

***SECTION 29***

**EXCLUSION OF ACTS WHICH ARE OFFENCES  
INDEPENDENTLY OF HARM CAUSED**

**COMPARATIVE STUDY OF PROVISIONS OF BNS, 2023 & IPC**

**29.1 Corresponding provisions**

- ◆ Section 29 of BNS corresponds to section 91 of IPC.

**SECTION ANALYSIS**

**29.2 Non-application of exceptions in sections 25 to 27**

- ◆ Section 29 provides that the exceptions in sections 25, 26 and 27 do not extend to acts which are offences independently of any harm which they may cause, or be intended to cause, to the person giving the consent, or on whose behalf the consent is given.

**29.2-1 Illustration**

Causing miscarriage (unless caused in good faith for the purpose of saving the life of the woman) is offence independently of any harm which it may cause or be intended to cause to the woman. Therefore, it is not an offence “by reason of such harm”; and the consent of the woman or of her guardian to the causing of such miscarriage does not justify the act.

**ANALOGOUS LAWS**

**29.3 Burden of proving that the case of the accused comes within general exception in section 29 of BNS**

- ◆ The burden of proving that the case of the accused comes within the general exception in section 29 of BNS, is upon the accused [Section 108 of Bharatiya Sakshya Adhiniyam, 2023] (See **Para 14.3**)

***SECTION 30***

**ACT DONE IN GOOD FAITH FOR BENEFIT  
OF A PERSON WITHOUT CONSENT**

**COMPARATIVE STUDY OF PROVISIONS OF BNS, 2023 & IPC**

**30.1 Corresponding provisions**

- ◆ Section 30 of BNS corresponds to section 92 of IPC.

**SECTION ANALYSIS**

**30.2 Act done in good faith** - Section 30 provides that nothing is an offence by reason of any harm which it may cause to a person, even if it is done without that person’s consent, if:—

- ◆ it is done for the benefit of that person;
- ◆ it is done in good faith;
- ◆ the circumstances are such that it is impossible for that person to signify consent, or if that person is incapable of giving consent, and has no guardian or other person in lawful charge of him from whom it is possible to obtain consent in time for the thing to be done with benefit.

**30.2-1 Meaning of 'Benefit'** - Mere pecuniary benefit is not benefit.

### 30.2-2 Illustrations

- ◆ Z is thrown from his horse, and is insensible. A, a surgeon, finds that Z requires to be trepanned. A, not intending Z's death, but in good faith, for Z's benefit, performs the trepan before Z recovers his power of judging for himself. A has committed no offence.
- ◆ Z is carried off by a tiger. A fires at the tiger knowing it to be likely that the shot may kill Z, but not intending to kill Z, and in good faith intending Z's benefit. A's bullet gives Z a mortal wound. A has committed no offence.
- ◆ A, a surgeon, sees a child suffer an accident which is likely to prove fatal unless an operation be immediately performed. There is no time to apply to the child's guardian. A performs the operation in spite of the entreaties of the child, intending, in good faith, the child's benefit. A has committed no offence.
- ◆ A is in a house which is on fire, with Z, a child. People below hold out a blanket. A drops the child from the house top, knowing it to be likely that the fall may kill the child, but not intending to kill the child, and intending, in good faith, the child's benefit. Here, even if the child is killed by the fall, A has committed no offence.

### 30.3 Non-applicability of exception under section 30

Exception stated in **Para 30.2** shall not extend to—

- (a) the intentional causing of death, or the attempting to cause death;
- (b) the doing of anything which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt, or the curing of any grievous disease or infirmity;
- (c) the voluntary causing of hurt, or to the attempting to cause hurt, for any purpose other than the preventing of death or hurt;
- (d) the abetment of any offence, to the committing of which offence it would not extend.

## ANALOGOUS LAWS

### 30.4 Burden of proving that the case of the accused comes within general exception in section 30 of BNS

- ◆ The burden of proving that the case of the accused comes within the general exception in section 30 of BNS, is upon the accused [Section 108 of Bharatiya Sakshya Adhiniyam, 2023] (See **Para 14.3**)

## SECTION 31

### COMMUNICATION MADE IN GOOD FAITH

## COMPARATIVE STUDY OF PROVISIONS OF BNS, 2023 & IPC

### 31.1 Corresponding provisions

- ◆ Section 31 of BNS corresponds to section 93 of IPC.

### SECTION ANALYSIS

**31.2 Communication made in good faith** - Section 32 provides that no communication made is an offence by reason of any harm to the person to whom it is made, if:—

- ◆ It is made in good faith and
- ◆ It is made for the benefit of that person.

**31.2-1 Illustration** - A, a surgeon, in good faith, communicates to a patient his opinion that he cannot live. The patient dies in consequence of the shock. A has committed no offence, though he knew it to be likely that the communication might cause the patient's death.

### **ANALOGOUS LAWS**

#### **31.3 Burden of proving that the case of the accused comes within general exception in section 31 of BNS**

- ◆ The burden of proving that the case of the accused comes within the general exception in section 31 of BNS, is upon the accused [Section 108 of Bharatiya Sakshya Adhiniyam, 2023] (See **Para 14.3**)

### **SECTION 32**

#### **ACT TO WHICH A PERSON IS COMPELLED BY THREATS**

### **COMPARATIVE STUDY OF PROVISIONS OF BNS, 2023 & IPC**

#### **32.1 Corresponding provisions**

- ◆ Section 32 of BNS corresponds to section 94 of IPC.

### **SECTION ANALYSIS**

**32.2 Act to which a person compelled by threat** - Section 32 provides that nothing is an offence which is done by a person if following conditions are satisfied—

- ◆ the person doing the act is compelled to do it by threats,
- ◆ the threats, at the time of doing it, reasonably cause the apprehension that instant death to him will otherwise be the consequence; and
- ◆ the person doing the act did not of his own accord, or from a reasonable apprehension of harm to himself short of instant death, place himself in the situation by which he became subject to such constraint.

**32.2-1 Exception not applicable to murder, and offences against the State punishable with death** - The above exception in section 32 applies to all offences done under threats except murder, and offences against the State punishable with death.

#### **32.2-2 Other situation when the exception in section 32 is applicable/not applicable**

- ◆ A person who, of his own accord, or by reason of a threat of being beaten, joins a gang of dacoits, knowing their character, is not entitled to the benefit of this exception, on the ground of his having been compelled by his associates to do anything that is an offence by law.
- ◆ A person seized by a gang of dacoits, and forced, by threat of instant death, to do a thing which is an offence by law; for example, a smith compelled to take his tools and to force the door of a house for the dacoits to enter and plunder it, is entitled to the benefit of this exception.

### **ANALOGOUS LAWS**

**32.3 Burden of proving that the case of the accused comes within general exception in section 32 of BNS** - The burden of proving that the case of the accused comes within the general exception in section 32 of BNS, is upon the accused [Section 108 of Bharatiya Sakshya Adhiniyam, 2023] (See **Para 14.3**)

### ***SECTION 33***

#### **ACT CAUSING SLIGHT HARM**

#### **COMPARATIVE STUDY OF PROVISIONS OF BNS, 2023 & IPC**

##### **33.1 Corresponding provisions**

- ◆ Section 33 of BNS corresponds to section 95 of IPC.

##### **SECTION ANALYSIS**

**33.2 Act causing slight harm** - Section 33 provides that nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if —

- ◆ that harm is so slight and
- ◆ that no person of ordinary sense and temper would complain of such harm

The law discourages frivolous litigation.

##### **ANALOGOUS LAWS**

##### **33.3 Burden of proving that the case of the accused comes within general exception in section 33 of BNS**

- ◆ The burden of proving that the case of the accused comes within the general exception in section 33 of BNS, is upon the accused [Section 108 of Bharatiya Sakshya Adhiniyam, 2023] (See **Para 14.3**).

### ***SECTION 34***

#### **THINGS DONE IN PRIVATE DEFENCE**

#### **COMPARATIVE STUDY OF PROVISIONS OF BNS, 2023 & IPC**

##### **34.1 Corresponding provisions**

- ◆ Section 34 of BNS corresponds to section 96 of IPC.

##### **SECTION ANALYSIS**

**34.2 Things done in private defiance** - Section 34 provides that nothing is an offence which is done in the exercise of the right of private defence.

It may be that—

- ◆ Section 34 merely provides the exception as regards things done in exercise of right of private defence. It does not define the scope of the right of private defence.
- ◆ The scope of right of private defence is defined and codified in sections 35 to 44 of BNS.
- ◆ Acts done in lawful exercise of right of private defence are exempted from criminal liability.

##### **ANALOGOUS LAWS**

**34.3 Burden of proving that the case of the accused comes within general exception in section 34 of BNS** - The burden of proving that the case of the accused comes within the general exception in section 34 of BNS, is upon the accused [Section 108 of Bharatiya Sakshya Adhiniyam, 2023] (See **Para 14.3**)

***SECTION 35***

**RIGHT OF PRIVATE DEFENCE OF  
BODY AND OF PROPERTY**

**COMPARATIVE STUDY OF PROVISIONS OF BNS, 2023 & IPC**

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**35.1 Corresponding provisions**

- ◆ Section 35 of BNS corresponds to section 97 of IPC.

**SECTION ANALYSIS**

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**35.2 Right of private defence of body/property**

- ◆ Section 35 provides that every person has a right to defend—
  - (a) his own body, and the body of any other person, against any offence affecting the human body;
  - (b) the property, whether movable or immovable, of himself or of any other person, against any act which is an offence falling under the definition of theft, robbery, mischief or criminal trespass, or which is an attempt to commit theft, robbery, mischief or criminal trespass.
- ◆ The right to defend, as above, is subject to the restrictions contained in section 37 (See **Para 37.2**) which provides for acts against which there is no right of private defence.
- ◆ Acts done in lawful exercise of right of private defence are exempted from criminal liability.

**ANALOGOUS LAWS**

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**35.3 Burden of proving that the case of the accused comes within general exception in section 35 of BNS** - The burden of proving that the case of the accused comes within the general exception in section 35 of BNS, is upon the accused [Section 108 of Bharatiya Sakshya Adhiniyam, 2023] (See **Para 14.3**)

***SECTION 36***

**RIGHT OF PRIVATE DEFENCE AGAINST ACT OF  
A PERSON OF UNSOUND MIND, ETC.**

**COMPARATIVE STUDY OF PROVISIONS OF BNS, 2023 & IPC**

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**36.1 Corresponding provisions**

- ◆ Section 36 of BNS corresponds to section 98 of IPC

**SECTION ANALYSIS**

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**36.2 Right of private defence against act of a person of unsound mind**

Section 36 provides that—

- ◆ Right of private defence is available against an act, which would otherwise be a certain offence, is not that offence, by reason of the youth, the want of maturity of understanding, the unsoundness of mind or the intoxication of the person doing that act, or by reason of any misconception on the part of that person
- ◆ Every person has the same right of private defence against that act which he would have if the act were that offence

**36.2-1 Illustrations.**

- (a) Z, under the influence of mental illness, attempts to kill A; Z is guilty of no offence. But A has the same right of private defence which he would have if Z were sane.
- (b) A enters by night a house which he is legally entitled to enter. Z, in good faith, taking A for a house-breaker, attacks A. Here Z, by attacking A under this misconception, commits no offence. But A has the same right of private defence against Z, which he would have if Z were not acting under that misconception.

**ANALOGOUS LAWS**

**36.3 Burden of proving that the case of the accused comes within general exception in section 36 of BNS** - The burden of proving that the case of the accused comes within the general exception in section 36 of BNS, is upon the accused [Section 108 of Bharatiya Sakshya Adhiniyam, 2023] (See **Para 14.3**)

**SECTION 37****ACTS AGAINST WHICH THERE IS  
NO RIGHT OF PRIVATE DEFENCE****COMPARATIVE STUDY OF PROVISIONS OF BNS, 2023 & IPC****37.1 Corresponding provisions**

- ◆ Section 37 of BNS corresponds to section 99 of IPC

**SECTION ANALYSIS**

**37.2 Acts of public servant against which there is no right of private defence** - There is no right of private defence,—

- (a) *against an act of a public servant*

- ◆ which does not reasonably cause the apprehension of death or of grievous hurt, and
- ◆ if done, or attempted to be done, by a public servant acting in good faith
- ◆ under colour of his office, though that act, may not be strictly justifiable by law.

A person is not deprived of the right of private defence against an act done, or attempted to be done, by a public servant, as such, unless he knows or has reason to believe, that the person doing the act is such public servant.

- (b) *against an act done or attempted to be done by the direction of a public servant*

- ◆ which does not reasonably cause the apprehension of death or of grievous hurt,
- ◆ if done, or attempted to be done, by the direction of a public servant acting in good faith under colour of his office, though that direction may not be strictly justifiable by law.

A person is not deprived of the right of private defence against an act done, or attempted to be done, by the direction of a public servant, unless he knows, or has reason to believe, that the person doing the act is acting by such direction, or unless such person states the authority under which he acts, or if he has authority in writing, unless he produces such authority, if demanded.

- (c) in cases in which there is time to have recourse to the protection of the public authorities.

**37.2-1 Limit on harm that can be inflicted in exercise of right of private defence** - The right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence.

### **SECTION 38**

## **WHEN RIGHT OF PRIVATE DEFENCE OF BODY EXTENDS TO CAUSING DEATH**

### **COMPARATIVE STUDY OF PROVISIONS OF BNS, 2023 & IPC**

#### **38.1 Corresponding provisions**

- ◆ Section 38 of BNS corresponds to section 100 of IPC

#### **SECTION ANALYSIS**

#### **38.2 When right of private defence of body extends to causing death**

Section 38 provides that—

- ◆ The right of private defence of the body extends to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely:—
  - (a) such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault;
  - (b) such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault;
  - (c) an assault with the intention of committing rape;
  - (d) an assault with the intention of gratifying unnatural lust;
  - (e) an assault with the intention of kidnapping or abducting;
  - (f) an assault with the intention of wrongfully confining a person, under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release;
  - (g) an act of throwing or administering acid or an attempt to throw or administer acid which may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such act;

The right as above is subject to the restrictions specified in section 37

#### **ANALOGOUS LAWS**

**38.3 Burden of proving that the case of the accused comes within general exception in section 38 of BNS** - The burden of proving that the case of the accused comes within the general exception in section 38 of BNS, is upon the accused [Section 108 of Bharatiya Sakshya Adhiniyam, 2023] (See **Para 14.3**)

### **SECTION 39**

## **WHEN SUCH RIGHT EXTENDS TO CAUSING ANY HARM OTHER THAN DEATH**

### **COMPARATIVE STUDY OF PROVISIONS OF BNS, 2023 & IPC**

#### **39.1 Corresponding provisions**

- ◆ Section 39 of BNS corresponds to section 101 of IPC

## **SECTION ANALYSIS**

### **39.2 When right of self defence extends to causing any harm other than death**

Section 39 provides that—

- ◆ If the offence be not of any of the descriptions specified in section 38 (*See para 38.2*), the right of private defence of the body is as under:—
  - Such right does not extend to the voluntary causing of death to the assailant,
  - Such right does extend to the voluntary causing to the assailant of any harm other than death.
  - Such right is subject to restrictions under section 37.

## **ANALOGOUS LAWS**

**39.3 Burden of proving that the case of the accused comes within general exception in section 39 of BNS** - The burden of proving that the case of the accused comes within the general exception in section 39 of BNS, is upon the accused [Section 108 of Bharatiya Sakshya Adhiniyam, 2023] (*See Para 14.3*)

## **SECTION 40**

### **COMMENCEMENT AND CONTINUANCE OF RIGHT OF PRIVATE DEFENCE OF BODY**

## **COMPARATIVE STUDY OF PROVISIONS OF BNS, 2023 & IPC**

### **40.1 Corresponding provisions**

- ◆ Section 40 of BNS corresponds to section 102 of IPC

## **SECTION ANALYSIS**

### **40.2 Commencement and continuance of right of private defence of body**

Section 40 provides that —

- ◆ The right of private defence of the body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence though the offence may not have been committed; and
- ◆ It continues as long as such apprehension of danger to the body continues.

## **SECTION 41**

### **WHEN RIGHT OF PRIVATE DEFENCE OF PROPERTY EXTENDS TO CAUSING DEATH**

## **COMPARATIVE STUDY OF PROVISIONS OF BNS, 2023 & IPC**

### **41.1 Corresponding provisions**

- ◆ Section 41 of BNS corresponds to section 103 of IPC

#### **41.1-1 House breaking**

- ◆ Old law provided for 'House breaking by night'. Section 41 of BNS provides for 'house breaking after sunset and before sunrise'



- ◆ Section 103 of IPC provided for 'mischief by fire'. Section 41 of BNS provides for 'mischief by fire or any explosive substance'

## **SECTION ANALYSIS**

### **41.2 When right of private defence of property extends to causing death**

Section 41 provides that—

- ◆ The right of private defence of property extends to the voluntary causing of death or of any other harm to the wrong-doer, if the committing or attempting to commit of the offence by the wrongdoer involves an offence of any of the following descriptions, namely:—
  - (a) robbery;
  - (b) house-breaking after sun set and before sun rise;
  - (c) mischief by fire or any explosive substance committed on any building, tent or vessel, which building, tent or vessel is used as a human dwelling, or as a place for the custody of property;
  - (d) theft, mischief, or house-trespass, under such circumstances as may reasonably cause apprehension that death or grievous hurt will be the consequence, if such right of private defence is not exercised.
- ◆ Such right is subject to the restrictions specified in section 37.

## **ANALOGOUS LAWS**

**41.3 Burden of proving that the case of the accused comes within general exception in section 41 of BNS** - The burden of proving that the case of the accused comes within the general exception in section 41 of BNS, is upon the accused [Section 108 of Bharatiya Sakshya Adhiniyam, 2023] (See **Para 14.3**).

## ***SECTION 42***

### **WHEN SUCH RIGHT EXTENDS TO CAUSING ANY HARM OTHER THAN DEATH**

## **COMPARATIVE STUDY OF PROVISIONS OF BNS, 2023 & IPC**

### **42.1 Corresponding provisions**

- ◆ Section 42 of BNS corresponds to section 104 of IPC

## **SECTION ANALYSIS**

### **42.2 When right of private defence of extends to causing harm other than death**

Section 42 provides that—

- ◆ If the offence, the committing of which, or the attempting to commit which occasions the exercise of the right of private defence of property, be theft, mischief, or criminal trespass, (offence not be of descriptions specified in section 41), the right of private defence of property is as under:
  - Such right does not extend to the voluntary causing of death,
  - Such right does extend to the voluntary causing to the wrong-doer of any harm other than death.
  - Such right is subject to the restrictions specified in section 37,

ANALOGOUS LAWS

**42.3 Burden of proving that the case of the accused comes within general exception in section 42 of BNS** - The burden of proving that the case of the accused comes within the general exception in section 42 of BNS, is upon the accused [Section 108 of Bharatiya Sakshya Adhiniyam, 2023] (See **Para 14.3**).

SECTION 43

COMMENCEMENT AND CONTINUANCE OF  
RIGHT OF PRIVATE DEFENCE OF PROPERTY

COMPARATIVE STUDY OF PROVISIONS OF BNS, 2023 & IPC

43.1 Corresponding provisions

- ◆ Section 43 of BNS corresponds to section 105 of IPC

43.1-1 *House breaking ‘after sunset and before sunrise’*

- ◆ Section 105 of IPC provided for ‘house breaking by night’. Section 43 of BNS provides for ‘house breaking after sunset and before sunrise’

SECTION ANALYSIS

43.2 Commencement/continuance of right of private defence of property

Section 43 provides as under:—

43.2-1 *Point of time at which right to private defence of property commences*

- ◆ The right of private defence of property commences when a reasonable apprehension of danger to the property commences;

43.2-2 *Point of time upto which right to private defence of property continues—*

- ◆ The continuance of the right to private defence of property in respect of various attempted offences with regard to property are as per the table given below:—

<i>Threat to property (offence attempted against the property by wrongdoer)</i>	<i>Time upto which right to private defence of property continues</i>
Theft	Till the offender has effected his retreat with the property or either the assistance of the public authorities is obtained, or the property has been recovered
Robbery	As long as the offender causes or attempts to cause to any person death or hurt or wrongful restraint or as long as the fear of instant death or of instant hurt or of instant personal restraint continues
Criminal trespass or mischief	As long as the offender continues in the commission of criminal trespass or mischief
House-breaking after sunset and before sun rise	As long as the house-trespass which has been begun by such house-breaking continues

**ANALOGOUS LAWS**

**43.3 Burden of proving that the case of the accused comes within general exception in section 43 of BNS** - The burden of proving that the case of the accused comes within the general exception in section 43 of BNS, is upon the accused [Section 108 of Bharatiya Sakshya Adhiniyam, 2023] (See **Para 14.3**).

**SECTION 44**

**RIGHT OF PRIVATE DEFENCE AGAINST  
DEADLY ASSAULT WHEN THERE IS  
RISK OF HARM TO INNOCENT PERSON**

**COMPARATIVE STUDY OF PROVISIONS OF BNS, 2023 & IPC**

**44.1 Corresponding provisions**

- ◆ Section 44 of BNS corresponds to section 106 of IPC

**SECTION ANALYSIS**

**44.2 Right of private defence against deadly assault when there is risk of harm to innocent person** - Against an assault which reasonably causes the apprehension of death—

- ◆ the exercise of the right of private defence, extends to the running of the risk of harm to an innocent person, if the defender be so situated that he cannot effectually exercise that right without risk of harm to an innocent person.

**44.2-1 Illustration.**

A is attacked by a mob who attempt to murder him. He cannot effectually exercise his right of private defence without firing on the mob, and he cannot fire without risk of harming young children who are mingled with the mob. A commits no offence if by so firing he harms any of the children.

**ANALOGOUS LAWS**

**44.3 Burden of proving that the case of the accused comes within general exception in section 44 of BNS** - The burden of proving that the case of the accused comes within the general exception in section 44 of BNS, is upon the accused [Section 108 of Bharatiya Sakshya Adhiniyam, 2023] [See **Para 14.3**].

**SECTION 45**

**ABETMENT OF A THING**

**COMPARATIVE STUDY OF PROVISIONS OF BNS, 2023 & IPC**

**45.1 Corresponding provisions**

- ◆ Section 45 of BNS corresponds to section 107 of IPC
- ◆ New section 48 of BNS extends the scope of offence of abetment to abetment outside India for offence in India.

**SECTION ANALYSIS**

**45.2 Definition of offence of ‘abetment’**

- ◆ Whether offence of abetment is committed or not is to be determined by reading section 45 of BNS in the light of sections 46 to 48 of BNS