

Volitional Impairment vs. Cognitive Impairment: The Incomplete Defence under Section 22 of the Bharatiya Nyaya Sanhita (BNS)

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Abstract—This study assesses whether the insanity defence that serves as a defence to crime in the context of Section 22 of the BNS, 2023, has been sufficiently adequate to rest on the factor of cognitive impairment in the face of volitional impairment despite the enormous developments made in the field of psychiatric science. The research methodology is a doctrinal and analytical research that scientifically evaluates statutory provisions, judicial interpretation and scholarly literature to determine the conceptualization of Indian criminal law concerning mental incapability and criminal responsibility. The study discusses the comparison of the cognitive test that underlies the M’Naghten Rules and the current understanding in mental health by qualitatively analysing secondary sources, which demonstrates that the legal standards and the current psychiatric categories are largely disavowed. The results demonstrate that Section 22 repeats to a large extent the previously existing Section 84 IPC, which perpetuates a very narrow test, accessible to exemption only under situations where the accused is incapable of knowing the kind or the wrongfulness of the act, but not with impulse-control or volitional disorders, which undermine self-regulation.

Index Terms—Insanity defence, Cognitive impairment, volitional impairment, Criminal responsibility, diminished responsibility, mental health law, legal insanity, psychiatric jurisprudence

I. INTRODUCTION

The Bharatiya-Nyaya Sanhita, 2023, Section 22, which has been a replacement of Section 84 of the Indian Penal Code, 1860 addresses criminal liability of persons of unsound mind. It represents the law on mental incapacity as criminal responsibility defence. The provision offers criminal immunity to an

individual who had no knowledge of the nature of the act at his time of commission or that what he is engaging in is wrong or against the law because of insanity of mind (Nair, 2025). The defence provided under Section 22 is a continuation of the common law tradition of cognitive impairment and to a large extent omits volitional impairment, thus rendering insanity an incomplete and narrow definition of defence in Indian criminal law (Chandler, et al., 2016).

Cognitive impairment is the malfunction of the mental functioning of a person which involves comprehension, reasoning or awareness. The focus of Section 22 BNS is on the mental ability of the accused to comprehend the character of the act or to differentiate between right and wrong when the offence occurred. This shows the rule of M’ Naghten rules that shape the insanity defence in India (Petersen, 2016). On the other, volitional impairment is the inability of a person to direct his actions in spite of his knowledge of their nature and wrongfulness. This is commonly referred to as a concept irresistible impulse, loss of self-control or impaired willpower. In case an accused had knowledge of the type of act and knew that it was wrong, defence in Section 22 would not apply, even when such a person is incapable of resisting the act because of mental illness (Safonov, 2021).

The difference between cognitive compared with volitional impairment demonstrates the narrowness of insanity defence under BNS. Section 22 talks about cognitive incapacity but does not cover the case where the accused is in control but aware. This solution is

indicative of a policy that is based on the fear of abuse of the defence and the necessity to create a balance between the incapability of a person and the security of the society. It has been repeatedly established that law Indian courts have always held that irresistible impulse is not a defence (Barnes, 2014). Such situations include *Dahyabhai Chhaganbhai Thakkar v. State of Gujarat*, the Supreme Court reiterated the fact that the most critical issue of inquiry is the state of mind of the accused during the crime committed and the presence or absence of cognitive abilities (Pandey et al., 2021).

Consequently, in effect, Section 22 is an incomplete defence. It is not the entire range of mental disorders recognized by psychiatry, most of which have to do with emotional control or volitional control but not intellectual comprehension. Some diseases like severe depression with suicidal or violent motives, or even impulse control disorders might not be exempt as per the rigid cognitive test. As a result, mentally ill people can be convicted as criminals even when they do not reach the thin line legal standards of cognitive incapacity (Cervenka, et al., 2017). The cognitive test provides a somewhat objective criterion in the form of knowledge and awareness, and the courts can determine through the medical evidence and circumstances around them. In this sense, Section 22 is cautious and conservative in its attitude towards the mentally ill and the importance of enforcing criminal responsibility (Schopp, et al., 2008).

Indian courts have actively construed the defence of insanity to only cover cases of cognitive impairment and not loss of self-control or volitional impairment. *Dahyabhai Chhaganbhai Thakkar v. State of Gujarat* (1964) is one of the most authoritative decisions concerning this aspect. In the case, the SC made it clear that the onus of the burden of proof on the accused by the provision in Section 84 of the IPC (now Section 22 of the BNS) is not so heavy as the burden of proof on the prosecution but the accused must prove on balance of probabilities that he was unaware of the character of the act or that the act was wrong at that time. The Court focused on the fact the time of unsoundness of mind becomes relevant is the very moment when the offence is committed, so the cognitive test of insanity was supported. In *Ratan Lal v. State of Madhya Pradesh* (1971), the SC had

restricted the application of the principle of insanity even further when it ruled that abnormal behaviour, mental weakness or prior history of mental illness does not necessarily mean an accused is entitled to the benefit of Section 84. The Court emphasized that it is a legal and not a medical insanity and that only unsoundness of mind that destruction of the cognitive ability of the accused could be taken as an exemption (Harshita, 2023).

Comparative Recognition of Volitional Incapacity

Section 22 of the BNS still solely depends upon a cognitive test of insanity, as per the M'Naghten Rules, and does not include any disorder that either disrupts self-control, but which does not compromise awareness. Such a limited comparative analysis reveals that other common law jurisdictions have already outgrown this narrow model by acknowledging volitional incapacity in other ways (Barnes, 2014).

In the United Kingdom, the inability to control oneself is specifically mentioned as a mitigating factor in the defence of diminished responsibility, created by the amendments to the Homicide Act, 1957 (2009). This gives the courts the chance to take into consideration mental conditions which significantly affect the ability to regulate behaviour even when the accused is aware of the nature and wrongfulness of the act. In the United States, a number of jurisdictions had historically taken the irresistible impulse test, and had extended the insanity defence by dispensing with the significant capacity to be able to appreciate criminality or to establish the nature of their behaviour to the law. The second limb is a direct understatement of the volitional element and is a mirror of current psychiatric knowledge of impulse-control disorders (Kennefick, 2011).

In Canada, even though section 16 of the Criminal Code may seem to be cognitively phrased, courts have construed the term by appreciating the nature and quality of an act to have the capacity to make rational choice and control. This jurisprudence allows perceiving those circumstances that subvert self-regulation, thus indirectly perceiving volitional impairment. Such comparative developments prove the fact that, the integration of the volitional element

is neither radical nor impossible. Revising Section 22 BNS to acknowledge a significant impairment in the capacity to exercise control over conduct would bring Indian law in line with international law and bridging current lawful insanity with modern psychiatric knowledge (Dixon, 2009).

The aim of the study is to critically analyse the extent and sufficiency of the insanity defence in Section 22 of the BNS, 2023 and specially its continued reliance on the cognitive impairment without much reference to the volitional impairment as a legal basis of criminal exemption. The study aims at examining how this small-minded test, based on the M'Naghten Rules and strengthened by judge interpretation, makes the defence of insanity incomplete especially under the current psychotherapeutic insights that point to disorders in impulse control and volitional capacity. The study has provided a contribution to the literature by pointing out the limitations in the doctrinal and practical sense of Section 22 BNS through comparison of the legal standards with modern day mental health approach thus revealing the discrepancy between legal insanity and medical insanity.

The study is divided into seven sections. Section 1 comprises the introduction of the document. A literature review is also comprised under section 2 of the study. The objectives are covered in Section 3. A research methodology is examined in Section 4. The results are discussed in Section 5. The discussion has been provided in detail in section 6. Section 7 contains conclusions. References have finally been included.

II. REVIEW OF LITERATURES

Scurich, N., et al., (2025) analysed their conceptualizations and how they assess. Open-ended questions were given out, the potential indicators (31 in total) were rated by the participants using Likert-type scales and two hypothetical cases were assessed. Although certain agreement arose on the important pointers, such as multiple instances of treatment failure, absence of insight, persistent or deviant urges, verbalized loss of control, self-regulation deficits, and a disillusion to consequences, the case studies showed a great deal of variability in the expert judgement largely due to contradictory conclusions.

These results indicate that statutory language is not the only way to explain the variation, and as a result, there are unequal considerations.

Ali, S. A., & Ghose, A. (2025) investigated the complex relationship between criminal tendencies and the neurological cues that trigger them, as well as the underlying biological, psychological, and social factors. Prolonged stress and adverse socioeconomic circumstances can influence the endocrine system, particularly cortisol, which changes behaviour and cognitive abilities and may promote criminal behaviour. The study delved into Indian Penal Code Section 84, which is now BNS Section 22 in the year 2023. The study argues that the Indian criminal law never decolonized because the BNS did not change the same concept of the unsoundness of the mind substantially. The diminished responsibility in favour of mitigated responsibility is also supported by the authors in line with the international precedents and highlights those legislative changes need to accommodate the scientific advancement.

Sharma, P. (2025) discussed how these sections are in line with the international criminal law tendencies and in addressing modern issues of criminal jurisprudence, including medical negligence and road safety. The combination of doctrinal analysis and historical investigation helped the study to clarify why Sections 275 to 276C are codified and why they may affect the administration of criminal justice in India. The findings support the significance of such provisions as important in improving legal clarity, ensuring accountability, and the rights of the victims, and help strengthen the primary aims of the BNS. The study ends by giving recommendations on how the courts should interpret the law and the legislature can improve the law to provide an effective enforcement and protect the constitutional values.

Hegde, P. R., et al., (2024) explored the mental health and criminal justice system intertwining are complex issues to both criminal justice systems and mental health specialists. On the one hand, the recently adopted BNSA 2023 provides improvement and potential improvement, whereas, on the other hand, it represents the step in the right direction after Mental Health Care Act (MHCA) 2017 signified a significant step to ensuring the rights of mentally ill patients. This study is a critical analysis of BNSA based on the view of forensic psychiatry that explores the essence of changes introduced and the continuing use of old

concepts related to mental illness. Indian Parliament on December 21, 2023, the Indian Parliament passed the BNSA 2023, which is a major shift in the law of India.

Yadav, D., & Yadav, R. (2025) studied the inconsistency between the contemporary neuro-criminology and Indian criminal jurisprudence. The study is based on the extreme evidential obstacles to biochemical data because the law does not consider volitional deficits. Additionally, we evaluate how threatened the judiciary is by its inconsistent evaluation of new scientific evidence without a generalized admissibility standard, such as Daubert. The results indicate that the current framework does not adequately evaluate neurobiological compromised criminals, which can pose a constitutional issue in Article 21. Legislative reformation is necessary to add the doctrine of Diminished Responsibility (DR) to the BNS, which allows introducing an intermediate category of culpability that should correspond with evidence of partial impairment. This scientific fact is directly in conflict with the legal test of insanity defence in BNS Section 22 of the Indian Criminal Justice System.

Thomas, R. (2024) reviewed the BNS, 2023, and pointed out the agreeable and incompatible characteristics of the same, in comparison to the Unlawful Activities (Prevention) Act, 1967; and the judicial developments solidified thereunder, inter alia. The above-mentioned comments and suggestions point to the possible conceptual problems of the new enactment to allow the effective and efficient administration and implementation. A bid to rewrite an already existing legal system must be done with a systematic and critical evaluation of the rules, principles, and philosophies inherent to a particular legal system. The motivation on the lawmakers to enact by such assessment meaningful and progressive changes aimed at increasing the capacity of the law to encourage just, reasonable and equitable rules and practices can be seen with the introduction of the BNS, 2023 replacing the IPC, 1860.

Waqas, M., et al., (2024) investigated the dimensional influence of BNS in the aforementioned relationship, specifically the needs for autonomy, belonging, and competence. Using convenience sample, 398 white-collar workers from Pakistan's service and manufacturing industries participated in this time-lagged survey. Following the matches, the

response rate was at 66.33 percent. The results of the study supported all assumptions, both direct and indirect, that the combined BN construct has an effect on work engagement through self-efficacy. Nevertheless, the dimension-wise research failed to establish that having job autonomy indirectly affects engagement at work.

The distinct area of the research problem appeared in the Indian criminal law discussion of the treatment of mental illness and criminal responsibility in accordance with Section 22 of the BNS, 2023. Most of the literature either takes a medical, neuro-scientific, or policy-based perspective on the issue or criticizes the persistence of colonial legal ideas, but fails to investigate the practical application of the rigid cognitive test to deny relief to offenders with impulse-control or volitional disorders despite their continued awareness. Additionally, scanty scholarly work has been done to relate judicial precedents, statutory interpretation, and psycho-psychiatric classifications in a systemic and analytical way to prove why Section 22 BNS is not a complete defence. The gap requires an identification of grounds to perform a specific legal study derived between doctrinal criminal law and modern mental health knowledge to determine whether the current model of assessment manages to provide sufficient weight to individual responsibility and societal safety.

III. RESEARCH METHODOLOGY

The study research design is the doctrinal and analytical research design as it involves a systematic analysis of legal principles, statutory law and judicial interpretations concerning criminal responsibility and the insanity defence in the Indian criminal law. The approach used is a qualitative doctrinal approach, where the legal texts are critically analysed to determine the conceptual framework on the idea of cognitive and volitional impairment in BNS, 2023. All data to be collected during the study is founded on secondary data, which comprised of statutes, case laws, academic articles, commentary and reports, which are of relevance to criminal jurisprudence and mental health law. To ensure that the material gathered is properly documented compared, and clarity in the legal analysis, MS Word have been adopted as the main research tools of organising, analysing, and presenting the material gathered.

IV. RESULTS

Obj. 1: To analysis the distinction between cognitive and volitional impairment in criminal jurisprudence with reference to criminal responsibility and mens rea.

H1: Cognitive impairment, rather than volitional impairment, remains the primary determinant of criminal responsibility and mens rea in Indian criminal jurisprudence.

The study explored the differentiation between the cognitive and the volitional impairment in criminal jurisprudence shows that criminal responsibility and the doctrine of mens rea is largely based on cognitive ability and not volitional control. Cognitive impairment is associated with a person and his/her capacity to comprehend the nature, quality and wrongness of an act. Laws and regulations of jurisprudence like the M'Naghten Rules and other insanity rules of various jurisdictions put more importance on this cognitive aspect which is the legal assumption of the reliance of moral blameworthiness on the basis of rational cognition (Shaikh, 2015). The findings show that the absence of mental capacity in an accused through mental illness renders the criminal responsibility to be considerably reduced or absent since the necessary constituent of mens rea cannot be proved. The method emphasizes the fact that the law relies on reason and knowledge as the basis of culpability (Schopp, et al., 2008).

Volitional impairment, conversely, which is impairment of the ability to act in spite of knowing that such acts are wrong, receives relatively little attention in criminal jurisprudence. These results indicate that judicial restraint exists concerning the acceptance of loss of self-control as a sole basis of exculpation mostly because of the apprehensions of reliability of evidence and misuse. Some legal doctrines like irresistible impulse tests and diminished responsibility provisions though they are trying to include volitional factors, their application is limited and inconsistent. Consequently, many of these individuals who have cognitive awareness but are deficient in control of their behaviours are usually held criminally responsible, which is a normative judgment that self-regulation is an expectation of the society (Mahmoudi, 2025). On the whole, result interpretation indicates an unequal balance of

doctrines: criminal law is more inclined to the cognitive rather than the volitional assessment of the mens rea and responsibility (Ferguson, 2012).

Obj. 2: To examine the evolution of the insanity defence in Indian criminal law from Section 84 of the IPC to Section 22 of the BNS.

H2: The transition from Section 84 IPC to Section 22 BNS preserves the cognitive test for insanity while refining its legal interpretation in light of evolving notions of mental illness.

A study explored the insanity defence under Section 84 of the IPC to Section 22 of the BNS has shown that there is a resounding theme of continuity over a radical change in doctrines. The two provisions are strongly based on the M'Naghten Rules that focus on the mental inability of the accused when he perpetrates the crime. The key part- that the accused should be unable to know what has been done or that it was wrong or against the law because of inability to have a sane mind, has also remained largely intact in substance. This shows that the Indian criminal law still emphasizes legal sanity against medical insanity thus limiting the defence in a strict, confined sense. Nevertheless, the change of IPC into BNS represents an insignificant yet significant change in the intent of law making and updating according to current circumstances. Section 22 of the BNS is of more modernized and simplified lingo, as it conforms to the larger agenda of streamlining criminal law and harmonizing it (Negi Advocate, 2023).

The findings also indicate that, though there has been progress in the field of psychiatry and mental health jurisprudence, the area of Indian criminal law has not yet integrated the fields of medicine and psychology in the insanity defence. This therefore places a heavy onus in the accused to demonstrate legal insanity at the time of the offence and the defence in practice is therefore rarely successful. Comprehensively, the replacement of Section 84 IPC by Section 22 BNS is an indication of legislative consolidation as opposed to reform. The insanity defence remains an exception based on moral culpability as opposed to therapeutic knowledge, reflecting an interest in the law in the safety of the populace, in the responsibility of the individual and in the discretion of the judge over broad mental conceptualizations (Ali, & Mukhopadhyay, 2024).

V. DISCUSSION

The results of the study show unequivocally that the Indian criminal jurisprudence still favours the concept of cognitive impairment over the concept of volitional impairment; such trend is very similar to the traditional doctrinal base of the M'Naghten Rules. The ability of an individual to cognize the character or wrongness of a given act continues to form the criminal responsibility as, according to the results, and tends to be a crucial factor in determining the question of criminal responsibility, and this confirms the legal assumption that the moral blameworthiness lies in rational cognition. In addition, this judicial focus exists even in the light of the fact that in the current psychiatry, the emphasis has been on various disorders that are known to have a greater impact on behavioural regulation than intellectual awareness (Baskin-Sommers et al., 2022). This consistency is also backed by the literature, as one example, note that volitional tests tend to provide inconsistent expert judgments, which can be the reason that the courts are still unwilling to consider loss of self-control as a ground to allow exculpation. Similarly, (Meynen, G. 2016) point out that Indian criminal law has not been adjusted to scientific knowledge on mental illness, and thus they continue to use a cognitive test that is easier to administer by the court with an evidentiary degree of confidence.

Moreover, the findings show that the transformation between the Section 84 IPC into the Section 22 BNS is a form of continuity, as opposed to a substantive reform, even though the legislature tried to revise the terms of the statutory language. The literature supports the given observation heavily: (Meynen, G. 2022) in particular, state that the lack of volitional considerations ignores neurobiological data demonstrating that insufficient self-regulation may co-exist with adequate cognitive comprehension. Therefore, even in cases where clinical evidence indicates that a person has a low volitional capacity; individuals with extreme cases of impulse-control disorders are criminally liable. By doing so, the findings and the examined literature agree on the point of an old conceptual dichotomy between the law and modern mental health science. It is this gap that helps towards the conclusion that Section 22 BNS is an incomplete defence and that further reform is still required to create fairness and doctrinal

consistency in the determination of criminal responsibility (Kowshikaa, A. S. 2025).

VI. CONCLUSION

The study finds that under Section 22 of the BNS, 2023, still references solely a narrow cognitive test of insanity and thus holds the doctrinal framework that has been established under Section 84 of the IPC. The provision reflects the M'Naghten Rules by acknowledging only the impossibility to know the nature or wrongfulness of a particular act, and rules out that such volitional impairment is involved, though based on modern psychiatric knowledge, many mental disorders are primarily a problem of control of impulse and not cognition. This has always been reinforced by judicial precedents that have disallowed irresistible impulse or loss of self-control as a defence and created an apparent gap between legal and medical insanity. As a result, Section 22 is still a partial defence which does not take into consideration contemporary understanding of mental health, producing a framework that does not maintain conceptual wholeness at the cost of continuing doctrinal wholeness.

The study is constrained by the necessarily dogmatic nature of its methodology which depends only on secondary sources, but not on an empirical assessment of how Section 22 works in real-world adjudication. This limitation limits the range of the evaluation of the frequency or success of the use of the insanity defence or the experience of mentally ill offenders in the criminal justice system. However, its implications are immense: the results demonstrate that there is still a structural incompatibility between law and psychiatry, and the current cognitive test is unable to provide individuals with volitional or impulse-control disorders with substantive justice despite their clinical inadequacies. Similar legislative change is required to make sure that Section 22 becomes more full-fledged defence to capture the current knowledge of science as well as to keep the society safe.

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