



**BNS - GENERAL EXCEPTIONS (S-14 – 33) (Defences in criminal law)**

The scope of general exceptions contained in BNS is wide enough to include not only offences contained in Bharatiya Nyaya Sanhita but also the offences contained in **other local and special laws**.

Chapter III is usually divided into two broader categories;

1. Excusable Defences (S 14 – 33)
2. Justifiable Defences (S 34 – 44)

- ❖ Excusable defences refer to the provisions contained from Section 14 to Section 33. These are provisions where the act committed by a person is excused **due to the lack of mens rea**.
- ❖ Justifiable defences refer to the right of private defence.

The general exceptions are classified under **7 categories** :

1. Judicial acts [S-15 and 16]
2. Mistake of fact [S- 14, 17]
3. Accidental acts [S- 18]

**4. Absence of criminal intent**

- Necessity [S- 19] (Act likely to cause harm for prevent other harm)
- **Incapacity to commit an offence** [S- 20 to 24]
  - a) Child (Doli Incapax) (Infancy)
  - b) Unsound mind (Insanity)
  - c) Drunkenness (Intoxication)

- Communication made in good faith (S-31) & Certain acts are not offence if they are done by compulsion/duress (S-32)

5. Consent [Sections 25-28 & 30] (Done in good faith without consent)

6. Trifling (slight harm) acts

7. Private defence

### **MISTAKE OF FACT [Sections 14, 17]**

Mistake refers to a perception or belief which does not correspond with the reality of the situation. (Mistaken belief **or** misunderstanding of truth)

This section is based upon the principle '**ignorantia facti excusat**' (ignorance of fact is excusable). It is the cardinal principle of criminal law that ignorance of fact is an excuse but ignorance of law is not an excuse.

For a person to claim the benefit of Section 14 & 17, the following **ingredients need to be proved**; (Mistake of fact as a defence in criminal law)

- ❖ An act is committed by a person.
- ❖ Person is bound by law to commit the act. (**S - 17** : justified by law)
- ❖ He believes so in good faith. (i.e act with due care and attention)
- ❖ The reason behind such belief is a mistake of fact and **not a mistake of law**.

There is a **legal duty** in section 14 and **legal justification** in section 17.

**S : 14 – Illustration** : 'A', a soldier, fires on a mob by the order of his superior officer, in conformity with the commands of the law. A has committed **no offence**.

**Example** : After enquiry, arrest by police a wrong person under mistake of fact. Police have committed **no offence**.

**S: 17 - Illustration**

A sees Z commit **what appears to A to be a murder** (A sees Z doing something that looks like a murder). A, in the exercise, to the best of his judgment exerted in good faith, of the power which the law gives to all persons of apprehending (arrest)murderers in the fact, seizes Z, in order to bring Z before the proper authorities. A has committed no offence, though it may turn out that Z was acting in self-defence.

**S 14** – Mistake of fact leads to the belief that X is **bound by law**

**S 17** – Mistake of fact leads to the belief that X is **justified in law**

Section 17 is similar to section 14 with one vital difference. In section 14, the mistake of fact must lead the person to believe that he is **bound by law** to do something whereas in section 17, the mistake of fact must lead the person to believe that he is **justified in law** to do something. Section 14 deals with a scenario where the person believes (mistakenly) that he is under a legal compulsion to do something. Under section 17, the person does not believe himself to be under a legal compulsion but is of the **impression (mistaken) that his actions are justified in law.**

### **MISTAKE OF LAW:**

A mistake of law occurs when a person misunderstands or is ignorant of the law as it exists. Unlike a mistake of fact, ignorance of the law is **generally not a defence in criminal law.** The maxim “ignorantia juris non excusat” (ignorance of the law excuses not) applies, meaning that everyone is presumed to know the law and cannot escape liability due to ignorance.

The BNS **does not provide a defence for mistake of law.** This principle is contained in the maxim itself, which is widely recognized and applied in Indian jurisprudence. If such kind of defence is allowed to be pleaded then everyone will advance this defence and it will be very difficult to prove whether the person was really ignorant of law or not. It applies even to a foreigner.

### **Ignorance of newly passed statute**

In *Mayer Hans (M.H) George Vs. State of Maharashtra* (Air 1965 SC 722) M.H, George was not an Indian Citizen and was trying to smuggle gold through India. India recently passed a law prohibiting carrying that much gold through India. M.H George was hiding the Gold in his jacket that too 34 kg of gold. Court said that even if M.H. George didn't know the law he is supposed know it **ignorance of law is no excuse** and he was held liable under the relevant provision.

### **ACCIDENT [Section 18]**

Section 18 can be a defence to an offender if he can prove that—

- ❖ The act was done by accident or misfortune;
- ❖ It was done without any criminal intention or knowledge;
- ❖ It was lawful act being done in lawful manner by lawful means;
- ❖ It was being done with proper care and caution.

**Ex 1:** A tries to pickpocket B. B has loaded, pistol in pocket. As hand touches the pistol and triggers it resulting in the death of B. It is accidental death and not culpable homicide.

**Ex 2 :** A is cutting the wood with an axe at a place where children are playing. The axe flies off and kills a nearby child. A is liable for causing death by negligence.

### **NECESSITY [Section 19]**

Section 19 of the BNS has incorporated the doctrine of necessity as a defence to a criminal charge {**Quod necessitas non habet legum (necessity knows no law)**].

“When an act is done to prevent some harm to person or property, the person committing the act is **not liable**”. In order to escape even more harm, he has to do something that would normally be offence.

**Essential ingredients:**

- ❖ Act is done with the knowledge that it is likely to cause harm;
- ❖ It is done without any criminal intention to cause harm;
- ❖ Act is done in good faith for the purpose of avoiding other harm to person or property

**Ex 1.** A captain of a vessel, without his negligence finds suddenly a small boat within a short distance, and hits it under forced circumstances to save vessel.

**Ex 2.** ‘A’, in a great fire ,Pulling down (demolish) a house to prevent great fire spreading to other areas. He does this with the intention in good faith of saving human life or property. A is not guilty of the offence.

**Doctrine of self-preservation** (Permits a lesser evil to avert a greater evil )

The question whether how far the doctrine of necessity justifies killing of another person to preserve one’s own life if discussed by court in R. **Vs.** Dudley and Stephens, (1884) 14 QBD 273, there were three men namely D, S (seamen) and a young boy on the ship. During the ship journey due to high storm they had to survive many days without food and water. On 20th day they decided to kill a person amongst themselves for survival. So they decided to kill the young boy. It was held that self preservation is no necessity. The Doctrine of Necessity is attracted where a person does not have a choice and to prevent graver harm he causes lesser harm.

**Note:**

Section 18 requires absence of ‘criminal intention’ as well as ‘knowledge’ whereas Section 19 requires absence of ‘criminal intention’ alone. Section 19

clearly postulates that the accused had knowledge that he is likely to cause harm.

## **INCAPACITY TO COMMIT AN OFFENCE [Section 20 to 24]**

### **Foundation of Criminal Liability**

It is mandatory that in order to hold a person legally responsible for some criminal conduct, it is necessary that the person who did the act had at the time sufficient mental capacity **to form a criminal intent**.

If the person is proved to have committed the criminal act but without the said mental capacity, he cannot be held criminally liable for his actions. The reasons behind him **lacking the mental capacity** can be classified into 3 primary categories;

1. Where the person is of **immature age** and has not yet developed the mental capacity required to form a criminal intent.
2. Where the person is of **unsound mind** and by reason of his mental state, cannot be said to have a guilty intent.
3. When due to reason of **intoxication**, the person has lost the mental capacity to form an informed intent.

### **A) Child ( Doli Incapax)**

Doli incapax is a Latin term that means **“incapable of doing harm”**.

Sections 20 and 21 of BNS grant immunity to infant below a particular age from any criminal liability. Section 20 totally absolves a child under the age of 7 years and Section 21 grants qualified immunity to child between 7 years and 12 years. The law presumes that child below a certain age is incapable to taking care of his own interest and he cannot distinguish between right and wrong.

<b>Aspect</b>	<b>Section 20</b>	<b>Section 21</b>
<b>Offence</b>	Acts of children	Acts of children with insufficient maturity
<b>Definition</b>	No child under 7 years liable	Child above 7 and under 12 years not liable if lacking maturity
<b>Age Range</b>	Below 7 years	Above 7 and under 12 years
<b>Liability</b>	Absolute immunity, no liability	Qualified immunity, Conditional liability based on maturity
<b>Judicial Assessment</b>	Not required	Required to assess child's maturity
<b>Punishment</b>	No punishment specified	No specific punishment; depends on maturity
<b>Legal Principle</b>	Doli incapax (incapable of crime)	Limited doli incapax based on maturity
<b>Purpose</b>	Protects very young children	Balances protection and accountability based on maturity

### **Criminal immunities granted to children under 7 years of age**

This section lays down that if a child is under 7 years of age does any act, it would not constitute an offence because under seven years of age, he is, by presumption of law, (doli incapax) not capable of forming a guilty mind.

### **Criminal immunities granted to children above 7 and under 12 of age**

In order to claim exception under this section the child must not have attained sufficient maturity for understanding and judging the nature and consequences of the act. The prosecution has to prove that child caused actus reus with men's rea and that he had sufficient maturity to understand the



nature and consequences of his conduct. Test for qualified, immunity depends on 3 factors:

- (a) The nature of the act done;
- (b) Subsequent conduct of the offender;
- (c) Behaviour towards other (demeanour) and appearance of the offender.

Child above 7 years of age and under twelve years of age is governed by the **maxim** *Malitia supplet aetatem* which means **malice supplies** (makes up for age) **the age**. The presumption of innocence of a child is based on the principle that 'the younger the child in age, the lesser the probability of being corrupt'.

### **B) UNSOUND MIND (INSANITY)**

Generally, men's rea is taken to be essential element of crime. It is said 'furiosus nulla voluntas est' i.e. a person who is suffering from **mental disorder** cannot be said to have committed a crime as **he does not know what he is doing**.

In order to be excused from criminal liability under section 22, the following needs to be proved;

- ❖ At the time of committing the offence, the accused **was of unsound mind**.
- ❖ Because of the unsoundness of mind, he was not capable of knowing the **nature of the act** at the time of committing the offence. **Or**
- ❖ Because of the unsoundness of mind, he was not capable of knowing that he was doing something either **wrong or contrary to law** at the time of committing the offence.

### **Burden of proof**



Section 22 of Bharatiya Nyaya. Sanhita should be read with Section 108 of the Bharatiya Sakshya Adhiniyam, 2023 which provides for the burden of proving defence in criminal cases. It provides that if the accused wants to establish that his case falls within any of the General Exceptions given in Bharatiya Nyaya Sanhita or within any other exception in any other law then the burden of proof is upon the accused of showing that his case falls under such exceptions.

### **Defence for Insanity - Points to remember**

- ❖ Existence of an unsound mind is a sine qua non to the applicability of this provision.
- ❖ A mere unsound mind per se would not suffice, and it should be to the extent of not knowing the nature of the act.
- ❖ Mere medical insanity cannot be said to mean unsoundness of mind.
- ❖ There may be a case where a person suffering from medical insanity would have committed an act, however, the test is one of legal insanity to attract the mandate of Section 22 of the BNS.
- ❖ A person of an unsound mind does not know that such an act is right or wrong.
- ❖ Burden on the accused to prove his plea of insanity is one of preponderance of probability.

### **C) DRUNKENNESS (INTOXICATION AS A DEFENCE)**

#### **Involuntary intoxication (S : 23)**

Section 23 of BNS provides that 'nothing is an offence which is done by a person who, at the time of doing it, is, by reason of intoxication.'

**To qualify for intoxication as a defence in BNS, the following conditions must be met:**

- ❖ The person must perform an act.
- ❖ They must be unable to understand the nature of the act.

- ❖ This inability is a result of their intoxication.
- ❖ The intoxication must have been administered **without their consent** or knowledge.
- ❖ The incapacity should be present at the time of the act.

For **successful defence** under this section, it must be proved that intoxication is caused against, the will or without the knowledge of the accused.

### **Voluntary Intoxication (S: 24)**

**Voluntary intoxication is not a defence even though** the accused was incapable of knowing the nature of the act.

**Voluntary intoxication** = Treated as if they were not drunk

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Presumed that he had the necessary knowledge (**Not intent**)

(Same level of knowledge as a sober (not drunk))

However, it **provides partial defence** to the person. It is general rule that intention can never be presumed. It must be proved with regard to facts and circumstances of the each case. Rather, the knowledge of the crime may be presumed with the surrounding circumstances of the case.

Thus, in an offence requiring the presence of particular knowledge, the plea that the person lacked the knowledge due to voluntary intoxication will not be accepted. However, in offences requiring a particular intent, voluntary intoxication may be pleaded as the ground for lacking such intent.

If a person, in spite of his drunkenness, knows the consequences of his act, it can safely be presumed that he **intended** the resultant consequences.

## General exceptions under BNS

### Accident

- The act must have been done without any criminal intention or knowledge;
- The act alleged to have been done against the accused must be lawful;
- The act must have been done in a lawful manner by lawful means and with proper care and caution.

### Doctrine of necessity

- The act must have been done under good faith;
- There must not be mens rea (absence of mens rea)
- It embodies the principle that where the accused chooses lesser evil, in order to avert the bigger then he is immune.

### Insanity/ Doli incapax

- It means that such a child is incapable of doing a criminal act and cannot form the necessary mens rea to commit a crime.
- This presumption is conclusive and it emanates from the recognition of the fact that he lacks the adequate mental ability to understand the nature and consequences of his act and thereby an ability to inform the required mens rea.
- Presumption under section 21 is not conclusive.
- The burden is upon the prosecution to prove beyond reasonable doubt that the child caused an actus reus with mens rea and that he knew that his conduct was not merely mischievous.

## Consent [Sections 25-28 and 30]

The term 'consent' is not defined in BNS. The law related to consent is based on maxim **volenti non fit injuria i.e. he who consents suffers no harm**. Man is best judge of himself and no man will consent to what he considers injurious to his interest.

The section 28 does not define 'consent' but describes **what is not consent**. This section says that consent is not a true consent if it is given :

- by a person **under fear of injury** and the person obtaining the consent knows or has reason to believe this.
- by a person under a **misconception of fact**.
- by a person of **unsound mind** and who is unable to understand the nature and consequence of that to which, he gives his consent.
- by a person who is **intoxicated**.
- by a person under **12 years of age**.

## Consent as defence

Section 25 of BNS gives immunity to a person from criminal prosecution on the ground of consent in general. Sections 26, 27 and 30 extend protection in those cases only where the harm is caused in good faith during the course of doing an act for the benefit of consenting party.

Following are the cases in which the consent of the harmed or his guardian exempts **the person inflicting the harm from criminal liabilities**:

(a) Section **25 - Consent given by an adult person** (18 years of age) to any harm against himself (which is not intentionally cause grievous hurt or murder). Good faith and benefit are not required as essentials. **E.x:** Wrestling fight.

(b) Section **26 - Consent given for an act done in good faith** for his benefit. But such act must **not be done** with intention of causing death, though such knowledge may be present. **E.x:** Medical treatment involving a surgical procedure. The school teacher is protected by this section.

(c) Section – **27 Consent given by the guardian** of child (12 years of age) /person of unsound mind for the benefit of child. **E.x:** Surgical operation of child.

(d) Lastly, defence is also available under Section **30** by virtue of which an act done for the **benefit of a person who cannot give consent** due to impossibility or incapacity.

The **Section 30** deals with the cases of emergency and presumes **implied consent** in 2 categories:

- ❖ When it is impossible to obtain consent because the person who could accord consent
- ❖ When it is not articulated or expressed.

**E.x 1 :** 'X' drops the child to save his life from fire.

**E.x 2:** A has performed immediate operation of a child despite his objection but in good faith as there was no time to obtain consent of guardian. So, he has committed no offence.

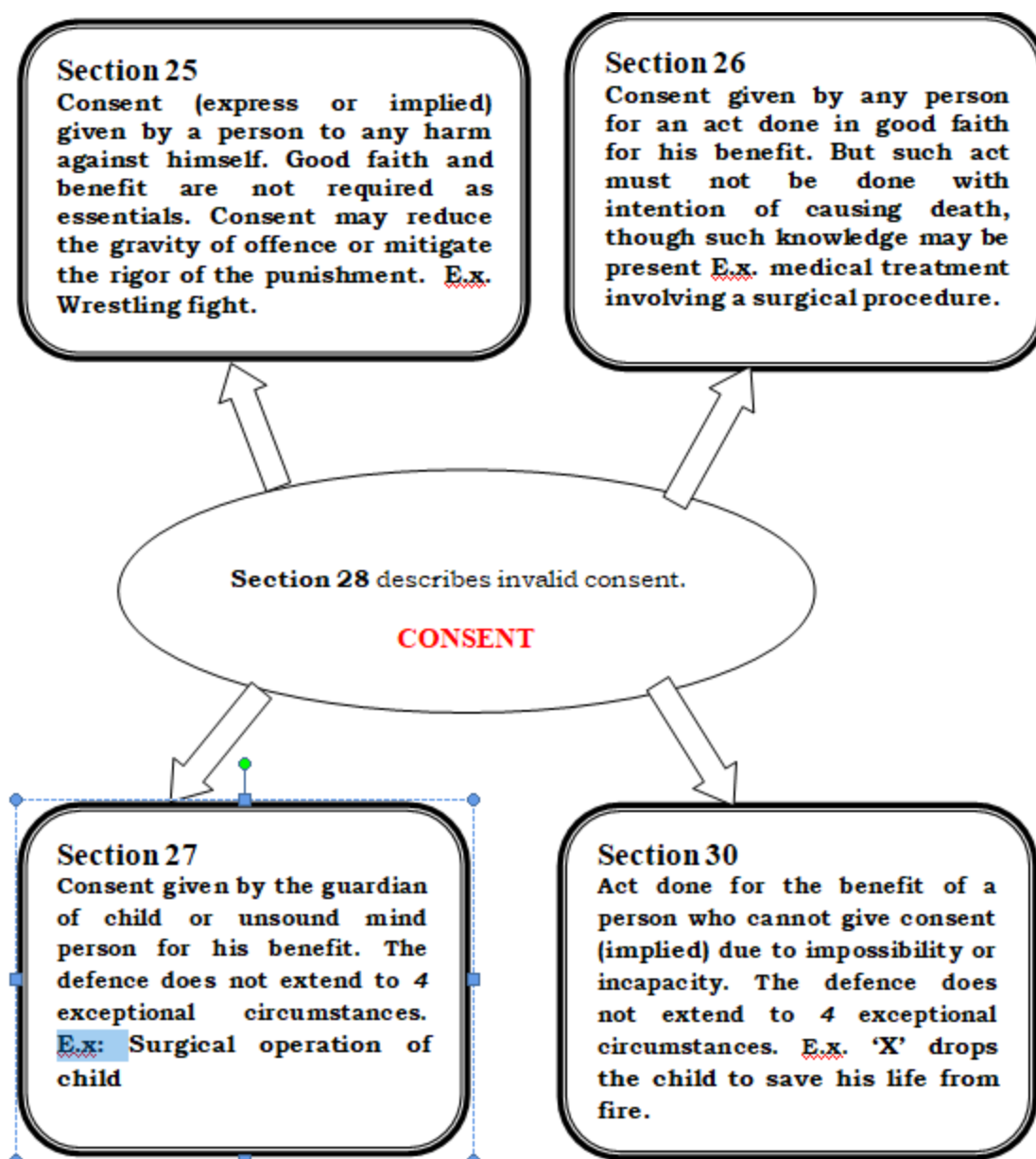
**Note:** Mere **pecuniary** (monetary) benefit is not benefit within the meaning, of sections 26, 27 and 30.

The benefit of **Sec-27/30** [Act done in good faith for benefit of person /child] **cannot be claimed in four situations** covered under the four provisos -

- ❖ **Intentional causing of death** or attempt to cause death – **Ex.** Father, in good faith, kills his own daughter from falling into the hands of dacoits – no immunity since the act is intentional and illegal.



- ❖ **Causing death** for any purpose **except for** prevention of death or grievous hurt .
- ❖ Causing or attempting to cause **grievous hurt except for** preventing death or grievous hurt or infirmity. **Ex.** Causing grievous hurt to a child under Sec-117(1) of BNS.
- ❖ Abetment to commission of any offence. **Ex.** Father intending monetary benefit to the child of 15 years, abets B to commit rape on the child. Neither father nor B could be within the exception.



## Consent Vs Submission

There is a difference between consent and submission;

- Every consent involves a submission; but it by no means follows that a mere submission involves consent. Mere submission by one who does not know the nature of the act done cannot be said to be consent.
- Although consent serves as a valid ground of defence to a criminal charge, consent does not mean absolute submission to any harmful act whatsoever. Therefore, consent must be valid and in order to be so, it must not be intertwined with the factors vitiating it.
- As such, if the accused had sexual intercourse with the victim on a false promise of marriage, the courts have held that submission of the body by a woman under fear or misconception of fact **cannot be construed as consent** and so conviction of the accused under section 69 of BNS held proper.

However, if the prosecutrix herself starts to cohabit with the accused owing to the reason that the respective families did not agree to their nuptial knot (marriage bond), the consent in such a case cannot be said to be given under fear or misconception of fact.

### Queen Vs. Poonai Fattemah (**Snake Charmer's Case**)

The accused, professing to be a snake charmer, persuaded the deceased to allow himself to be bitten by a poisonous snake under the impression of a belief that he possessed the powers to protect him from the bite which he could not subsequently. It was held that the deceased's consent did not excuse the accused from criminal liability.



### **TRIFLING (slight harm) ACTS (S-33)**

This section is based on 'DE MINIMIS NON CURAT LEX' i.e. the law will not take care of trifles. Sec-33 intends to prevent penalisation of negligible criminal wrongs, or offences of trivial nature.

**Examples:** To take a sheet of paper from other's drawer.

Pressing a man and causing hurt while getting into a railway compartment.

A dips his pen in B's ink and B prosecutes A for theft, A can take defence of Section 33 of the Code.

