
RETHINKING CRIMINAL RESPONSIBILITY AND MENTAL ILLNESS IN INDIA: A CRITICAL ANALYSIS OF THE BNS–BNSS FRAMEWORK

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ABSTRACT

The connection between the mentally ill and their criminal responsibility has proved to be one of the most intricate issues that criminal jurisprudence faces today. This research aims at critically analyzing India's legal system that addresses cases of mentally ill individuals who commit crimes in terms of recent developments in Bharatiya Nyaya Sanhita, 2023, and Bharatiya Nagarik Suraksha Sanhita, 2023. The author believes that even though there exists the recognition of the insanity defense, procedural protection for the accused with mental incapacity and the legal protection for those who have been found not guilty of the crime due to insanity, the current state of affairs requires certain changes.

The first important thing worth noting is that the use of the cognitive test according to Section 22 of the BNS leads to an "all-or-nothing" attitude towards criminal liability without regard to partial impairment cases. Besides, the procedural protections offered by the BNSS with regard to competency to stand trial, mental health evaluation, and detention of suspects are not effective because of the underdevelopment of forensic infrastructure and coordination between medical experts and the court.

Furthermore, it should be noted that custodial life of mentally ill offenders in Indian prisons needs to be analyzed, and the discrepancy between statutory protection and actual conditions in which offenders live, especially those who are under trials, should become the main focus of the discussion. Finally, with regard to the constitutional dimension, one should consider the problem from the perspective of dignified treatment of mentally ill offenders.

A comparative analysis with the UK and US legal system will allow finding alternative solutions such as diminished responsibility and other aspects of the concept of insanity.

Keywords: Mental Illness, Criminal Responsibility, Insanity Defence, Bharatiya Nyaya Sanhita, Trial Competence, Human Rights.

CHAPTER 1

INTRODUCTION AND RESEARCH FRAMEWORK

1.1 Background and Context

Over the years, the link between mental illness and criminal liability has found itself a contentious one in the framework of criminal jurisprudence. Fundamentally, criminal liability is premised upon the assumption that the accused is a rational being who understands the nature of his/her actions and distinguishes between lawful conduct and behavior contrary to the law. Thus, criminal punishment entails holding the accused liable and morally culpable for his/her voluntary action. This is based on the fundamental assumption that the accused was fully aware of the implications of his/her actions and had chosen the said actions knowing full well that they were contrary to the law. However, this moral foundation gets completely destabilized if it turns out that the accused is suffering from some form of mental illness.

The presence of mental illness undermines the core assumptions undergirding criminal liability. For instance, it may be difficult, and sometimes impossible, to establish whether an individual suffering from some psychiatric disorder is fully in touch with reality or has the mental capacity to distinguish right from wrong. Under such circumstances, it becomes inappropriate to use such concepts as *mens rea* or intention since the accused lacks the rational capacity needed to make the distinction. This explains why legal systems worldwide have formulated doctrines in order to resolve this issue. Essentially, the formulation of these doctrines tries to strike a balance between the demands of fairness and justice on the one hand, and social safety on the other hand.

In the context of India, it should be noted that this balance has been traditionally achieved using the insanity doctrine established by Section 84 of the Indian Penal Code, 1860.¹ The enduring existence of this doctrinal framework demonstrates the Indian legal system's dedication to maintaining operational consistency through its criminal law system despite ongoing legislative changes. The ongoing use of a 19th-century cognitive assessment method creates urgent challenges because it fails to meet present-day standards for understanding mental disorders and human conduct. The issue is no longer confined to a narrow doctrinal inquiry into the conditions under which an accused may be exculpated. It now encompasses a broader

¹ Bharatiya Nyaya Sanhita, 2023, § 22.

set of interrelated concerns, including trial competence, procedural fairness, custodial treatment, and the rights of mentally ill offenders within the criminal justice system. The Bharatiya Nagarik Suraksha Sanhita 2023 together with the Mental Healthcare Act 2017 establishes a new legal framework that provides citizens with comprehensive rights protection through its implementation of rights-based systems.² The current developments demand that Indian criminal law needs a complete reassessment of its methods for defining and handling cases that involve mental health disorders. The study investigates mentally ill offenders because they represent a fundamental test which assesses the justice system's operational consistency and equitable treatment and ethical validity. The legal system which does not properly recognize mental health conditions leads to penalties against people who lack true criminal responsibility, which results in a breakdown of its fundamental legal principles.

1.2 Statement of the Problem

The legal system that controls mentally ill offenders in India shows official signs of being continuous and stable but still has major structural and conceptual issues that need resolution. The research study focuses on the main issue which exists because the current legal framework that includes Bharatiya Nyaya Sanhita 2023 and Bharatiya Nagarik Suraksha Sanhita 2023 and Mental Healthcare Act 2017 does not establish a complete and fair system for handling mental health issues in criminal justice system.

The first dimension of this problem lies in the substantive law governing criminal responsibility. Section 22 of the Bharatiya Nyaya Sanhita retains an exceptionally narrow and rigid formulation of the insanity defense which is based on the M'Naghten Rules.³ The framework employs an all-or-nothing system which requires total exoneration for the accused who meets the strict cognitive incapacity threshold or complete blame assessment based on their actual mental state. The system operates through two strict options which create problems because mental illness exists between two extreme states instead of showing complete states. The system blocks people with serious but not total disabilities from receiving legal recognition of their diminished responsibility. The second dimension examines the operational weaknesses in the system. The Bharatiya Nagarik Suraksha Sanhita establishes procedures to assess trial competence and maintain judicial fairness but these protections require sufficient forensic

² Mental Healthcare Act, 2017, No. 10 of 2017, India Code (2017); Bharatiya Nagarik Suraksha Sanhita, 2023.

³ M'Naghten's Case (1843) 10 Cl. & Fin. 200 (HL).

psychiatric resources to function properly.⁴ The system implementation faces operational challenges because psychiatrists take too long to assess patients and there are not enough qualified workers and different facilities operate at different performance levels. Many accused persons who cannot defend themselves are forced to endure extended criminal trials which often result in wrongful convictions. The third dimension of the study investigates how prisons manage their inmate population and treat mentally ill criminals. The Indian prison system currently holds a significant number of mentally ill inmates who remain in custody as undertrial prisoners pending their court hearings. The conditions of confinement characterised by overcrowding, inadequate medical care, and social isolation create an environment that worsens preexisting mental health conditions.⁵ The Supreme Court's broad interpretation of Article 21 rights to life and personal liberty creates serious constitutional issues.

The deficiencies show that there is a complete breakdown in the system which fails to combine legal and medical and institutional approaches to mental illness. The lack of coordination between substantive legal provisions and procedural protections and custodial methods leads to results that do not provide fairness to individuals and fail to attain the main objectives of the criminal justice system.

1.3 Research Objectives

The main goal of the present research is to provide a critical examination of the existing framework that governs the prosecution of mentally ill individuals under the law in India. In particular, the study seeks to highlight conceptual, organizational and procedural aspects that can be seen as problematic and requiring changes in the law.

Thus, the research aims to critically examine the doctrinal nature of the insanity defense within the framework of the Bharatiya Nyaya Sanhita, 2023, paying special attention to the implications of its cognitive and binary structure. Moreover, the study seeks to analyze the existing procedural rules provided in the Bharatiya Nagarik Suraksha Sanhita, 2023, that can be employed in solving problems with trial competence.

Another key research interest lies in the assessment of the role of the Mental Healthcare Act, 2017, in the treatment of mentally ill offenders, especially those detained in prison cells. In

⁴ Bharatiya Nagarik Suraksha Sanhita, 2023, §§ 367–376.

⁵ Sunil Batra v. Delhi Administration, (1978) 4 SCC 494.

addition, the research seeks to clarify the distinction between legal and medical definitions of mental disorder in the Indian criminal justice system.

Moreover, it is necessary to examine some practical implications of implementing relevant laws. Thus, the research seeks to address a number of issues that concern, in particular, forensic psychiatry infrastructure, legal aid and prison management in India. Finally, the study will seek to make comparisons with other systems in the world in order to derive some recommendations for future reform in the law.

1.4 Research Questions and Hypotheses

The main questions that will guide the research include the following:

Can the current legal framework be considered an adequate reflection of the concept of mental disorder? Do the available procedural safeguards of mentally ill accused persons guarantee the required standard of a fair trial?

Is the application of custodial practice in the treatment of mentally ill offenders in line with constitutional requirements regarding dignity and humane treatment? Is the absence of the doctrine of diminished responsibility a problem in the Indian criminal law?

Hence, the working hypothesis of the research is the following: the current legal framework can be criticized for failing to provide an adequate conceptual basis and institutional integration. Thus, the retention of the cognitive test, along with insufficient procedural guarantees and inadequate custodial practice, leads to unfair and ineffective outcomes.

1.5 Research Methodology

This research is based on the doctrinal methodology. It means that the primary focus will be made on the analysis of the statutory acts and legal doctrines, judicial decisions, and other literature on the issue in question. The use of the doctrinal methodology ensures a thorough investigation into the legal principles concerning mental illnesses and the criminal responsibility of a person suffering from these disorders.

Apart from using the doctrinal methodology, the paper will also incorporate the comparative one. In particular, some of the relevant features of legal systems in other countries will be used

to analyze the current problems and suggest possible solutions in the Indian context.

As far as the empirical methodology is concerned, the research will use relevant reports and statistical data produced by government agencies, international organizations, etc. Despite the fact that no new empirical research will be conducted in the course of this project, the use of data already existing will enable the researcher to see the gap between the actual reality and the theoretical law.

1.6 Scope and Limitations

The main focus of this research is the treatment of the persons suffering from mental illnesses in criminal proceedings in accordance with the criminal law of India. It means that the research will concentrate exclusively on the problem of criminal responsibility, trial competency, and the custody of persons in question. As the most relevant statutory instruments, the paper will refer to the Bharatiya Nyaya Sanhita, 2023, Bharatiya Nagarik Suraksha Sanhita, 2023, and Mental Healthcare Act, 2017.

The paper will neither deal with other aspects of mental health law nor consider the problems connected with civil commitment and juvenile justice. The other limitation of the research lies in the difference between legal and medical concepts. Even though the psychiatrist's opinion will prove useful for this analysis, the researcher will try not to discuss broader epistemological problems here.

One more limitation refers to the lack of appropriate statistical data in relation to mental illnesses among criminal offenders. However, despite these limitations, the main objective of the research can still be accomplished.

1.7 Chapterisation

The present work consists of six chapters. Chapter I provides general information about the topic, including the description of the research problem and the objectives of the study, the overview of the existing literature on the problem, and the research methodology chosen by the author. Chapter II deals with the conceptual grounds of criminal responsibility, insanity, and trial competency.

Chapters III and IV discuss substantive and procedural issues, respectively. The former

examines the insanity defense provided by the Bharatiya Nyaya Sanhita, 2023. The latter deals with the procedural guarantees for persons suffering from mental disorders, with special attention being paid to the issue of trial competency.

Finally, Chapter V considers custodial problems concerning mentally disordered people in accordance with the requirements of the Mental Healthcare Act, 2017.

CHAPTER 2

CONCEPTUAL FOUNDATIONS OF CRIMINAL RESPONSIBILITY AND MENTAL ILLNESS

2.1 Introduction

However, before delving into the substantive doctrines and procedures that pertain to mentally ill offenders, it is necessary to elucidate some theoretical considerations first. There is little question that there are many inconsistencies and problems inherent in the handling of mental illnesses in the criminal justice system. However, these are caused not so much by a lack of rules as by a lack of understanding of the underlying concepts involved in these rules.

For instance, phrases like "mental illness," "legal insanity," "trial competence," and "culpability" are used interchangeably in legal contexts although they refer to entirely different phenomena.

In essence, criminal law is the embodiment of the process of assigning blame. Criminal law does not simply prescribe penalties for particular acts or omissions, but it allocates blame for those acts or omissions on a basis that is grounded on the defendant's mental state. Blame allocation, however, presupposes a certain degree of rationality; i.e., the defendant's ability to recognize, assess, and govern his or her actions. As such, mental disorders present challenges to criminal law that may be resolved only through the development of new conceptual frameworks.

This chapter aims to provide some insight into this task. More specifically, it endeavors to explore some important aspects of the connection between criminal responsibility and mental illness. These include, among others, an examination of the difference between legal insanity and the medical perspective of mental disorders, the analysis of the notion of mens rea and

culpability, the doctrine of trial competence, and the separation of mental illness from mental retardation.

2.2 Mental Illness, Mens Rea, and Criminal Responsibility

That a criminal act should be done with intent has been part of criminal law for decades now, dating back several centuries ago. Stated explicitly in the phrase 'actus non facit reum nisi mens sit rea', the guilty mind requirement is an aspect of criminal liability that holds that committing an act does not make someone guilty of a crime; what makes one culpable is the guilty mind behind the act. In other words, mens rea can be regarded as the moral compass of criminal liability.

When a person commits a criminal offense while being in a state of mental illness, the principle of mens rea faces a direct challenge because mental health conditions interfere with the reasoning process that is required for determining culpability. Someone with serious mental issues, therefore, cannot have any intention to commit an act and may not understand its consequences and significance, making it difficult to attribute mens rea.

It would, however, be wrong to view mental illness and mens rea as completely related, since some mental illnesses do not preclude criminal liability. This is why mental illness is considered cautiously as grounds for excusing individuals from criminal responsibility. The reason is that mental illness can be abused and there are always fears of over-inclusivity.

Therefore, legal systems adopt a narrower approach to mental incapacity.⁶

In the context of criminal liability, culpability should be regarded as a more comprehensive notion than mens rea. Mens rea pertains to the particular mental state (intentional, knowing, or reckless) of the offender, whereas culpability is a general measure of the blameworthiness of the accused person. Even though mental illness cannot negate the element of mens rea, it can certainly diminish culpability due to the offender's diminished capacity for rational decision-making. Hence, the problem with the mens rea approach is that it fails to accommodate the nuances of mental disorders.

The question that arises in the context of the aforementioned discussion is how the criminal

⁶ Alan Reed & Ben Fitzpatrick, *Criminal Law* 312 (5th ed. 2016)

law can incorporate the effects of mental illness without undermining its integrity and administrability. On the one hand, adopting an overly restrictive standard based exclusively on mens rea would result in overlooking the impairment of the offender's agency. On the other hand, taking an overly liberal stance would lead to a fragmented and inconsistent body of criminal legislation.

2.3 Legal Insanity and Medical Insanity

A critical issue related to the problem under discussion is the distinction between legal insanity and medical insanity. Both terms are commonly perceived to denote the same phenomenon in ordinary language. In reality, however, they refer to entirely different notions that serve separate purposes.

Medical insanity is a term used to describe mental illness. According to the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, schizophrenia, bipolar disorder, depression, anxiety, post-traumatic stress disorder, attention deficit hyperactivity disorder, eating disorders, obsessive-compulsive disorders, and personality disorders all belong to the category of mental illnesses. As a result, the primary goal of diagnosing mental illness is to classify the disorder according to its type and characteristics.

By contrast, legal insanity is an exceptionally narrow concept that does not involve the identification of any specific disorder. Instead, it concerns the functional consequences of the accused's mental disorder on his or her cognitive abilities during the commission of the offense. Under Indian law, the criterion for establishing legal insanity is that the accused person, by reason of unsoundness of mind, was incapable of knowing the nature of the act or that it was wrong or contrary to law.⁷

The professions of law and medicine pursue their separate goals and the distinction between them shows this fact. The law exists to establish responsibility while psychiatry works to identify and treat mental health disorders. People who suffer from medical insanity will not meet the criteria for legal insanity according to the definition of the law. The legal test requires less evidence because it needs specific functional impairment evidence to prove actual mental impairment.

⁷ Bharatiya Nyaya Sanhita, 2023, § 22.

The implications of this distinction are important. A defendant who has established psychiatric disorders will not meet the insanity criteria unless his mental state at the crime show psychiatric impairment. A defendant who has never received a mental health diagnosis can use the insanity defense if enough proof shows that he did not understand his actions during that time.

The courts have continuously acknowledged the differences that exist between legal and medical viewpoints. The Supreme Court of India holds that the critical point for investigation rests on the mental state of the defendant during the crime rather than his mental state before or after the crime.⁸ With its emphasis on temporality, this argument highlights the role of the temporary legal standard and the difficult issues of the proof of insanity.

2.4 Culpability, Moral Agency, and the Limits of the Cognitive Test

The principle of culpability underlies the notion of criminal responsibility. It measures how much an individual can be morally blamed for his actions. For persons affected by mental disease, there arise doubts regarding culpability. Such people may lack the capability to rationally make decisions.

The traditional approach to culpability is codified in the M'Naghten rules. The approach employs the cognitive test where the person's understanding of the nature of his actions is considered. The advantage of this test is that it has a clearly defined standard and can be easily administered. However, the test does not adequately address the different aspects that can be affected by mental impairment. The problem arises when a person understands that his actions are wrong but cannot resist the urge to commit them due to volitional impairment.

Recent medical studies have shown that mental diseases may influence emotional and impulse controls. Therefore, a person may know that his actions are immoral but be unable to restrain himself. Cases like these are excluded from consideration under the insanity defense because of the cognitive test. There is no comprehensive definition of culpability since the cognitive test excludes the role of volitional impairment in making decisions.

In the legal system, individuals are classified as either wholly responsible for their actions or having no criminal responsibility. Consequently, those persons affected by volitional impairment fall under the category of persons without criminal responsibility. The law does

⁸ Dahyabhai Chhaganbhai Thakker v. State of Gujarat, AIR 1964 SC 1563.

not accommodate varying levels of culpability. The effect of this approach is that it does not cater to different levels of mental health. The all-or-nothing method of categorizing individuals undermines the principle of proportionality in criminal punishment.

2.5 Fitness to Stand Trial and Procedural Competence

One of the main, yet frequently overlooked distinctions within the given topic pertains to that between the legal concepts of insanity at the time of the act and fitness to stand trial. Where the former refers to the mental state of the accused at the time of commissioning the offense, the latter pertains to his/her current state of mind.

Fitness to stand trial is one of the fundamental components of criminal procedure that guarantees fair trial. The defendant must demonstrate enough mental faculties to comprehend the charges against him/her, be able to discuss matters with his/her attorney, and assist in their own defense. Such requirements are based on the notion of natural justice as well as the right to a fair trial.

It is very important to make such a distinction because the two notions have nothing in common. For instance, the accused can be proved legally insane when committing the crime and still be fully capable to take part in the legal proceedings. Likewise, the opposite scenario is also quite possible when the accused demonstrates good mental health at the moment of committing the crime, yet later becomes mentally ill.

In both cases, there will be completely different consequences for the accused. Thus, in the first scenario, he/she might invoke the insanity plea as a possible defense. As to the second scenario, the criminal proceedings will be put off until the accused has recovered enough to defend himself/herself.⁹

Furthermore, the trial competence demonstrates how the state of being mentally ill is not static, unlike the insanity plea, which relies on the backward-looking inquiry. The issue is that it requires constant monitoring of an accused's psychological state through medical tests and court hearings to guarantee the protection of his or her rights throughout the process.

⁹ Bharatiya Nagarik Suraksha Sanhita, 2023, §§ 367–376.

2.6 Intellectual Disability vs. Mental Illness

Another crucial conceptual differentiation that should be made is that between intellectual disability and mental illnesses. Despite the fact that both conditions affect cognition, they have a number of distinctions in terms of etiology and nature of both phenomena.

Intellectual disability represents the situation when someone experiences considerable impairment in intellectual functions and adaptive behavior due to developmental factors. Such a person is unable to comprehend and process information, communicate, or deal with basic everyday tasks efficiently. On the contrary, psychiatric disorders represent the category of mental illnesses that arise regardless of the period of life and affect moods, thoughts, and behavior.

It is critical to distinguish between the two phenomena since intellectual disability implies that someone cannot participate in the legal proceedings actively or cannot take reasonable decisions because of severe problems with understanding. At the same time, mental illnesses imply that there may be episodic impairments in someone's condition. Both cases require different approaches in the legal framework, while confusing them may lead to improper legal responses and insufficient protection of rights.

2.7 Constitutional Dimensions: Dignity and Fairness

The treatment of mentally ill offenders must also be examined within the broader constitutional framework. The Indian Constitution through Article 21 establishes the right to life and personal liberty which the Supreme Court has interpreted to include the right to dignity and humane treatment. The State has a duty under this constitutional perspective to treat individuals with mental illness through respectful methods while providing them required treatment. The criminal justice system needs to function according to principles of fairness and justice and reasonable practices. The ongoing detention of mentally ill patients under conditions which worsen their condition creates major constitutional issues.

Prisoners maintain their rights throughout imprisonment according to judicial decisions which declare that the State must deliver suitable medical services to inmates.¹⁰ This particular principle finds special application in cases related to mentally ill offenders, who can be

¹⁰ Sunil Batra v. Delhi Administration, (1978) 4 SCC 494.

described as the most vulnerable category of people in the criminal justice system.

Conceptualizing the problem of mental disorders in criminal law through the lens of a rights-based approach entails abandoning the retributivism framework and replacing it with a therapeutic and rehabilitative orientation. In addition, the collaboration between the criminal justice system and the health sector is also an essential prerequisite of such an approach.

2.8 Conclusion

It should be concluded that the conceptual framework of criminal responsibility and mental illness is based on various legal, medical, and moral notions and distinctions. Legal insanity, trial competence, insanity at the time of the act, and other differentiations between various concepts of insanity are crucial for a proper application of criminal legislation.

Failing to make the necessary distinctions leads to confusion, injustice, and inconsistency in the process of applying criminal legislation to offenders. On the other hand, maintaining clear definitions makes it possible to develop a more refined legal framework for addressing mentally ill offenders.

CHAPTER 3

THE INSANITY DEFENCE UNDER THE BHARATIYA NYAYA SANHITA, 2023

3.1 Introduction

The insanity defence exists as a vital yet highly disputed element of criminal law. This legal doctrine demonstrates its strongest connection to both ethical principles and psychiatric research. The defence operates to determine which situations should allow mentally ill offenders to escape criminal responsibility for their unlawful actions. The legal system values systematized fairness which holds people accountable for their actions while matching their punishments to their specific crimes.

The Bharatiya Nyaya Sanhita 2023 BNS which replaces the Indian Penal Code provides an insanity defence through Section 22 which maintains most of Section 84 from the IPC.¹¹ Such continuity demonstrates that the legislature prioritizes stability over reforms despite the critical

¹¹ Bharatiya Nyaya Sanhita, 2023, § 22.

nature of doctrinal deficiencies. Thus, retaining an outdated cognitive test in a modern legal framework leads to many questions concerning its ability to cope with contemporary notions of mental disorder and criminal liability.

This chapter provides a critical analysis of the insanity defence under the BNS. The paper discusses the doctrinal background, elements of proof, evidentiary challenges, and limitations associated with using such an excuse. The chapter argues that although the defense is necessary to guarantee that people suffering from psychological problems do not become victims of injustice, it is too narrow in the current version and needs improvement. Specifically, the absence of diminished responsibility doctrine results in numerous inconsistencies.

3.2 Historical Development of the Insanity Defense and Its Continuity in the BNS

In India, the insanity defence was based on the M'Naghten rules introduced by the House of Lords in 1843. These principles were developed following the trial of Daniel M'Naghten, who was found not guilty due to insanity. The M'Naghten rules imply that the test of insanity concerns the accused's inability to understand the nature of the crime or its unlawfulness.

This rule was introduced in Section 84 of the Indian Penal Code, elaborated by Lord Macaulay and his colleagues.

Section 22 of the Bharatiya Nyaya Sanhita, 2023, reflects this principle, making only slight modifications. The provision states that nothing shall be an offense when the offender cannot know the nature of his or her actions and that those actions violate legal norms or standards as a result of psychological disturbances. One can say that this section retains a doctrinally sound provision despite the lack of modernity associated with the M'Naghten principles.

It seems natural why the insanity doctrine remained unchanged throughout history. First, the M'Naghten principles have always been easy to follow and administer. Indeed, they imply using a cognitive test for insanity rather than engaging in complex psychological discussions. However, the simplicity of these rules comes along with a high degree of conceptual deficiency. Namely, when introducing the M'Naghten rule, society did not have enough information on the problem under discussion.

In such circumstances, the use of this rule for proving criminal insanity becomes questionable. Indeed, this practice demonstrates how the desire for stability in criminal law contradicts other

stance because they fear that defendants will misuse the defence while they need to uphold public trust in the criminal justice process.

3.4 The Cognitive Test and Its Limitations

The section 22 test essentially follows a cognitive approach in determining insanity. This implies that an individual would be considered insane if, at the time of committing the crime, he had a defect in his cognitive capabilities that impaired his ability to comprehend the criminal nature and wrongfulness of his actions. While this method is objective and straightforward, it cannot be applied comprehensively when dealing with mental illnesses.

Firstly, the cognitive test ignores volitional impairment. Research in modern psychiatry reveals that mental diseases do not just affect cognitive abilities but also disrupt the individual's emotions and self-control. Thus, a person who knows that an action is wrong may still not be able to control himself because he is psychologically compelled to carry out the act. However, since cognitive impairments ignore volitional issues, people who have reduced culpability may end up being convicted under the section 22 insanity provision.

Secondly, there is the problem of the binary nature of the test. In essence, the defense assumes that people suffering from mental diseases fall either into the completely insane category or the perfectly sane category. As such, people who suffer from mental impairments are treated like individuals who have no impairments. This not only violates the principle of proportionality but also fails to acknowledge the complexity and continuum of mental conditions.

The cognitive test is premised on a limited view of human agency. At the time it was enacted, a person was deemed capable of being held accountable for his actions if he understood that what he did was morally wrong. Even though this approach might have worked then, it is increasingly becoming difficult to use it in today's times.

3.5 Burden of Proof and Evidentiary Challenges

There are significant evidentiary hurdles when applying the insanity defence. Firstly, in India, it has been decided in various judicial precedents that the burden of proving insanity rests with the accused. Unlike the prosecutorial burden of proof, the accused has to make the court

suspicious of his sanity to succeed in having the defence considered.¹³

Practically speaking, this might prove difficult to establish. Mental illnesses tend to be episodic, and there might not be any means of observing the mental state of an accused person. Also, psychiatric assessment tends to be carried out after the commission of a crime, and therefore the findings might not be representative of the condition of an accused person at the time of committing the act. Furthermore, the absence of medical records and stigmatization might pose a challenge in gathering evidence relating to mental disorders.

To overcome the difficulty in accessing direct evidence in establishing the mental state of an accused person, courts usually depend on indirect evidence. This consists of the conduct of an accused person before, during, and after the commission of the act, along with past experiences of the accused person with mental illnesses. Although this technique is necessary because of the difficulties in obtaining direct evidence, it introduces subjectivity into the decision-making process.

Evidentiary issues surrounding the use of the insanity defence reveal the need for collaboration between the legal and medical systems. Improving access to forensic psychiatric experts and enhancing documentation of mental health conditions could help enhance the objectivity and accuracy of decisions made by courts.

3.6 Lack of Doctrine of Diminished Responsibility

One of the major shortcomings of the application of the insanity defence under the BNS is the failure to recognize diminished responsibility as a mitigating factor. Unlike many other countries, there is no provision in Indian criminal law to reduce the level of criminal responsibility of people with partial impairment of their mental faculties.

The concept of diminished responsibility entails that if a defendant commits an offense while suffering from some sort of psychological disease and it is found to have significantly impaired his capacity for self-control, he will not be completely excused from criminal responsibility. He would, however, be regarded as less culpable than other accused persons.

Therefore, introducing a doctrine of diminished responsibility will create a more effective

¹³ Id.

system for addressing instances of partial mental disability. People with partial impairment of their mental states currently cannot avail themselves of this provision because there is no law recognizing this concept in India.

3.7 Mens Rea, General Exceptions, and the Moral Structure of the Defence

The presence of the insanity defence in the chapter on general exceptions highlights how central this defence is to limiting criminal liability in the law. It should be noted that, in addition to being an ordinary defence in the eyes of the law, this exception highlights the importance of the rule that only those guilty of an offence with a sound mind should be held responsible for it.

Indeed, the insanity defence denies the basis for punishment since it takes into account the fact that those unable to understand what is happening around them and control their actions cannot have moral culpability. In essence, without this aspect, there would be no possibility of holding criminals responsible for their actions.

That said, the restrictive nature of the definition of this concept under section 22 prevents it from properly reflecting its moral foundations. Indeed, only those whose mental state affects their cognitive capabilities and not morality are considered insane by law in this case.

The adoption of a broader understanding of insanity could help make the provisions of this defence reflect the true moral foundations of criminal law.

3.8 Conclusion

The insanity defence in the Bharatiya Nyaya Sanhita, 2023, can be viewed both as a critical protection and a source of considerable problems related to the doctrine of the insanity defence. While this defence plays a crucial role in preventing people with inadequate mental states from being punished for criminal acts, it does not do enough in practice.

Specifically, the continued use of the cognitive aspect of the M'Naghten test is one of the reasons for this problem.¹⁴ The legal system experiences two fundamental issues because the existing legal framework lacks a diminished responsibility doctrine which creates a gap that

¹⁴ M'Naghten's Case (1843) 10 Cl. & Fin. 200 (HL).

results in unfairness and judicial inconsistencies according to your description. The solution for these problems demands people to study both legal matters and psychiatric concepts while creating a detailed understanding of criminal accountability. The proposed method will improve individual case outcomes through its just nature while increasing the overall moral authority of the entire criminal justice system.

CHAPTER 4

PROCEDURAL SAFEGUARDS UNDER THE BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 AND TRIAL COMPETENCE

4.1 Introduction

The determination of criminal responsibility establishes whether past offenses by an accused can result in their criminal liability, but the criminal process needs to assess whether the defendant can engage in their own defense at this time. The law cannot claim to be fair if it proceeds against a person who is unable to understand the nature of the proceedings, instruct counsel, or defend themselves in any meaningful sense. Mental incapacity safeguards exist as essential elements which a fair criminal justice system needs to establish. The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) replaces the Code of Criminal Procedure 1973 while maintaining and improving its established procedures for handling defendants who possess mental disabilities or intellectual disabilities.¹⁵ These provisions are expected to ensure that the criminal process is undertaken in accordance with natural justice, fairness, and dignity. Additionally, there is an effort to integrate the aspect of medical examination into the legal procedure of determining whether an accused is fit to be tried.

However, while these safeguards are important in their legislative provisions, their practical realization depends on several other factors, particularly the way they are implemented in a rather complex institutional setting. This chapter provides a discussion of the procedural framework as prescribed by the BNSS Act, including the concept of trial competence, the stage when mental incapacity may arise, mechanisms of psychiatric assessment, and possible legal consequences of such incapacity. Finally, there is a critical analysis of the problems that prevent proper functioning of these safeguards.

¹⁵ Bharatiya Nagarik Suraksha Sanhita, 2023.

4.2 The Concept of Trial Competence

The concept of trial competence, also known as the capacity to enter defence, is essential in the criminal procedure. This requirement is grounded in the notion that a criminal trial can only proceed when the accused is capable of participating actively in the case. In particular, trial competence implies the knowledge of the nature of the charge, roles of different persons involved in the trial, and consequences of the trial. At the same time, the accused should be capable of communication with legal representatives.

Thus, the concept of trial competence differs significantly from the defence of insanity, which is based on an assessment of mental health status at the moment of committing an offence. The key difference between trial competence and the defence of insanity lies in the fact that the former pertains to the current status of the accused, while the latter focuses on past events. Such a differentiation allows maintaining procedural fairness despite the outcome of insanity assessment.

It should be emphasized that trial competence, as the requirement in criminal procedure, is grounded in the principle of natural justice and the right to fair trial. Indeed, if the accused cannot understand the criminal process or participate actively in defending him- or herself, it becomes impossible to hold a fair trial. Indian courts recognize procedural fairness as an important element of Article 21 of the Constitution.¹⁶

The BNSS includes this principle because it establishes methods to identify situations where defendants lack the capacity to defend themselves. The provisions acknowledge that mental incapacity functions as a legal condition which affects the legitimacy of criminal proceedings.

4.3 Statutory Framework under the BNSS

The Bharatiya Nagarik Suraksha Sanhita 2023 contains its main provisions about mental incapacity procedural protections through Sections 367 to 376.¹⁷ These sections provide a framework for handling suspects who may be considered of unsound mind or intellectually disabled.

This is done through the initiation of a process when there is reason for a Magistrate or a Court

¹⁶ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

¹⁷ *Bharatiya Nagarik Suraksha Sanhita*, 2023, §§ 367–376.

to believe that the accused lacks capacity to enter defense in a case due to a mental defect or disorder. The standard for raising such suspicions is kept low enough so as not to preclude any protective measures that would be required prior to causing harm to the accused.

In such cases, the court is supposed to order a medical examination of the accused, which will be done by either a psychiatrist or a clinical psychologist, according to the BNSS. Such an improvement is noticeable compared to earlier legislation in which there was little reliance on the expertise of psychiatrists and psychologists.

Next, the court determines the level of functional capacity of the accused person, meaning whether the person can understand what the proceedings are all about and what he or she needs to do in order to defend him or herself. The determination of mental capacity of a person, however, is a legal decision and should be determined with a view to a legal definition of mental incapacity.

Finally, depending on the results of such an inquiry, the court decides how to handle the situation, including deferring the proceedings, granting the accused temporary release under certain restrictions or admitting him or her to a mental health facility.

4.4 Inquiry and Trial in Cases of Suspected Unsoundness

The BNSS distinguishes between inquiry and trial procedures in cases of suspected mental incapacity, providing specific sections in regards to each of the stages. According to the provisions of the Code, at the stage of inquiry, the Magistrate should determine whether the accused is able to understand the proceedings and can effectively make defense to his/her detriment. If there is reason to suspect that the accused cannot, the Court is obliged to obtain a medical opinion first.

At the stage of trial, the court should be equally vigilant to the signs of mental disorder or incapacity in the accused and take necessary steps accordingly. Such continuous surveillance of the accused and constant monitoring of changes that occur during court procedure is vital due to the potential development of mental illness.

BNSS also provides a system for further evaluation and review of medical opinions concerning the accused's state of mind. In particular, a special Medical Board should be constituted by a court. This would allow for the verification of the initial diagnosis made by the attending

physician. Such measures indicate the high importance of psychiatric evaluations made.

It should be noted, however, that judicial determination must still be provided even after medical evidence is presented by a doctor.

4.5 Bail, Treatment, and Custodial Alternatives

The main element of the BNSS framework shows its dedication to non-custodial solutions which protect accused individuals who cannot defend themselves. Section 369 mandates that courts must grant bail to defendants who need outpatient care but have someone responsible for their supervision and protection from danger.¹⁸

This provision is indicative of the change from the stereotypical belief that people suffering from mental illnesses are usually confined in institutions. Rather, it suggests that community-based treatment can sometimes be an appropriate option. In addition, this provision is consistent with the provisions of the Mental Healthcare Act, 2017, regarding the least restrictive form of care for people suffering from mental disorders.

Where bail cannot be considered for an individual accused of a crime, he/she could be placed in a mental health establishment. Nevertheless, it is essential to mention that the absence of appropriate facilities poses serious problems because in some cases mentally ill individuals end up in prisons and may face aggravation of their state.

Thus, deciding on whether or not an accused should be granted a bail or placed in an institution should be done on the basis of a number of considerations. The BNSS offers a way for dealing with this dilemma; however, it may work only when adequate infrastructure and relevant measures are in place.

4.6 Postponing and Resuming the Trial

If an accused person has been found incapable of defending himself/herself properly, the trial is usually postponed. It means that the trial will continue once the accused will have enough capacity to take part in it.

The BNSS regulates this issue by offering a number of provisions related to the possibility of

¹⁸ Id. § 369.

resuming the trial once the accused has gained his/her capacity. The necessity to undergo further medical evaluations becomes crucial here since only in this case the judge will be able to determine whether an individual has recovered from a mental disorder.

Such a provision shows the willingness of authorities to help the accused and not abandon him/her. At the same time, it makes sure that the accused will only be able to defend himself/herself adequately and that he/she will get a fair trial.

4.7 Acquittal on Grounds of Unsoundness and Subsequent Custody

If the insanity or related condition of a person is considered under the IPC, several points must be kept in mind by Hon'ble Judges or the authorities determining the same.¹⁹ The dual result obtained reflects the differences between responsibility for facts and legal culpability.

Upon obtaining this acquittal, the courts shall determine what further action will be taken against the accused. This can include release under supervision and admission to the psychiatric institution. The court decision should combine ensuring public safety with respect for the rights and interests of the accused.

One of the issues that arise in this regard is the risk of indefinite detention. Without proper means of control, persons who have been found insane and, accordingly, not responsible for their crimes, may stay indefinitely in the custody of institutions. As a result, preventive measures will be carried out without sufficient legal grounds, causing many constitutional and human rights violations.

This risk of indefinite detention is mitigated to a certain extent by the use of safeguards and the mechanism of periodic reviews included in the BNSS. However, as mentioned above, the implementation of these instruments is far from perfect.

4.8 Institutional Challenges and Practical Limitations

Despite the comprehensiveness of the BNSS in terms of procedural requirements, its effectiveness can be seriously hindered by the problems faced at the institutional level. Among the key challenges, we can distinguish the problem of the availability of medical professionals

¹⁹ Id. §§ 372–376.

in sufficient quantity. In particular, there may be problems with assessing the condition of an accused person in a timely manner.

Moreover, legal professionals themselves may not always possess the knowledge required to diagnose and investigate the mental state of an accused person. Legal aid may also be insufficient for conducting an effective trial on this issue.

Finally, one of the most pressing problems at the institutional level involves the lack of a suitable infrastructure. The lack of suitable facilities in prisons creates serious difficulties in addressing the issue of treatment and rehabilitation of mentally ill persons.

The issue of gaps between law and reality, therefore, becomes very relevant in this context. Although the BNSS includes many procedural safeguards, implementing these safeguards will require additional investments in developing the necessary infrastructure.

4.9 Conclusion

The discussion of procedural safeguards established under the Bharatiya Nagarik Suraksha Sanhita, 2023 demonstrates their significance for protecting the rights of mentally ill offenders. Their introduction shows India's desire to ensure justice and respect the dignity of people with disabilities.

However, procedural safeguards alone cannot help protect the rights of an accused person. The actual effectiveness of safeguards will depend on the development of institutional and infrastructure support for this purpose. In this case, however, we can speak about an important step toward fairer legislation.

CHAPTER 5

CUSTODIAL REALITY, HUMAN RIGHTS, AND SYSTEMIC FAILURES

5.1 Introduction

The validity of the protections offered to the mentally ill persons as offenders is based on the premise that the state would operate in a manner befitting of its constitutional values. However, the experience of the mentally ill within the Indian criminal justice system is far removed from such a theoretical ideal. The prison, which is meant to be a site of lawful detention and regulated

care, ends up being a place where the mentally ill accused person is neglected, made worse, and rendered invisible.

This chapter shifts focus away from a statutory perspective to a discussion of what goes on within the prisons. Here, the interaction between the Bharatiya Nagarik Suraksha Sanhita, 2023 and the Mental Healthcare Act, 2017 is analyzed in the context of constitutional discourse of rights. It emerges that while there exists a rights-based framework, poor implementation leads to results that fail to promote justice or dignity.

5.2 Mental Healthcare Act, 2017 and Its Relevance to Criminal Justice

The MHCA of 2017 marks a departure from India's former laws concerning the management of mental illnesses, marking a move from a custodial and paternalistic regime to a rights-based one. This law regards mental healthcare as part of the fundamental right to life and requires access to services and treatment.²⁰

Relevance of the MHCA to the Criminal Justice System

In essence, the relevance of the MHCA to the criminal justice system is immense since the law makes several key demands on the State. For instance, it places an obligation on the State to provide necessary treatment for individuals with mental illnesses, both those who are under its custody and others who are free. Additionally, the MHCA calls for the implementation of several important principles, namely dignity, autonomy, informed consent, least restrictive care, and community treatment. The mentioned principles oppose the use of institutional treatment of mentally ill offenders.

However, as has been pointed out above, the integration of the MHCA into criminal procedure does not appear to be entirely achieved. Even though the BNSS creates opportunities for treatment of mentally ill offenders through assessment and treatment mechanisms, they tend to function separately from the rights regime established by the MHCA. As a result, there tends to emerge certain inconsistencies in treating mentally ill offenders.

The aforementioned importance of dignity and autonomy in the context of the MHCA takes on special significance in criminal law. In this branch of the law, the State applies coercive powers

²⁰ Mental Healthcare Act, 2017, No. 10 of 2017, India Code.

that may infringe upon individuals' freedom and dignity, among other rights. Consequently, the implementation of the mentioned principles in practice is crucial for protecting individuals' rights.

5.3 Prison Conditions and the Reality of Mental Illness in Custody

Generally speaking, Indian prisons are known for their overcrowding, poor conditions, and scarcity of healthcare services. Such circumstances are especially dangerous for individuals with mental illnesses since special measures are required in order to deal effectively with such prisoners.

Furthermore, many mentally ill individuals in prisons are undertrials, who have to spend long time periods behind bars due to procedural delay. Stress and anxiety experienced during prolonged incarceration worsen their condition and, as a result, make these prisoners even more psychologically disturbed.

It should be noted that in most Indian prisons, psychiatric services are extremely scarce. Even where such services are available, they usually fail to meet prisoners' needs. Moreover, medications are usually prescribed without proper follow-ups and controls, which raises doubts about their effectiveness and appropriateness.

In addition, imprisonment per se tends to be psychologically harmful to inmates since overcrowding, lack of privacy, social isolation, and violence exert adverse effects on prisoners' psychological well-being. Consequently, the prison becomes an additional source of psychological disturbance for inmates, especially those who suffer from mental disorders.

5.4 Constitutional Framework: Dignity, Liberty, and Fair Treatment

The assessment of mentally ill offenders requires evaluation through the constitutional rights which Article 21 of the Constitution of India provides. The Supreme Court has consistently interpreted this provision to include the right to live with dignity, even within the confines of incarceration.²¹

Prisoners do not lose their basic rights when being held in custody. It means that there is a

²¹ Sunil Batra v. Delhi Administration, (1978) 4 SCC 494.

responsibility on the part of the State to provide adequate medical treatment and maintain humane conditions. It is especially true of prisoners suffering from mental disorders who are incapable of advocating for their rights.

The denial of proper mental healthcare of imprisoned persons violates their basic rights to life and personal liberty. In addition, the issue touches upon international standards concerning the right to healthcare. It obliges States to ensure equal access to healthcare services to their citizens, including those serving time in prisons.

Thus, the constitutional framework of protecting basic rights creates a solid foundation for defending mentally ill offenders. However, it presupposes a high degree of readiness on the side of judges to ensure the implementation of the said rights. It also demands the willingness and ability of institutions involved in criminal procedures to perform corresponding duties.

5.5 Systemic Failures and Institutional Gaps

Challenges associated with treating mentally ill offenders are not caused by individual errors. They are rooted in the systemic flaws inherent in the criminal justice system, including the shortage of forensically oriented psychiatric services, low cooperation levels between medical professionals and judges, and a lack of training among police, prison officials, lawyers, and prosecutors.

One of the most important steps in identifying mental disorders is raising awareness. The problem arises because many people working for the police force or serving as prison guards have no education in this sphere. It means that they cannot detect mental problems and provide appropriate assistance. In addition, legal professionals sometimes fail to understand the importance of certain actions aimed at revealing mental incapability of defendants.

Inability to identify mental illness among offenders becomes critical because of the lack of forensically oriented psychiatric services. Without professional medical advice, judges find it difficult to determine whether or not the suspect or defendant is capable of understanding the charges against them. Thus, many trials take place with people whose mental capabilities allow them to comprehend accusations.

Finally, the inadequacy of the legal aid system should be mentioned here. Legal representatives working on behalf of disadvantaged groups of citizens may be interested in pursuing mental

health cases, but they might lack either time or money. As a result, many mentally ill defendants do not receive proper treatment and fail to defend themselves during hearings.

It becomes clear that the issue under discussion is not limited to legislative reforms. It requires a multi-faceted approach and development of institutions responsible for providing adequate medical assistance to prisoners.

5.6 Conclusion

A review of the custodial reality facing mentally ill offenders shows the difference between the constitutional framework of their rights and its implementation. Despite the presence of an extensive legislative base, there is a lack of systemic measures to guarantee equal treatment of offenders with mental disorders.

In this regard, it is necessary to create a holistic mechanism combining medical and legal aspects. Only with due attention to institutional development, it will be possible to protect the rights of vulnerable individuals and ensure the implementation of constitutional provisions.

CHAPTER 6

COMPARATIVE ANALYSIS AND REFORM PROPOSALS

6.1 Introduction

The weaknesses of the Indian legal regime on mentally ill offenders can be best understood in comparison with other regimes. Indeed, the latter have been able to develop alternative solutions that may help to fill several gaps identified in the previous chapters. This chapter looks at certain elements of legal regimes in the United Kingdom and in the United States and identifies some lessons learned from the comparison for India.

6.2 Comparative Perspectives: United Kingdom

In the United Kingdom, although the insanity defence is based on the same criteria as the M’Naghten Rules, it has been supplemented with additional criteria for assessing criminal responsibility. The most important among them is the criterion of 'diminished responsibility', which means that the accused's guilt can be mitigated if their mental disorder substantially undermines their responsibility.

According to the Homicide Act, 1957 (as amended), if diminished responsibility is established, then the accused can be released from the punishment for murder and get manslaughter. Such an approach to mental illness assumes that the former does not exist in the form of a binary concept.

Moreover, the legal regime of the United Kingdom includes provisions for specialized assessment of mentally ill offenders and their placement in special psychiatric hospitals instead of ordinary prisons.

6.3 Comparative Perspectives: United States

Like other jurisdictions, the United States also applies the test based on the M'Naghten rules. However, unlike other countries, in the US, several states use different standards to assess the guilt of mentally ill people. Some of the standards consider only whether the accused was aware of their actions.

The Model Penal Code suggests using a more extended criterion, namely, whether the accused lacks substantial capacity to understand the wrongfulness of his or her behavior or to control it.²² This approach can thus account for some of the weaknesses inherent to the purely cognitive version of the test and develop a more holistic framework for establishing responsibility.

The procedural safeguards in place under the American system include, among others, the competency evaluations of an offender before sentencing, along with the provision for adequate treatment of mentally ill offenders.

6.4 Lessons for India

In light of this comparative analysis, there are numerous lessons that can be drawn for implementing reforms in India. The first of them is the need for introducing a new doctrine of diminished responsibility to bridge the gap in the existing scheme. With the adoption of this principle, it will become possible to acknowledge various degrees of impairment and issue proportionate penalties.

Secondly, incorporating volition in the insanity defense will enable reflecting more accurately

²² Model Penal Code § 4.01 (Am. L. Inst. 1962).

how mental disorders affect human behavior. Thirdly, building specialized forensic psychiatry services, such as appointing medical boards, training experts, and providing adequate infrastructural support is imperative.

Fourthly, placing greater emphasis on the community-based rehabilitation and alternatives to imprisonment will help reduce the prevalence of prisons in the country and make the system fairer and more efficient.

6.5 Reform Proposals

To implement necessary reforms, both legislative and institutional actions must be taken simultaneously. On the legislative side, it is crucial to revise the BNS, incorporating the doctrine of diminished responsibility and expanding the scope of the insanity defense to cover volitional impairments.

On the institutional side, investing in mental healthcare facilities should be done to create necessary infrastructure and provide specialists and legal officers with appropriate training.

Lastly, policy-related changes can be made by emphasizing early diagnosis of mental disorders, diverting some patients from being involved in the criminal justice process, and setting up proper community-based supports.

6.6 Conclusion

Comparative analysis of mental illness in Indian and American criminal laws suggests several improvements to be made regarding mental disorders' influence on criminality. While the existing Indian framework offers a good start to the problem at hand, it should still be expanded to include more sophisticated elements.

Namely, the reformed legal framework should be able to take into consideration the continuum of impairment degrees and provide flexible responses accordingly, ensuring that the procedure is properly observed in every single case.