

General Exceptions Under the Bharatiya Nyaya Sanhita, 2023: A Doctrinal Reappraisal of Criminal Responsibility

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Abstract:

General exceptions are crucial in criminal law as they specify the circumstances under which criminal culpability is negated, even when an act constitutes an offense. The Bharatiya Nyaya Sanhita, 2023 includes these exclusions in Chapter III, highlighting that criminal liability depends not only on the act but also on the presence of mens rea and the lack of a legally acknowledged defense. The principal exemptions include mistake of fact, judicial acts, accidents, necessity, activities executed in good faith, consent, acts by children and those of unsound mind, intoxication, and the right to private defense.

This study meticulously analyzes the general exclusions specified in the Bharatiya Nyaya Sanhita, 2023, focusing on its scope, need, and judicial interpretation. The paper asserts that while general exceptions are crucial for averting unjust punishment, judicial interpretation is equally important for administering criminal justice with fairness and predictability.

Keywords: General Exceptions, Bharatiya Nyaya Sanhita 2023, Criminal Liability, Criminal Defences, Mens Rea, Criminal Justice.

INTRODUCTION

"An injustice done to one is a threat to justice for all"

- Montesquieu

An accused individual may be exonerated from criminal culpability for any illegal conduct or omission if many factors deem the act noncriminal or non-offensive. General exceptions are legal defenses that an accused individual may utilize to exonerate themselves from criminal culpability. These defenses are contingent upon the context of the claimed offense, the accused's mens rea, and the rationality of their acts. Bharatiya Nyaya Sanhita, 2023 (hereinafter mentioned as *BNS, 2023*) {earlier The Indian Penal Code of 1860} contains provisions that either nullify an offense or classify it as a precautionary measure to protect you and others in similar circumstances from incurring a fine. Sections 14 to 44 of the BNS confer the right of individuals to safeguard their own lives and well-being, as well as that of others.

Upon a finding of guilt, the defendant shall be held responsible for their conduct and subjected to the requisite penalty. The perpetration of a crime entails not only the execution of an unlawful act or

omission but also encompasses a culpable mindset, intent, and behavior. The perpetration of an act that fails to satisfy these criteria for criminality is not regarded as a crime. These represent the most prevalent defenses that an individual charged with a crime may utilize to exonerate themselves or evade responsibility for the offense. An individual charged with a crime may leverage certain legal loopholes to evade accountability for their actions or for perpetrating an offense that could lead to the death or injury of an innocent individual. Given that our nation operates under a democratic framework, it is equitable for the accused to have the opportunity to present their perspective. Individuals may self-represent in court due to legal provisions allowing exceptions for particular circumstances.¹

Assuming that you have been assaulted by a person who is acting violently toward you, you will surely make an effort to defend yourself. If the assailant gets injuries when you defend yourself, may it be considered that you are liable for such injuries or have offended the aggressor?

- **Review of Literature**

General Exceptions are recognized as an integral component of criminal law, since they delineate the circumstances under which a criminal conviction must be invalidated notwithstanding the occurrence of a discernible criminal conduct or offense. This section aims to underscore notable articles regarding the notion and interpretation of General Exceptions by legal experts and judiciary bodies. It aims to elucidate how scholars have articulated the reasoning and burden of proof for certain defenses and to underscore prevalent flaws that currently exist.

1. **Conceptual Basis of General Exceptions in Criminal Law**

Academics have long recognized the importance of general exceptions in criminal law, as they act as safeguards against unjust punishment. **K.D. Gaur** asserts that criminal liability is imposed not solely based on an act's classification as an offence, but rather due to the presence of culpability and the absence of a legitimate defense.² The literature indicates that general exceptions embody the ethical foundation of criminal law by recognizing circumstances in which punishment would be unlawful and morally unjustifiable.

2. **Mens Rea, Voluntariness, and Criminal Responsibility**

Numerous criminal law texts characterize the mens rea premise as central to broad exclusions. Scholars note that defenses of mistake of fact, accident, and unsoundness of mind directly indicate the absence of guilty intent or voluntary action. **Ratanlal & Dhirajlal** assert that exceptions negate culpability when the necessary mental ingredient for committing an offense is absent.³ This doctrinal approach posits that general exceptions adhere to the fundamental premise that deterrent punishment is warranted only based on an individual's blameworthiness, rather than on results alone.

3. **Burden of Proof and the Accused's Responsibility**

A significant discourse among academics focuses on the burden of proof, especially in relation to general exceptions. Literature indicates that, while the prosecution must establish the accused's guilt beyond a reasonable doubt, the responsibility for demonstrating the applicability of a general exception,

¹ Bhattacharya, Prof. T, Indian Penal Code, 5th Edition, Central Law Agency, Allahabad, 2007.

² K.D. Gaur, Textbook on Indian Penal Code 144–47 (6th ed. 2016).

³ Ratanlal & Dhirajlal, The Indian Penal Code 247–52 (36th ed. 2019).

subsequent to proving the offense, rests entirely with the accused.⁴ This provision's severity has faced criticism from certain experts; yet, many have defended it, arguing that the facts are typically unique to the accused's knowledge.⁵ Literature indicates that the courts play a crucial role in determining the conclusion of this element.

4. Judicial Interpretation of Key Exceptions

“Judicial interpretation” has garnered significant attention in numerous commentaries pertaining to criminal law. An assessment has been conducted about the influence of judicial interpretation on defenses such as private defense, good faith, consent, and insanity, adhering to consistent principles. The Supreme Court's involvement in addressing the question of unsoundness of mind has been examined in numerous commentaries. Judicial interpretation, as noted in several commentaries, asserts that insanity must be established as a legal rather than a medical concern.⁶ Private defense necessitates proportionality and necessity to prevent its misuse as retaliation.⁷

5. Contemporary Relevance and Emerging Concerns under BNS, 2023

Recent scholarship has begun to examine the functioning of general exceptions under the Bharatiya Nyaya Sanhita, 2023, particularly in light of modern social and technological realities. Commentators assert that while the statutory structure mostly maintains the ideas of its predecessor, interpretation issues regarding good faith, consent, intoxication, and the level of proof are expected to endure.⁸ The literature suggests that uniformity in court norms is essential for the effective operation of general exceptions in safeguarding the rights of the accused, while also maintaining public confidence in the criminal justice system.

• Aims And Objectives

This study intends:

1. To investigate and evaluate the concept of defenses from various viewpoints.
2. To examine the fundamental nature of the right to defense or exception under intellectual property law and to analyze its legal precedents.
3. To investigate the importance of the defenses provided by the IPC and the criteria for their applicability.
4. Investigate and assess India's existing legal framework regarding the right to self-defense.
5. To investigate, analyze, and compare the legal frameworks of India, England, the United States, and Australia concerning self-defense and other exclusions permitted by the Indian Penal Code.
6. To assess the existence of any loopholes or legal constraints within the presently applicable legislation concerning the right of defense in India.
7. To examine the latest judicial and legislative advancements regarding the universal right to defense.

⁴ V.N. Shukla, *The Law of Crimes* 128–30 (5th ed. 2018).

⁵ K.D. Gaur, *Textbook on Indian Penal Code* 152–55 (6th ed. 2016).

⁶ *Dahyabhai Chhaganbhai Thakkar v. State of Gujarat*, (1964) 7 SCR 361 (India).

⁷ *Darshan Singh v. State of Punjab*, (2010) 2 SCC 333 (India).

⁸ K.I. Vibhute, *PSA Pillai's Criminal Law* 198–203 (14th ed. 2022).

- **Hypothesis**

We will ascertain the veracity of the subsequent assertion: *A robust legal system that governs human existence and bestows the necessary sanctity for its advancement signifies a society's progress. A society's capacity to honor human life signifies its advancement. The paramount and inalienable position of the fundamental right to universal defense must be safeguarded at all costs. Consequently, it is essential to juxtapose India with other countries to ascertain the sufficiency of India's existing legal framework for such arguments.* This can be achieved by juxtaposing India with other nations.

- **Research Questions**

1. Is the right to general defences a violation of the human rights of the victim?
2. Does India's current legal framework for the right to universal defence do away with all loopholes and limitations imposed by statute?

- **Research Methodology**

The researcher has selected a doctrinal research methodology that omits empirical data to enhance the significance of the current study. The research was conducted utilizing secondary sources. Secondary material was obtained from diverse sources, including books, statutes, journals, encyclopedias, reports, government publications, periodicals, and other readily available resources. Various comparative, historical, and analytical methodologies are utilized to examine secondary materials during the investigation. Research has been undertaken into notable self-defense cases from Australia, England, India, and the United States. Footnotes have been included consistently to accurately attribute the fundamental writing. The researchers employed all available resources to enhance the authenticity of the research and to incorporate more substantial and accessible materials. All previously stated sources, along with periodicals and statutes from India, England, the United States, and Australia, were referenced. Moreover, the researcher acquired secondary materials from media stories, pertinent legal and other websites, as well as any additional sources accessible at various times and upon request.

GENERAL EXCEPTION IN CHAPTER III OF THE BNS, 2023

The main exceptions covered in Chapter III of The BNS, 2023, are as follows:

1. **Mistake of Facts and Mistake of Law (Section 14 and 17):**

We are all acquainted with the adage, *"Ignorance of the facts is not an excuse, but ignorance of the law is never an excuse,"* and we understand the significance of this proverb. Conversely, if he violates the law and subsequently attempts to exonerate himself by asserting ignorance of its requirements, the law will not absolve him and will hold him accountable for his actions, regardless of his claims of unawareness. Under the stipulations of **Section 14**, an accused individual qualifies for protection if charged with a crime perpetrated by someone oblivious to the circumstances surrounding the offense, and if the accused genuinely believes that legal obligations necessitated the commission of the crime in question.

For instance, if a soldier discharges a weapon into a crowd under the orders of his superior and in compliance with the law, he will not incur legal liability for his acts.

Conversely, if an accused individual is charged with a crime despite lacking awareness of it, **Section 17** of the Sanhita stipulates that a person is culpable if he believes his actions are legally justified, or if, due to a factual error rather than a legal misinterpretation, he genuinely believes he is acting within the law. Both scenarios exemplify circumstances under which an individual may be deemed guilty of an offense. Both pertain to the same individual. In both potential scenarios, the perpetrator remains accountable for the offense committed.⁹

For instance, A suspected Z of murder; hence, in good faith and in compliance with the law, A apprehended Z to surrender him to the authorities. A has no prior criminal convictions.

Case Law: In *Raj Kapoor v. Laxman*¹⁰, the Board of Censors granted the petitioner's request for a certificate under the Cinematography Act, 1952 for the public exhibition of a film. The petitioner contended that upon being charged under Section 292 of the Code {now S. 294 of BNS, 2023}, their liability was negated by the issuance of a certificate for public exhibition by a competent authority, as mandated by the Act of 1952, regardless of the film's potential obscenity or its capacity to debase or corrupt public morals. This was their response to the accusation of having perpetrated the purported offense. The Supreme Court concurred with the argument and concluded that once the competent authority issued the requisite certificate in good faith, the petitioner producer and other agencies were safeguarded under this section in conjunction with section 5-A of the Act of 1952, primarily due to their good faith belief in the certificate's justificatory nature. This judgment was rendered after the Supreme Court concurred with the argument and arrived at the following conclusion: once the responsible authority issued the requisite certificate in good faith.

2. **Judicial Acts (Section 15 and 16):**

Judicial acts are actions executed by judicial system members while executing their given statutory authority. Section 15 of the Sanhita safeguards actions undertaken within the court's jurisdiction, whereas Section 16 extends protection to actions executed irrespective of the authorized court's jurisdiction. To preserve this immunity, the judge must constantly execute their responsibilities in good faith.¹¹

3. **Accident (Section 18):**

This encompasses incidents that transpired when you were adhering to the law. When a legitimate action is executed lawfully, utilizing authorized methods, and with appropriate diligence and caution, an accident or misfortune arising during the execution of the lawful act does not represent a violation of the law.

For the accused to be exonerated and employ the defense of accident, they must present evidence that satisfies the following criteria in a court of law:

- a) The behavior is unforeseen and results from adverse conditions or an incident.

⁹ BELINDA MORRISSEY, WHEN WOMEN KILL: QUESTIONS OF AGENCY AND SUBJECTIVITY 73 (Maureen McNeil et al. eds., Routledge 2003).

¹⁰ *Raj Kapoor v. Laxman*, 1980 AIR 605, 1980 SCR (2) 512.

¹¹ "JOSHUA DRESSLER, UNDERSTANDING CRIMINAL LAW 241 (Bender & Company 3rd ed 2001).

- b) The conduct was executed without criminal intent.
- c) The offense occurred while the perpetrator was legitimately involved in an authorized activity.
- d) The activity was conducted with utmost caution and attention.
- e) The defendant's infliction of harm does not entitle them to assert a defense.

For instance, If M attempts to shoot a bird with a rifle and the bullet strikes an oak tree, resulting in N's injury, M must not be liable for N's injuries.

Case Law: In the case of *King Emperor v. Timmappa*¹², court's judgment determined that discharging an unauthorized weapon did not negate the applicability of Section 18 of the Sanhita as a defense. The appeal of the acquittal was not reviewed, and the trial magistrate's verdict was upheld. The court determined, pursuant to Section 19(e) of the Indian Arms Act, that there is no legal justification for augmenting the sentence. The provision just held the respondent liable for the offense. Due to his apprehension of a potential wild animal attack on himself and his colleagues, he temporarily borrowed a weapon from a buddy for a brief period. The proposal to extend the sentence was declined in response to the request.

4. **Necessity (Section 19):**

The notion of necessity can be categorized into two separate subtypes: public necessity and private necessity. The concept of being compelled to act originates from the Latin phrase "Quod necessitas non habet legem," which translates to "necessity knows no law. This is the origin of the philosophical concept of necessity. Nevertheless, the necessity argument cannot be employed if the evidence does not demonstrate that the matter was urgent initially. This is a prerequisite for the necessity argument. The subsequent conditions must be met to qualify for the necessity defense under the BNS:

- a) Awareness of the potential for harm is necessary, even if the act is executed without the intent to constitute a crime.
- b) It is imperative to inflict harm to protect the life of the accused, as well as those of others and their property.
- c) The action must be executed without the objective of causing harm and not with the purpose of engaging in deceitful conduct.

Case Law: The defendants in the 1884 case *R v. Dudley and Stephens*¹³ were sailors. "Subsequent to the tempest that led to their vessel capsizing, they, along with a boy of approximately seventeen years, drifted to safety on a wooden plank."

They roamed purposelessly without sustenance or hydration for a prolonged duration. They killed the youngster upon realizing their imminent demise from famine, and even after their rescue, they continued to consume his flesh for several additional days until their actions were discovered.

During the murder trial, their defense asserted that self-defense was paramount and that they had no alternative but to kill the youngster. Both defendants were convicted of murder, and their claim of self-defense as a necessary means of preserving their lives was deemed fruitless. As a result, both individuals received death sentences.

¹² (1901) 3 Bom LR 678.

¹³ *Dudley v. Stephens*, (1884) 14 QBD 273

5. Infancy (Section 20 and 21):

Section 20: It addresses the conduct of a child under the age of seven. No actions performed by an individual under the age of seven can be classified as criminal.

For instance, if a child under seven years old pulls the trigger of a pistol and causes his father's death, the child will not be held liable for the death.

Section 21: It encompasses the conduct of a youngster possessing an underdeveloped mind, aged between seven and twelve years. A youth aged between seven and twelve who lacks the capacity to comprehend the nature and consequences of their actions cannot be deemed to have committed an offense. A 10-year-old who fatally shoots his father with a firearm will not be held liable if he has not attained adulthood.

Section 20 specifies that actions performed by a child under the age of seven are deemed legal, while Section 21 indicates that actions taken by a child aged between seven and twelve, who possesses an immature understanding or has not achieved adequate maturity, are also considered legal. The primary reason infancy can be used as a legal defense under the BNS is children's inherent limitations or lack of understanding. *Doli capax* denotes children who have not reached a specific degree of maturity and understanding.

Case Law: In *Krishna Bhagwan v. State of Bihar*¹⁴, "The Patna High Court determined that a child accused of a crime during trial, who is either seven years old at the time of the offense or at the time of the court's decision, may be convicted if he possesses the requisite understanding and awareness of the crime committed. In 2010, the Patna High Court upheld this ruling."

6. Insanity (Section 22):

Behavior of an individual with compromised cognitive abilities. The conduct of an act by an individual who is oblivious to the nature of the act or to the fact that it is unlawful is not deemed an offense. The individual's mental condition hindered their comprehension of either information.

An individual with a compromised mental state or mental illness cannot be considered to embody this fundamental standard of human conduct, and if such a person perpetrates a crime, they qualify for immunity under the Sanhita. The accompanying requirements must be satisfied to utilize the defense stipulated by Section 22:

- a) The defendant must have been experiencing a mental disease at the time the offense was perpetrated.
- b) There is no evidence indicating that the criminal act was driven by any motivation.
- c) Owing to his mental impairment, the defendant is oblivious to the repercussions that would ensue from his actions.

This defense is unequivocally substantiated by the M'Naughten Rule. It was contended that all individuals are presumed sane unless proven otherwise, and that to establish a defense of insanity, it must be shown that the accused experienced a disturbed state of mind and was unaware of the nature and quality of their actions. To establish a defense of insanity, it is necessary to prove that the defendant

¹⁴ *Krishna Bhagwan v. State of Bihar*, 1991 CriLJ 1283

experienced a mental disorder and lacked the intent to conduct the act.

For instance, A, who is either insane or otherwise of unsound mind, fatally stabbed B, believing it to be a game. A shall not be held accountable for B's demise, as he lacked comprehension of the act's nature or the law at the time of B's death. He was unable to engage in logical or rational thought.

Case Law: In the case of *Ashiruddin Ahmed v. State*¹⁵, The defendant, Ashiruddin, claimed that he received a directive from a celestial entity to sacrifice his four-year-old child. He brought his son to a mosque the following morning and murdered him there. He subsequently proceeded immediately to his uncle; but, upon encountering a chowkidar, he was directed to a location adjacent to a tank and recounted the narrative there.

The Supreme Court determined that the accused lacked comprehension of the illegality of the deed he was charged with, despite being cognizant of the crime's nature. Consequently, the defendant is authorized to give his defense.”.

7. **Intoxication (Section 23 and 24):**

Intoxication constitutes a legitimate defense under the BNS, 2023 solely if it was involuntary. If the offender intentionally gets inebriated to utilize drunkenness as a legal defense for criminal activity, the intoxication defense is not permissible. According to sections 23 and 24, an inebriated individual is afforded immunity solely if the drug that caused their inebriation was administered without their consent or awareness. Section 23 addresses charges requiring particular purpose and knowledge, while Section 24 encompasses all potential intoxication-related offences.

Section 23: An act performed by an individual unable to exercise sound judgment owing to alcohol consumption. An act committed by an individual who, at the time of the act, is unable to comprehend its nature or recognize its wrongfulness is not deemed an offense if the intoxicant was administered without the individual's consent and knowledge.

For instance, an individual consumed alcohol presented by a companion under the erroneous assumption that it was a non-alcoholic beverage. Upon returning home, he became intoxicated and caused a collision. He will not be held accountable for his acts as he was administered alcohol without his consent and knowledge.

Section 24: Intoxication as a determinant in the perpetration of a crime necessitating specific intent or knowledge from the offender. This rule is applicable when an action is not illegal until executed with particular knowledge or intent. Under certain conditions, an individual who performs an act while intoxicated is seen as possessing the same level of awareness as if they were sober. Unless the intoxicating substance was supplied without his consent or against to his wishes, this is the situation.

For instance, if an inebriated individual stabs another person without their agreement or knowledge at a gathering, the intoxicated individual will not be held liable for the stabbing. Nevertheless, if the individual inflicted harm upon the victim while knowingly intoxicated, he shall be held accountable for the assault.

Case Law: In the case of *Babu Sadashiv Jadhav v. State of Maharashtra*¹⁶, “The defendant was

¹⁵ *Ashiruddin Ahmed v. State*, 1949 CriLJ 255

¹⁶ 1986 Cri LJ 739

inebriated during the altercation with his wife. He subsequently drenched her with kerosene, ignited her, and promptly commenced extinguishing the flames. According to Section 100 of the Sanhita, the court concluded that he meant to inflict serious bodily damage that would likely lead to death.”.

8. Consent (Section 25-28 and 30):

Section 25: Conduct predicated on agreement that neither aims to inflict death or severe harm nor possesses awareness of the likelihood of such outcomes. Any action that is not aimed at causing death or serious bodily injury, and that the perpetrator does not recognize as likely to result in such outcomes, does not constitute an offense due to any harm it may inflict, or that the perpetrator intends to inflict, on an individual over the age of 18 who has provided explicit or implicit consent to endure that harm; nor does it constitute an offense based on any harm the perpetrator may acknowledge it is likely to cause to such a consenting individual.

Case Law: In the case of *Poonai Fattemah v. Emp*¹⁷, “The defendant, masquerading as a snake charmer, convinced the victim that he possessed the ability to shield him from any potential injury resulting from a snake bite. The deceased trusted him, resulting in his getting bitten by the snake, ultimately leading to his demise. The consent-based defense was not allowed to proceed.”.

*Bishamber v. Roomal*¹⁸ (rape of a Harijan girl) “To shield the grievance from the assault of Harijans, the Self-constituted Panchayat compelled him to march through the village with his face blackened and subjected him to a public thrashing. The activities of the accused Panchayat were deemed authorized by the complaint.”

Section 26: Action undertaken freely, in good faith, and for the individual's benefit, not meant to result in death. No action undertaken without the intent to inflict death constitutes an offense, regardless of any resultant harm, whether intended or anticipated by the perpetrator, to any individual for whom the action is performed in good faith and who has provided explicit or implicit consent to endure such harm or to accept the associated risks. This is the sole exception where the perpetrator wants to commit murder.

Case Law: In *R.P. Dhanda v. Bhurelal*¹⁹, “The appellant, a medical doctor, consented to conduct cataract surgery on the patient's eye. The patient ultimately experienced eyesight loss due to the procedure. This defense shielded the physician as he was considered to have acted judiciously.”.

Section 27: Actions performed in good faith for the welfare of a child or an individual with mental incapacity, either by the guardian or with the guardian's consent. No actions undertaken in good faith for the benefit of an individual under twelve years of age or of unsound mind, with the express or implied consent of their guardian or lawful custodian, shall be deemed an offense, irrespective of any harm that may result, be intended, or be known to the perpetrator as likely to occur to that individual.

Section 28: It governs the functioning of consent as stipulated by Sections 25 to 27 and Section 30, although it does not provide a definition of consent. Section 28 encompasses four separate categories of consent, none of which independently constitutes permission.

In Section 28, there are four distinct types of consent, but none of them actually constitute consent in and

¹⁷ *Poonai Fattemah v. Emp*, (1880) ILR 5 Cal 351

¹⁸ *Bishamber versus Roomal*, AIR 1951 All 500

¹⁹ *R.P. Dhanda v. Bhurelal*, 1987 CriLJ 1316

of themselves:

- a) The consent is granted out of fear of harm.
- b) Consent is frequently granted despite a lack of understanding of the facts.
- c) Insane individuals are capable of giving consent.
- d) A child younger than 12 years of age provides consent for the procedure.

In order to successfully assert a Section 25, 26, or 27 defence, the following conditions must be met:

- a) The individual has given their consent to assume the risk.
- b) The individual's age must be at least 12 years greater than the minimum age requirement. If the child is younger than 12 years old, the parent or legal guardian must grant permission for the child's best interests.
- c) The individual does not suffer from any mental impairments.
- d) Consent can either be given explicitly or implicitly.
- e) Consent was never intended to cause serious injuries or death.
- f) Due to a misunderstanding of the facts or out of fear of harm, consent was withheld.

Section 30 does not necessitate a legal infraction where an individual acts in good faith for the benefit of another without that person's consent, even if the latter suffers harm as a consequence.

Case Law: In *Jakir Ali v. State of Assam*²⁰, “The evidence conclusively shown that the defendant participated in sexual conduct with the victim while feigning a marriage proposal. The Gauhati High Court determined that a woman's submission of her body due to fear or misapprehension of reality does not constitute consent, hence affirming the accused's conviction under sections 376 and 417 of the Indian Penal Code {Now, S. 64 & 318 of BNS, 2023}.”

9. Communication (Section 31):

Even if the communication has the potential to do harm to the recipient, it is not deemed an offence if it is made in good faith with the intention of assisting the individual .

Example: The doctor confides in the patient's wife that her husband has a form of cancer that is incurable and that his life is in jeopardy. The wife was so distressed by the news that she passed away. Since the physician communicated this information to the patient in good faith, he will not be held liable for any resulting damages .

10. Duress (Section 32) :

An act that a person is compelled to perform after being threatened. Nothing constitutes an offence if it was committed by a person who was coerced to do it by threats that, at the time it was committed, caused a reasonable apprehension that instant death would otherwise result, so long as the person who committed the act did not, of his own volition or out of a reasonable apprehension of harm to himself short of instant death, place himself in the situation in which he became subjected to the threat. Exceptions to this rule are only homicide and offence.

With the exception of murder and crimes against the state punishable by death, if a person is forced to do

²⁰ *Jakir Ali v. State of Assam*, 2007 (3) GLT 497

something under threat and at the time of doing it, reasonably causes the apprehension that instant death to that person will otherwise be the result, the accused is not guilty of the crime as long as he did not do it of his own volition or out of a reasonable fear of harm to himself short of instant death.

Example: A band of robbers had captured A, and there was a very real probability that he would die immediately. He was pressured into taking a gun and into allowing the robbers to enter his home and harm his family. Because the crime was performed under duress, A will not be held guilty of it.

11. Trivial Acts / Trifles (Section 33):

This section addresses conduct that causes only minimal harm. Nothing constitutes an offence solely on the ground that it causes, is intended to cause, or is known to be likely to cause harm, so long as the harm in question is so minor that no reasonable person in his or her right mind would complain about it. Acts that are deemed trivial are violations of the law that cause minimal harm and for which the average person would not file a complaint. Section 95 grants immunity to those who commit violations deemed minor. The maxim "de minimus non curat lex" encapsulates the principle that the legal system does not consider insignificant actions .

Case Law: In the case of *Mrs. Veeda Menezes v. Khan*²¹, "the respondent threw a file of papers at the appellant's husband during an argument between the appellant's husband and the respondent, which resulted in a scratch on the appellant's elbow. The husband of the appellant was found to be innocent of all charges. The defendant was found not guilty because the Supreme Court determined that the degree of harm was insignificant".

12. Private Defence (Section 34 – 44)

Section 34 of the BNS, 2023 delineates the conditions under which an individual may invoke the immunity of private defense to safeguard their life and property, as well as the lives and properties of others, for injuries incurred in self-defense, which is not deemed an offense. This immunity safeguards an individual not only for injuries incurred in self-defense but also for those sustained while defending others.

Section 34: Actions executed in the interest of private defense. An individual who harms another while using their right to self-defense is not culpable of an offense.

Section 35: The right to defend oneself and one's property with private force.

Protect both his own and other people's property, as well as his own and another person's bodies.

Section 36: An individual assaulted by a minor owing to ignorance, lunacy, or intoxication may invoke private defense.

Section 37: Affirms that all individuals possess the right to engage in private defense, contingent upon acceptable limitations.

- a) In defending his or another's body against any criminal act that constitutes a threat to their life.
- b) In defending himself or another's mobile or immovable property against any offence, such as theft, robbery, mischief, or criminal trespass, or an attempt to commit any of those offences; preventing

²¹ *Mrs. Veeda Menezes v. Khan*, 1966 SCR 123

the property from being stolen, robbed, destroyed, or entered illegally.

For instance, A father discharges a firearm at a thief's leg to safeguard his daughter, who faces an impending threat of assault by a robber. Nevertheless, no repercussions will be imposed on the father as he was endeavoring to preserve his daughter's life.

Case Law: In *Akonti Bora v. State of Assam*²², “The Gauhati High Court determined that, in the exercise of the right to defend private property, the act of dispossessing or evicting a trespasser encompasses the authority to dispose of the tangible items utilized in the commission of the trespass. This verdict was rendered following the court's ruling that the right to private property defense encompasses the freedom to dispose of tangible assets.”

Section 36: Right of private defence against the act of person of unsound mind, insane person, etc.

Every individual possesses an equivalent right to private defense against an act that would typically qualify as a specific criminal, but does not due to the individual's immaturity, lack of cognitive development, mental incapacity, intoxication, or a misunderstanding on their part. In other words, when an action that often qualifies as a specific crime is not penalized as such due to the perpetrator's immaturity, lack of maturity, or intoxication.

For instance, under the compulsion of insanity, A attempts to murder Z, notwithstanding A's innocence. Self-defense is a strategy that Z can utilize to safeguard himself against A.

Section 37: Acts against which no private defence is available.

- a) There exists no entitlement to private defense against an act that fails to instill a reasonable apprehension of death or grave harm if executed, or against an act that does not engender a reasonable fear of death or serious injury if not executed.
- b) An action undertaken by a public official in good faith while performing their duties, even though the activity may not be entirely authorized.
- c) A person is not entitled to private defense against an act that does not legitimately instill the fear of death or severe injury, regardless of whether the act is executed or could lead to such consequences.
- d) Attempted execution, pursuant to the directive of a public official acting in good faith under the guise of their office, despite the directive not being strictly lawful in its original formulation..

An individual is not entitled to private defense when there is still an opportunity to request the assistance of public authorities. This is applicable in all situations. The degree of harm inflicted must correspond to the imminent threat or aggression.

Case Law: In *Puran Singh v. State of Punjab*²³, “The Supreme Court of India declared that in cases of invasion or aggression on property by an individual lacking ownership rights, there is unequivocally no recourse to public authorities, and the accused possesses the unequivocal right to repel the assault and employ force if deemed necessary. The court acknowledged that seeking assistance from public agencies is unfeasible.”

Section 38: When the exercise of the right to self-defense results in fatality. This section of the agreement discusses the question of "the extent of the right to private defense of the body in relation to causing death.

²² *Akonti Bora v. State of Assam*, 1980 CriLJ 138

²³ *Puran Singh v. State of Punjab*, 1975 SCR 299

This section stipulates that the right to private defense of the body permits, with the limitations specified in the preceding section, the intentional infliction of death or injury upon the assailant if the offense necessitating the defense belongs to one of the following categories:

- a) Assault that poses a significant risk of bodily injury or death.
- b) A rational dread of sustaining a life-threatening injury
- c) Performing the act of rape
- d) Unnatural passion
- e) kidnapping or robbery
- f) Intentionally and illegally holding a person in such a way that they have a reasonable fear of being assaulted but are unable to call public authority.
- g) The act of throwing or attempting to throw acid, which causes the victim to worry they will sustain severe injury as a result of the assault .

Case Law: In *Yogendra Morarji v. State*²⁴, “The Supreme Court extensively clarified the scope and limitations of the right to private defense of the body. An individual confronted with an imminent threat to their life or physical integrity must possess no alternative safe or rational means of escape or withdrawal other than the act of suicide. This regulation is inviolable.”

Section 39: When those rights cover any type of harm, besides death.

The right to private defense of the body does not encompass the intentional infliction of death upon the assailant if the offense does not meet the criteria outlined in the preceding section. The right, however, extends, subject to the limitations outlined in section 99, to the deliberate infliction of any harm, excluding death, against the assailant.

Case Law: In *Dharmindar v. State of Himachal Pradesh*²⁵, The standard of proof necessary to establish the right to private defense was found to be less burdensome than that required of the prosecution to substantiate its case. If the evidence and circumstances indicate a majority of probabilities supporting the defense argument, it would suffice to fulfill the burden of demonstrating self-defense. In situations where the defense case is being upheld, this would be the scenario.

Section 40: Commencement and continuance the right of private defence of the body.

The right to private defense of the body commences upon a reasonable apprehension of danger due to an attempt or threat of an offense, even if the offense has not yet occurred; this right persists as long as the reasonable apprehension of danger exists.

For instance, A, B, and C sought to eliminate D for retribution when they unexpectedly observed a police officer advancing from the opposite direction. Apprehensive, they pivoted and resumed their escape. Nonetheless, D shoots B in the leg, notwithstanding the absence of any immediate threat to B. D will be held liable for this action, irrespective of the fact that no one was in peril or at risk of injury.

Section 41: When the right of private property defence includes the right to cause death.

- a) Robbery;
- b) House-breaking by night;
- c) Mischief by fire committed on any building, tent or vessel, building, tent or vessel used as a

²⁴ *Yogendra Morarji v. State*, (1980) 2 SCC 218

²⁵ *Dharmindar v. State of Himachal Pradesh*, Appeal (crl.) 445 of 2001

human dwelling, or a place for the custody of property;

d) Theft, mischief, or house-trespass under such circumstances as to cause reasonable apprehension that death or grievous bodily harm will result if the right of private defence is not exercised .

For instance, C endeavors to stab D while unlawfully entering D's domicile to perpetrate burglary. D harbored a legitimate apprehension that C may cause him significant harm; hence, in an effort to protect himself and his possessions, D was fatally stabbed with a knife that was plunged into his chest, leading to his demise. C shall not assume liability for any matters.

Case Law: In the case of *Mohinder Pal Jolly v. State*²⁶, The slain worker and many of his colleagues were singing slogans outside the workplace while making requests. Moreover, they hurled brickbats, resulting in damage to the owner's property. In reaction, the owner discharged two rounds from outside his office, one of which struck and fatally wounded the already dying employee. Consequently, due to the court's finding of mischief, the accused will be precluded from utilizing this segment of the statute as a defense.

Section 42: When such a right includes the ability to do injury other than death.

If the offense that triggers the right to private defense is theft, mischief, or criminal trespass not specified in the preceding clause, then this right does not encompass the deliberate infliction of death. This authority extends, subject to the constraints specified in section 99, to the intentional infliction of any harm, excluding death, upon the perpetrator.

For instance, If A has perpetrated criminal trespass with the goal to aggravate or harm B, B is entitled to retaliate against A in a similar manner, provided that it does not result in death.

Case Law: In the case of *V.C. Cheriyan v. State*²⁷, The three persons who murdered built an unlawful road over the church's private land. They were being investigated for criminal conduct at the time. The three alleged church members placed these barricades and are also charged with obstructing this road. The defendant fatally stabbed the victim, and the Kerala High Court determined that an individual's right to self-defense does not encompass the act of causing another person's death.

Section 43: Establishment and continuation of right to private property defence.

- a) The right to defend one's own private property can be used if there is a valid fear that the property is being threatened.
- b) The right to protect one's private property against theft continues until the thief has escaped with the stolen property.
- c) As a third option, public authorities can be contacted for aid.
- d) There is also the potential that the lost property has been recovered.
- e) The right to defend one's private property against robbery exists so long as,
- f) The criminal causes another person's death or bodily harm, or attempts to do so.
- g) Alternatively, unjustifiable confinement
- h) As long as the prospect of an unanticipated loss of life or property exists,
- i) Pain that develops abruptly or
- j) Personal restriction remains immediate.

²⁶ *Mohinder Pal Jolly v. State*, 1979 SCR (2) 805

²⁷ *V.C. Cheriyan v. State*, 1982 CriLJ 2071

k) The right to a private property defence against criminal trespass or offence endures so long as the perpetrator is committing criminal trespass or harm.

The right to private property defence against midnight housebreaking remains in effect so long as the house-trespass that was initiated by midnight housebreaking continues .

Example: If a burglar immediately attempts to injure the homeowner with a knife, the homeowner has the legal right to act in self-defense and harm the intruder in order to preserve their life and property from the threat posed by the intruder.

Case Law: In the case of *Nga Pu Ke v. Emp*²⁸, “it was stated that an unauthorised individual stole paddy sheaves from the defendant's property. As a result of a battle that broke out between the accused and the cartmen, the cartmen abandoned their sheaves and fled. The accused continued to pursue and assault the victim, resulting in his death. The judge judged him guilty of the offence for which he was accused”.

Section 44: Private defence against homicidal violence when an innocent person is in danger.

“If an individual instills a fear of death while exercising their right to private defense against an assault, and the defender has no alternative but to inflict harm on an innocent person, the defender's right will be broadened to include the risk they have created.”

For instance, A mob assaults C with the intention of terminating his life. He cannot assert his right to self-defense without igniting a conflagration among the crowd. C did not violate any laws by exercising his right to keep and bear arms, as he was forced to endanger innocent children to ensure his own protection.

Excusable Acts	Justifiable Acts
A mistake of Fact under section 14 and 17.	A Judge and Act executed in accordance with an order issued under Sections 15 and 16.
Accident under Section 18.	The necessity under Section 19.
Infancy – Section 20 and 21.	Consent under Section 25 –28 and 30.
Insanity – Section 22	Communication under Section 31.
Intoxication –Section 23 and 24	Duress under Section 32.
	Trifles under Section 33.
	Private Defence under Section 34 - 44.

CONCLUSION

Thus, these are the general exceptions that the defendant may invoke to evade liability or the repercussions of the offense committed. Depending on the specifics of the situation, it is possible to cause the death of an individual or inflict harm on an innocent person. In light of our nation's democratic framework, it is just that the accused be permitted to present their perspective. Consequently, particular

²⁸ *Emp.v. Noor Mohmed,A.I.R- 1928*

exceptions have been authorized to allow persons to represent themselves in court.

Upon examining the overarching context and operational dynamics, it becomes apparent that these prospective defenses will not substantially influence the criminal law judge's determination. Comprehending criminal law necessitates an understanding of the idea of mens rea. The court must evaluate the specific facts and circumstances of each case to ascertain if the accused has access to a certain defense. Central to establishing an individual's guilt is the assessment of whether they possess the necessary elements of mens rea. These general defenses in IPC/BNS are significantly contingent upon the specifics of the case in question.