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## MIND, MADNESS, AND THE LAW: PROBLEMS WITH THE INSANITY PLEA IN INDIAN CRIMINAL JUSTICE

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### ABSTRACT

*The transition from the Indian Penal Code, 1860 to the Bharatiya Nyaya Sanhita (BNS), effective 1 July 2024, represents a landmark moment in India's criminal law reform. However, with respect to the insanity defence, this legislative overhaul amounts to little more than a formal renumbering. Section 22 BNS mirrors the substance of the erstwhile Section 84 IPC, retaining the 19th-century M'Naghten cognitive test, which exempts criminal liability only where the accused was incapable of knowing the nature of the act or its wrongfulness at the time of commission. This paper critically examines the insanity defence under the BNS and identifies three persistent structural failings. First, the exclusive reliance on a cognitive test renders the defence inaccessible to offenders whose mental disorders primarily impair volitional control rather than cognitive awareness, placing the law at odds with contemporary psychiatric and neuroscientific understanding. Second, judicial application of Section 22 BNS remains deeply inconsistent, with courts employing divergent interpretive approaches in the absence of structured evidentiary guidelines. Third, the burden of proof placed on the accused, combined with unequal access to qualified forensic psychiatric expertise, systematically disadvantages economically marginalised defendants. The paper concludes that meaningful reform requires replacing the binary M'Naghten framework with a modern, clinically informed standard that incorporates volitional impairment, standardising evidentiary protocols for psychiatric evidence, and investing substantially in India's forensic psychiatry infrastructure — changes essential to reconciling criminal justice with principles of mental health and human rights.*

**Key Words:** *Insanity Defence; Section 22 BNS; Cognitive Test; Volitional Impairment; Forensic Psychiatry*

## I. INTRODUCTION

In the Indian criminal-justice system, the words "insanity plea" often evoke a mix of fascination and suspicion. High-profile cases where the defence of insanity is raised—whether in honour-killing matters, sexual-offence trials, or violent crimes—tend to polarise public debate. Some see the insanity plea as a clever legal loophole to escape punishment; others view it as a crucial safeguard ensuring that people with genuine mental illness are not punished like rational, fully responsible offenders.

With the replacement of the Indian Penal Code, 1860 (IPC) by the Bharatiya Nyaya Sanhita (BNS) from 1 July 2024, India has formally entered a new era of criminal law. Yet, when it comes to the insanity defence, the change is more cosmetic than revolutionary. The core doctrine—rooted in the 19th-century M'Naghten Rules—now appears as Section 22 BNS, largely unchanged in substance.

## II. SECTION 22 BNS: THE INSANITY DEFENCE IN THE NEW CODE

Section 22<sup>1</sup> of the Bharatiya Nyaya Sanhita (BNS) provides:

*"A person shall not be criminally responsible for an offence if, at the time of committing the act, he is, by reason of unsoundness of mind, incapable of knowing the nature of the act or that he is doing what is either wrong or contrary to law."*

This clause is a direct substitute for Section 84 of the Indian Penal Code (IPC). However, the essence of the clause is the same as applying the M'Naghten-style cognitive test, in which the accused must not be able to understand either (1) the nature of the act, or (2) that it is wrong or contrary to the law. The BNS does not, in this provision, introduce any volitional limb (such as loss of control) or any diminished-responsibility category. In essence, the law still operates on a binary model: the accused is either criminally liable or fully exempt from liability on insanity grounds.

Judges continue to apply Section 22 BNS by examining the totality of circumstances<sup>2</sup>—what preceded, attended, and followed the crime—to determine whether the accused's mental state met

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<sup>1</sup> The Bharatiya Nyaya Sanhita, 2023 (ACT NO. 45 OF 2023).

<sup>2</sup> Pahuja Law Academy, India, available at - <https://www.pahujalawacademy.com/section-22-act-of-a-person-of-unsound-mind> (last visited on Mar 31, 2026).

the statutory threshold. Leading precedents under the old IPC, such as *Rattan Lal v. State of M.P.*<sup>3</sup> and *Shrikant Anandrao Bhosale v. State of Maharashtra*, still influence how courts interpret "unsound mind" and "incapable of knowing," even though the code itself has been recast.

### III. OVER-RELIANCE ON THE M'NAGHTEN COGNITIVE TEST

The BNS insanity test remains firmly rooted in the M'Naghten cognitive model<sup>4</sup>, asking only whether the accused *knew* the nature and wrongfulness of the act. This test largely ignores volitional or control impairments—for example, cases where a person *knows* an act is wrong but due to a severe mental disorder is unable to control urges or impulses.

As a result, many offenders<sup>5</sup> who are suffering from conditions that primarily affect their impulse regulation, emotional lability, or neurotransmitters irregularities, may not qualify for the insanity defence under Section 22 BNS, even though their mental illness greatly reduces their moral and practical capacity to conform to the law. This has led scholars to argue that the current framework is out of step with the neuroscientific and psychiatric understanding of decision-making and behaviour.

### IV. INCONSISTENCIES IN APPLYING SECTION 22 BNS

Research on Indian courts shows that, even before the BNS, the application of the insanity defence was highly inconsistent. Different High Courts and trial courts interpreted the threshold for "unsound mind" and "incapable of knowing" in divergent ways, sometimes treating brutal or premeditated acts as proof that the accused must have been "rational" and therefore not insane.

Under the BNS, this inconsistency<sup>6</sup> is likely to persist, because the statutory language itself gives judges wide discretion. Some courts may accentuate earlier psychiatric history and hospital records while the other courts may focus on post-crime behaviour, their motive, or planning. This thereby imports moral and rationality-based deductions into the legal-medical question. Without a clear, structured framework or guidelines on how to weigh psychiatric evidence, the

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<sup>3</sup> 1970 (1971) 3 SCR 251.

<sup>4</sup> Pahuja Law Academy, India, available at - <https://www.pahujalawacademy.com/section-22-act-of-a-person-of-unsound-mind> (last visited on Mar 31, 2026).

<sup>5</sup> Textbook, India, available at - <https://testbook.com/judiciary-notes/section-22-bns> (last visited on Mar 31, 2026).

<sup>6</sup> S.M. Samir Ali, "Unsoundness of Mind and Neurological Impairments: A Reappraisal of Section 22 of the Bharatiya Nyaya Sanhita, 2023", Cambridge University Press, 2025.

insanity plea has a higher risk to come under the subjectivity of different courts and thereby making its application more inconsistent.

## V. BURDEN OF PROOF AND EVIDENTIARY CHALLENGES

The burden of proving insanity under Section 22 BNS still lies on the accused, and the standard is generally understood as "on a balance of probabilities" (not beyond reasonable doubt), following the lines of Section 108 of the Bharatiya Sakshya Adhinyam<sup>7</sup>. In practice, this means that the defence must present convincing medical evidence—such as psychiatric-evaluation reports, hospitalisation records, and testimony from qualified psychiatrists—to overcome the presumption of criminal responsibility.

However, only a small fraction of insanity pleas succeed even under the old IPC framework. Research conducted over the past decade based on Indian High-Court data shows that approximately 17–18%<sup>8</sup> of insanity-plea appeals were successful, and those which succeeded had well documented medical history records from past along with credible psychiatric opinion and compliance to procedure.

The same evidentiary obstacles and structural inequalities exist with the BNS. Person experiencing poverty, or are under-educated or socially marginalised often have little access to adequate psychiatric evaluation whereas on the flip side, wealthier defendants may be able to commission multiple reports and expert opinions, which raises the spectre of unequal accessibility to the insanity defence.

## VI. CONCLUSION

The replacement of the IPC by the Bharatiya Nyaya Sanhita marks a symbolic shift in India's criminal-law architecture, but on the question of mental insanity particularly, the change does not include substantive<sup>9</sup>but rather formal. Section 22 BNS preserves the M'Naghten-style cognitive test, the binary structure of liability, and the deep-seated institutional and doctrinal problems that have long plagued the insanity plea in India.

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<sup>7</sup> The Bharatiya Sakshya Adhinyam, 2023 (ACT NO. 47 OF 2023).

<sup>8</sup> Parthasarathy Ramamurthy, "How does India Decide Insanity Pleas? A Review of High Court Judgments in the Past Decade", National Library of Medicine, 2019.

<sup>9</sup> Textbook, India, available at - <https://testbook.com/judiciary-notes/section-22-bns> (last visited on Mar 31, 2026).

As a result, the insanity plea under the BNS often remains either too hard to access for genuinely ill offenders or too vulnerable to strategic manipulation by a few privileged accused. Making reforms in this area is not just a technical legal exercise; it is a moral and institutional project that lies at the crossroads of law, psychiatry and the protection of human rights. Unless India replaces its insanity-plea doctrine with a modern one and allocates adequate resources on the infrastructure of forensic-psychiatry, we shall always have strained, inconsistent, and incomplete relations between “mind, madness and the law” under BNS.