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# **GENERAL EXCEPTIONS UNDER THE BHARATIYA NYAYA SANHITA, 2023: A CRITICAL ANALYSIS**

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## **ABSTRACT**

*General exceptions are a crucial component of criminal law as they define the circumstances under which the criminal liability is exempted despite the commission of an act that falls within the definition of an offence. The Bharatiya Nyaya Sanhita, 2023 has included these exceptions within Chapter III, thus reiterating that criminal liability is not only dependent on the act but also on the presence of mens rea and the absence of the legally recognised defence. The general exceptions include mistake of fact, judicial acts, accident, necessity, acts done in good faith, consent, acts of children and persons of unsound mind, intoxication, and the right of private defence.*

*This paper critically evaluates the general exceptions as provided under the Bharatiya Nyaya Sanhita, 2023 by critically assessing the scope, need, and judicial interpretation of these exceptions. The paper argues that while general exceptions are a crucial component in ensuring that a person is not punished unjustly, judicial interpretation is also a critical component in ensuring that criminal justice is not only administered but also in a fair and certain manner.*

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

## **INTRODUCTION**

The real focus of criminal law is to establish whether a given act becomes punishable by the State and in what context an individual can be subjected to criminal responsibility. While generally an act prohibited by law is punishable, criminal jurisprudence over time has asserted that this is subject to a qualification, and liability cannot be automatically imposed in all cases. The law has to make provision for instances where the acts of an individual, although appearing to fall under the dictionary interpretation of a punishable act, may be justified, excused, or

excluded from criminal responsibility. The doctrine of general exceptions is thus a fundamental feature of criminal jurisprudence because it guards against unjust punishment and criminal liability is tempered with legal and moral justification.<sup>1</sup>

The Bharatiya Nyaya Sanhita, 2023, which replaces the Indian Penal Code, 1860, maintains the fundamental principles of criminal responsibility and moulds and modernises some of its provisions. Perhaps the most striking similarities with the transition include the inclusion of general exceptions within the Bharatiya Nyaya Sanhita, 2023. As a defence against a wrongful conviction, these statutory defence mechanisms include exceptions for a mistaken fact, judicial acts, accident, necessity, acts done in good faith, consent, acts done by children and persons of unsound mind, intoxication, duress, trifling acts, and the right or exercise of private defence.<sup>2</sup> The relevance of general exceptions is rooted in the fact that the determination of liability is not solely founded on the act of committing an illegal act but is also founded on the presence of such essential elements as mens rea or voluntary act. The Bharatiya Nyaya Sanhita also defines the meaning of “mens rea” under general exceptions as provided in the definitional clauses of the Bharatiya Nyaya Sanhita. This is an indication of the continuing relevance of mens rea or the element of guilt in criminal law.<sup>3</sup> Moreover, it is provided in the Bharatiya Nyaya Sanhita that the accused shall be presumed innocent until guilt is proved beyond reasonable doubt, but the burden is on the accused to prove the applicability of general exceptions after the basic ingredients of the offence have been proved.<sup>4</sup> The courts have traditionally played a key role in deciding questions of general exceptions and have authoritatively interpreted such areas as private defence, good faith, insanity, mistake of fact and mistake of law.<sup>5</sup> <sup>1</sup>

With the enactment of the Bharatiya Nyaya Sanhita, 2023, a critical analysis of general exceptions becomes more significant, as courts will interpret these provisions in light of modern realities and constitutional fairness. This paper therefore examines the scope, rationale, and judicial interpretation of general exceptions under the Bharatiya Nyaya Sanhita, 2023 to assess their effectiveness in ensuring just criminal responsibility.

### **RESEARCH OBJECTIVES**

The objectives of this research work are as follows:

1. To assess the concept, scope, and purpose of general exceptions as per the Bharatiya

Nyaya Sanhita, 2023.

2. To analyse the framework of law relating to general exceptions, with specific reference to Section 3 of the Bharatiya Nyaya Sanhita 2023.
3. In order to examine the burden of proof and the role of the accused in proving the applicability of general exceptions.
4. To assess how judicial interpretation affects important general exceptions like mistake of fact, unsoundness of mind, consent, good faith, and private defence.
5. In order to analyse whether there exists a balancing act between individual interests and societal interests under general exceptions of Bharatiya Nyaya Sanhita, 2023.

### **RESEARCH PROBLEM**

The idea of general exceptions has been included in the Bharatiya Nyaya Sanhita, 2023, maintaining the concept of general exceptions as an integral part of the framework of protecting an individual from unfair penal sanctions. Despite this, the application of exemptions under the law of general exceptions has constantly posed various degrees of legal and interpretation issues. Issues have often been raised in regard to the interpretation of the extent of the various exceptions included under the law, the measures of proof required from the accused, and how the interests of an individual may be balanced with the interests of society in general. In addition, the Bharatiya Nyaya Sanhita is a newly enforced law of criminal jurisprudence; the interpretation of various exceptions in the law of general exceptions has not yet been uniformly applied in various courts of law. The overall research problem of this research study is an analysis of the extent to which the law of general exceptions under the Bharatiya Nyaya Sanhita, 2023 has been framed and applied in Indian courts of law.

### **RESEARCH QUESTIONS**

- Q1. What is the purpose and scope of general exceptions under the 2023 BNS? Q2. How does Section 3 of BNS operate in excluding criminal liability?
- Q3. What burden of proof, if any, does the defendant have?
- Q4. How have courts interpreted important exceptions like private defence, good faith, insanity etc.?
- Q5. Is the balance between interests and individuals maintained with general exceptions?

## **RESEARCH METHODOLOGY**

The current study employs a doctrinal approach as well as an analytical approach in researching the scope of general exceptions of the Bharatiya Nyaya Sanhita, 2023. The study is based mainly on statutory sources, especially those under Section 3 and ancillary specific definitional sections of the Bharatiya Nyaya Sanhita, 2023. In addition, authorities such as rulings of the Supreme Court of India and different High Courts of India were taken into consideration for evaluating the scope of key exceptions such as mistake of fact, unsoundness of mind, good faith, consent, and private defense, among others. The current study is descriptive and, at the same time, evaluative in nature and aims to evaluate whether, through the general exceptions approach, fairness, consistency, and certainty in criminal responsibility are being met.

## **LITERATURE REVIEW**

General Exceptions have always been acknowledged as a constituent part of criminal jurisprudence because they define when a criminal conviction must be negated in spite of a perceptible criminal act or offense. This section seeks to highlight some significant writings on the concept and interpretation of General Exceptions by legal scholars and courts. It also seeks to clarify how scholars have been able to expound on the rationale and burden of proof for these defences and highlight some common loopholes about them that exist today.

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

Scholars have long acknowledged the centrality of general exceptions in criminal jurisprudence since they serve as shields against unjust punishment. According to K.D. Gaur, criminal liability is not inflicted merely because an act falls within the definition of an offence, but because the act is accompanied by culpability and is not protected by a lawful defence.<sup>6</sup> The literature outlines that general exceptions reflect the moral underpinning of criminal law by acknowledging situations where punishment would be illicit and morally incorrect.

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

Much criminal law literature describes the mens rea principle as lying at the heart of general exceptions. Academics observe that mistake of fact, accident, and unsoundness of mind defences immediately translate into no guilty intention or voluntary act. Ratanlal and Dhirajlal state that the exceptions exclude guilt when the mental element

requisite for the commission of an offence is lacking.<sup>7</sup> In so far as this doctrinal approach goes, general exceptions adopt the material principle that deterrent punishment is only justified because a person is found blameworthy rather than by outcomes alone.

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

Another notable debate among scholars is centered on the burden of proving, particularly as it relates to general exceptions. Literature reveals that, although the prosecution is required to prove the guilt of the accused beyond a reasonable doubt, the burden of proving the applicability of a general exception, after proving the offence, is placed squarely on the accused.<sup>8</sup> The harshness of this provision has been criticized by some scholars; however, it has also been justified by many, considering that facts are normally peculiar to the knowledge of the accused.<sup>9</sup> Literature suggests that the courts are instrumental in deciding the outcome on this factor.<sup>2</sup>

### 4. Judicial Interpretation of Key Exceptions

“Judicial interpretation” has been a subject of interest in most commentaries dealing with criminal law. There has been an evaluation of the role that judicial interpretation plays in defences such as private defence, good faith, consent, and insanity, wherein consistent principles have been followed. For instance, the role of the Supreme Court in dealing with the issue of unsoundness of mind has been discussed in most commentaries. As discussed in most commentaries, judicial interpretation of the court states that “insanity must exist as a matter of law rather than medicine.”<sup>10</sup> In private defence, there is a requirement of proportionality and necessity such that it is not abused in retaliation.<sup>11</sup>

### 5. Contemporary Relevance and Emerging Concerns under BNS, 2023

Recent scholarship has started addressing how general exceptions will work under the Bharatiya Nyaya Sanhita, 2023, in particular, in view of contemporary social and technological realities. Commentators contend that although the statutory framework broadly continues the principles of its predecessor, interpretive challenges are likely to persist with respect to good faith and consent, intoxication, and the standard of proof.<sup>12</sup> The literature thus tends to indicate that consistency in judicial standards shall be the key to the general exceptions continuing to function effectively for the protection of

accused persons, with the confidence of the public in criminal justice also being retained.<sup>3</sup>

## **DISCUSSION AND ANALYSIS**

### 1. The Statutory Framework and the Purpose of General Exceptions: 2023 BNS

The general exceptions under the Bharatiya Nyaya Sanhita, 2023, act as a statutory defence and are legally enforceable in order to negate the criminal liability in terms of justification, excuse, or any kind of legal protection in criminal law, as also provided under any section of this act. Section 3 of the Bharatiya Nyaya Sanhita, 2023, includes the general exceptions, as well as an explanation of the burden of proof principle.<sup>13</sup> The overall intent of this act in relation to the burden of proof principle, therefore, is that criminal liability must not attach based merely on the similarities drawn between an act and a criminal act, unless criminal liability is supported by culpability, as well as not being legally justified.<sup>14</sup>

### 2. Burden of Proof and Standard Applicable to General Exceptions

It is noted that an important aspect of general exceptions is that there is a burden cast on the accused to prove a defense by showing that a general exception exists once the prosecution proves the ingredients of a crime. It has been noted by the Supreme Court that there is a need for guilt to be proven beyond reasonable doubt; however, it is also noted that the accused can prove a general exception on the basis of a preponderance of probability.<sup>15</sup> This ensures that there is an integrity maintained within a criminal trial. Importantly, there is a balance both for individual protection and social interest by reference to facts that are within the special knowledge of an individual accused.<sup>16</sup>

### 3. Mistake of Fact, Accident, and Necessity: Absence of Mens Rea

The defence of mistake of fact, accident, and necessity, etc., is based on the premise that criminal responsibility cannot arise if the act has been committed without any guilty intention and/or due to circumstances beyond one's control. Likewise, the defence of mistake of fact provides a defence if "the accused has acted in good faith on a state of facts which, if true, would justify his acting as he did."<sup>17</sup> Accident as a defence provides a defence if "the act is done without any criminal intent and with due care and caution." Necessity is a defence when the act is done to cause harm in order to prevent a greater

harm. The three defences illustrate that the law does not punish an outcome; rather, it is concerned with mens rea and voluntary actions.<sup>18 4</sup>

#### 4. Unsoundness of Mind and Intoxication: Capacity-Based Exceptions

The exception of unsoundness of mind follows the principle that criminal liability must involve the mental capacity necessary to know the nature of an act and its wrongfulness. The courts have always followed the distinction between legal insanity and medical insanity; the defence of insanity is allowed only when the accused is incapable of knowing the nature of the act or its wrongfulness.<sup>19</sup> In *Dahyabhai Chhaganbhai Thakkar v. State of Gujarat*, the Supreme Court has clarified the burden of proof for the accused and reasserted the theory of legal insanity supported by evidence.<sup>20</sup>

On the flip side, Intoxication is treated cautiously. While involuntary intoxication can, in a few cases, provide a defense, voluntary intoxication is not excused for criminal behavior, especially if the crime calls for knowledge but not specific intent.<sup>21</sup> With the aforementioned provisions, it is apparent that the criminal law places considerable importance on responsibility but includes some exceptions for incapacity.

#### 5. Consent, Good Faith, and Communication: Justification-Based Exceptions

Consent acts as an effective defence mechanism in criminal laws, which holds true when an act is perpetrated with the free and informed consent of an affected party, subject to specific statutory restrictions. The defence mechanism is applicable in cases of bodily harm, medical acts, and lawful acts involving risk.<sup>22</sup> Likewise, good faith serves as an effective defence mechanism in criminal laws, where an act is perpetrated with care and attention, devoid of any malice or dishonesty. Good faith was held by courts as comprising reasonable care and hence an objective test, as distinguished from honest belief.<sup>23</sup>

The qualification relating to communication protects an individual communicating information in good faith for the benefit of other persons. These clauses promote responsible and beneficial behaviour without allowing the criminal law to be exploited in the treatment of responsible individuals.<sup>5</sup>

#### 6. Right of Private Defence: Scope, Limits & Judicial Tests

The right of private defence is perhaps one of the most important of all general exceptions because of its potential to allow a necessary degree of force for self-

protection and security. However, such a right is clearly circumscribed by the tests of necessity, proportionality, and immediacy. Moreover, the Supreme Court in the case of *Darshan Singh v. State of Punjab* established broad parameters of private defense; it cannot be exercised as a measure of aggression or retaliation.<sup>24</sup> Such a right of private defense exists only when there is a apprehension of fear; this apprehension ceases as soon as the reason for fear no longer exists.

#### 7. Trifling Acts and the Principle of De Minimis

The exception relating to trifling acts embodies the principle that the law does not concern itself with trivial matters. This exception prevents criminal law from being misused for minor acts that cause negligible harm. Such a defence is essential to ensure proportionality and to prevent over-criminalisation. Scholars have noted that the recognition of trifling acts strengthens fairness in criminal justice by ensuring that the State's punitive machinery is reserved for serious wrongdoing.<sup>25</sup><sup>6</sup>

### **CONCLUSION**

General exceptions unquestionably form an indispensable part of criminal jurisprudence because they have ensured that criminal liability is imposed only when it is legally and morally justified to do so. The *Bharatiya Nyaya Sanhita, 2023* has retained these exceptions as statutory safeguards because it is not possible to assess criminal liability based only on the act alone; rather, it also requires an assessment of the mental element and voluntariness involved and an appreciation of the applicability of these exceptions, which help prevent injustice when an act is done by way of mistake of fact, accident, necessity, unsoundness of mind, consent, good faith, intoxication, duress, trifling acts, and private defense.

It is submitted that based on the analysis presented in this paper, it can safely be argued that the framework of general exceptions under the *Bharatiya Nyaya Sanhita, 2023*, still evolves around the principles of fairness and proportionality. However, it is apparent that such a framework of exceptions is largely dependent on judicial interpretation, especially in such cases as they involve fact-sensitive exceptions and place a duty of proof on the accused. Thus, such an important role of courts can never be overstated.

In conclusion, though a robust framework exists with respect to General Exceptions in *Bharatiya Nyaya Sanhita, 2023*, a true test of its success comes in its practical application and

interpretation by courts. Consistency in interpretation and application will be key in ensuring certainty in laws and safeguarding individual rights and upholding the faith of citizens in these institutions.

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