

## PREMENSTRUAL STRESS (PMS) SYNDROME AS A CRIMINAL DEFENCE

---

Anushmita Dutta\*

### INTRODUCTION

---

Criminal law fundamentally operates on the principle of *Actus non facit reum nisi Mens sit rea*, which literally translates to “an act does not make one guilty unless there is a guilty intent”. We may thus conjecture that an offence is committed only when two requisites are fulfilled, which are, *Mens rea* (guilty mind or criminal intention) and *actus reus* (guilty act or wrongful act). Only upon the completion of these two pre-requisites, an act is said to be criminal in nature and further the justice delivery system of any particular nation, by following their respective due procedures, punishes the perpetrator(s) of such criminal act. But it is not always necessary that the perpetrator gets punished for her criminal activity, and this is precisely where the general defences arrive to save the day by vitiating the factor of *Mens rea*.

General criminal defences are the protection available to the accused against prosecution by the state upon establishing that the accused did not have the required criminal intent for the commission of the wrongful activity. While the prosecution has to prove its case beyond a reasonable doubt, the accused has to merely probabilize his or her defence by a preponderance of probabilities.<sup>1</sup> In simple terms, in order to benefit from the applicable defence, the defendants or the accused just need to significantly increase the probability of their contention for the ‘more probable than not’ theory to get vitiated.

Chapter IV of the Indian Penal Code of 1860 mentions all these general defences or exceptions as applicable in criminal offences.<sup>2</sup> One of the several exceptions as described under this chapter in Section 84, i.e., Act of a person of unsound mind, which reads, “Nothing is an offence which is done by a person who, at the time of doing it, by reason of

---

\*BA LLB, FIRST YEAR, DHARMASHASTRA NATIONAL LAW UNIVERSITY, JABALPUR.

<sup>1</sup> HHJ Stephen Davies, Proof on the balance of probabilities: what this means in practice, Thomson Reuters Practical Law (October 22, 2009).

<sup>2</sup> The Indian Penal Code, 1860, §76 - 106, No. 45, 1860 (India).

*unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.”<sup>3</sup>*

The expression "unsoundness of mind" is frequently used interchangeably with words like "insanity," "lunacy," "madness," "mental retardation," and "abnormal psychological state," both of which refer to a mental state in which a person lacks the ability to regulate his behaviour and perception according to the laws of the society to which one belongs. Upon pleading the defence of insanity the onus of proving that the accused was suffering from insanity at the time of the commission of the offence lies completely upon him; this was established by the honourable Supreme Court of India in the case *Bhikari v State of Uttar Pradesh*.<sup>4</sup> Also, it is imperative to note here that not medical insanity, rather legal insanity, which is the mental illness at the time of the crime, falls within the ambit of Section 84 of IPC.

*Diminished Capacity is yet another aspect of the defence of insanity. Though both are a bit different as insanity defences aim for criminal responsibility, while diminished capacity defences look at whether the defendant has the mental capacity to shape the necessary criminal intent.*<sup>5</sup>

## **PREMENSTRUAL STRESS SYNDROME AND INSANITY**

---

Premenstrual Stress (hereinafter PMS) Syndrome, is a disorder undergone by most women starting from approximately two weeks prior to, and lasting until, the onset of menses. The primary symptoms of PMS range from mild effects like headache, lethargy, bloating, increase in appetite, irritability, etc to severe effects like anxiety, depression, and excessive irritability and sometimes, perhaps fits of psychological attacks. The triggers of premenstrual syndrome are a topic of contention among PMS experts, but many believe the condition is caused by a hormonal imbalance in women.<sup>6</sup> But the fundamental question that arises here, given the subject matter of the discussion, is whether or not PMS is a proper ground to plea for the defence of insanity.

---

<sup>3</sup> The Indian Penal Code, 1860, §84, No. 45, 1860 (India).

<sup>4</sup> *Bhikari v State of Uttar Pradesh* AIR 1966 SC 1.

<sup>5</sup> TV Asokan, The Insanity Defense: Related Issues, *The Indian Journal of Psychiatry*, 191-198, 6 vol. 58 (2016).

<sup>6</sup> London, Sundaram, Murphy & Goldstein, Evaluation and Treatment of Breast Symptoms in Patients with the Premenstrual Syndrome, 28 *I. REPROD. MED.* 503 (1983).

Katharina Dorothea Dalton, an English physician and PMS expert, in her research works in the mid-90s, basically hypothesized about the relation between PMS and behaviour and reasoned that “*hormones could affect more than the physical workings of the body. In several of her papers, she suggested that PMS could lead to severe behavioural changes that led women to commit crimes.*”<sup>7</sup> Dalton, in one of her surveys with prison inmates in 1953, found out that about half of those arrested committed offences before or after their terms, and that this frequency was linked to progesterone hormone variations, which she asserted causes PMS. Upon this, defence attorneys asked Dalton to testify as an expert witness in the cases of women convicted of crimes because of her status as a PMS professional. Even the premiere courts in India while dealing with cases where the defence of PMS is pleaded, directly refer to the thesis as presented by Dalton to date.

Upon the analysis of the defence of insanity, as provided by the state, it can be clearly conjectured that to invoke this defence, the accused necessarily needs to create reasonable doubt by proving either one that – the accused was not capable to know the nature of his act or that the accused was not capable to understand that her acts were not legal. For the defendants to invoke the defence of insanity in the cases of PMS, it shall be proved by the defendants that PMS led to such hormone fluctuations in the mind and body of the accused that those fluctuations either made her mind incapable of realizing the nature and consequences of the act that she committed or resulted in her being incapable to realize that what she was doing was illegal. Logically examining, the latter case shall in no way be applicable and the only way to invoke this defence is proving the former scenario. And this scenario is exactly where Dalton’s thesis comes into action by diluting the *Mens rea* is the case.

## RELEVANT CASES

---

- ***Regina v. Craddock***<sup>8</sup>

In this English case, the defendant Sandie Craddock was arrested for stabbing a fellow barmaid in a fit of rage. She already had more than 30 convictions upon her before this trial, all of which were similar in nature, i.e., offences committed in a fit of rage.

---

<sup>7</sup> Bianca Zietal, Katharina Dorothea Dalton (1916–2004), The Embryo Project Encyclopedia (May 24, 2017). <https://embryo.asu.edu/pages/katharina-dorothea-dalton-1916-2004>

<sup>8</sup> 1 C.L. 49 (1980).

While her trial, she tried to escape the prison, assaulted the warden and tried to hang herself.<sup>9</sup> At the trial, the Crown accepted the defence of PMS claimed by Craddock and reduced her sentence and sentenced her to probation.

- ***Regina v Smith***<sup>10</sup>

Craddock upon being released from the prior sentence changed her name to Sandie Smith.<sup>11</sup> She threatened to kill a police officer, making threat calls over the phone and brandishing a knife in front of the officer. She was arrested and again claimed the defence of PMS, but this time the court did not consider it. The reason was that Dr Katherine Dalton specifically testified this case and clearly established that the defendant knew what she was doing, although she could not control herself.<sup>12</sup> Thus, the court refused the defence of PMS as the fact that the accused could clearly understand the nature and consequences of her act was clear proof of the fact that *Mens rea* was present.

- ***Regina v English***<sup>13</sup>

The defendant deliberately pinned her boyfriend to a pole and slammed her car and killed him. But Dr Dalton again testified that the accused was suffering from severe PMS at the time of the offence. The court accepted the plea for defence under exceptional circumstances and accepted PMS as a mitigating factor in this case.

- ***Regina v Reynolds***<sup>14</sup>

The accused killed her mother by hitting her with the hammer on the head and then arranged the scene in such a manner so as the people would think of it as burglary. Dr Dalton again testified that the accused was suffering from PMS while committing the offence. Her guilt was reduced to only manslaughter (culpable homicide) as the court considered PMS as a mitigating factor in this case.

Thus, it can be properly surmised that when it comes to the plea of PMS as a defence, the English courts based upon expert testimonies consider it as a mitigating factor but not as a proper legal defence in criminal offences. However, the judiciary of the USA has shown less enthusiasm when it comes to considering PMS as a defence or even a mitigating factor.

---

<sup>9</sup> Clark & Shapiro, *The Monthly Syndrome*, NEWSWEEK 74 (May 4, 1981).

<sup>10</sup> 2 QB 35 (1981).

<sup>11</sup> *Supra note 9*.

<sup>12</sup> *Ibid*.

<sup>13</sup> Norwich Crown Ct. 1981 (unreported).

<sup>14</sup> Crim. L.R. 679 (C.A. 1988)

- ***People v Santos***<sup>15</sup>

It is an American case where the accused, Shirley Santos, was charged with assaulting her child and yet again the defence of PMS was claimed that caused her to act irrationally. Even though, upon plea bargaining, Santos pleaded guilty; yet prior to this, the judge accepted the defence of PMS claimed by the attorney of Santos to be credible.

- ***Commonwealth v Richter***<sup>16</sup>

The accused was stopped by an officer while she was driving in her car with her three children and it was found out that she was drunk driving. She refused to undergo a sobriety test and tried to assault the officer. When the officer informed her that the children would be put under protective custody for the night, she replied that PMS caused this behaviour. A gynaecologist testified her cause during the trial, but the judge refused to accept PMS as a defence.

These court rulings show that PMS is not expressly recognised as a defence or a mitigating cause by the legal system. However, these cases demonstrate that some women are more likely to use PMS as a shield in court cases.<sup>17</sup>

### **KUMARI CHANDRA: SATI LAJNANI VERSUS THE STATE OF RAJASTHAN**<sup>18</sup>

**Bench:** Hon'ble Justice Mohammad Rafiq and Hon'ble Justice Goverdhan Bardhar

**Facts:** In 1981, the accused Kumari Chandra alias (also known as) Sati of Nasirabad city in Ajmer, Rajasthan had coaxed three children, two boys and one girl, to come out of their school with her and subsequently when the four of them arrived near a well, Sati pushed the children into the well and ran away. Two children were saved, but one boy, unfortunately, drowned to his death. The police upon receiving the report charged the accused under Section 307 (murder), Section 367 (kidnapping), Section 302 (punishment for murder) and Section 364 (punishment for kidnapping) under the Indian Penal Code.

<sup>15</sup> *People v. Santos*, No. 1K046229 (Crim. Ct. Kings. County, N.Y. 1982) (unpublished opinion).

<sup>16</sup> No. T90-215256 (Fairfax County Gen. Dist. Ct., Va. 1991) (unreported case).

<sup>17</sup> Nicole R. Grose, Premenstrual Dysphoric Disorder as a Mitigating Factor in Sentencing: Following the Lead of English Criminal Courts, *Valparaiso University Law Review*, 1 Vol 3 (1998).

<sup>18</sup> 2018(3) RLW 2382 (Raj.).

The prosecution failed to submit any proper motive on the part of the accused of the commission of this offence. In addition to this, two doctors from the Ajmer district testified in court that the accused used to suffer from psycho-neurotic symptoms like irritation, aggressiveness and suicidal tendencies just before the onset of her menses due to PMS and because of the exact same reasons might have pushed the children into the well. Thus, the defendants pleaded for the defence of insanity on the grounds of the accused suffering from PMS during the commission of the offence. The trial court did not accept the defence so the case was appealed in Rajasthan High Court.

**Issue:** Can the defence of insanity, as under section 84 of IPC, be claimed by a woman suffering from premenstrual stress (PMS) syndrome?

**Arguments:**

The prosecution: The learned counsel for the prosecution argued by presenting witnesses and facts. It was argued that the accused-appellant used to come home late at night and resultantly, their neighbour, the parents of those children, used to state that the accused-appellant was not of a sound character. This might have been a fair motive that caused Kumari Chandra to deliberately push the children into the well.

The appellant: The learned counsel of the accused-appellant argued by providing testification by the doctors and various theses like 'Menstruation and Crime' by Dr Katherina Dalton, 'PMS-the Malady and the Law' by Dr Harinder Singh, etc to prove how insanity should technically incorporate PMS. Many precedents like *Bhikari v State of Uttar Pradesh*, *Sudhakaran v State of Kerala*, etc were provided by the counsel for the appellant in order to prove that the appellant has the onus just to significantly increase the probability of their contention for the 'more probable than not' theory to get vitiated, i.e., by a preponderance of probabilities.

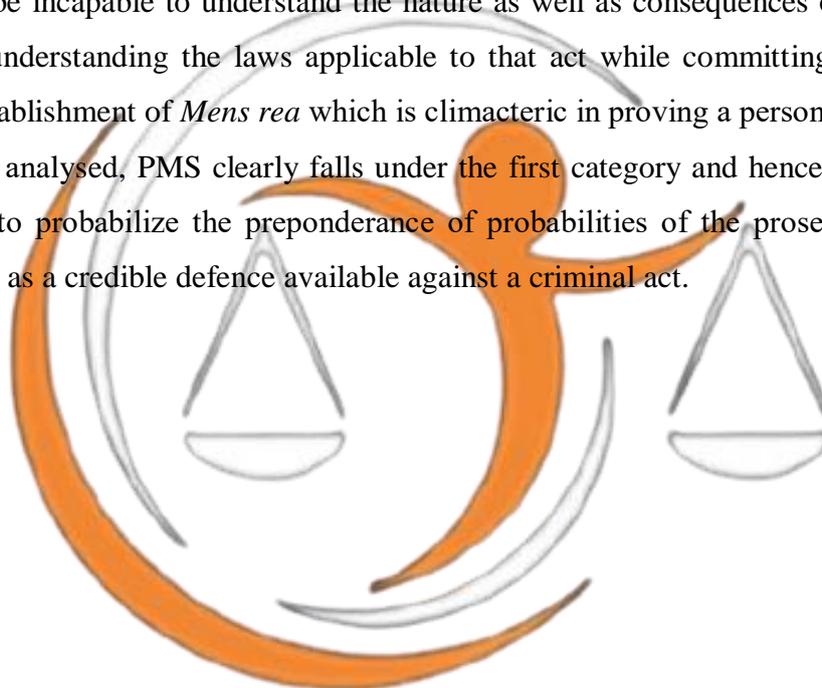
**Judgement:** The honourable bench mentioned that even though the law related to PMS being considered as a ground for claiming the defence of insanity has not developed much in India, yet the accused has the complete right to claim such defence and probabilism by showing that she was suffering from severe PMS while committing the offence. Since, it is the duty of the prosecution to prove the guilt of the accused beyond a reasonable doubt, which could not be done owing to the preponderance of probabilities as effectuated by the appellant suffering

from PMS at the moment of the commission of the offence. As in *State of Rajasthan v Shera Ram alias Vishnu Dutt*<sup>19</sup> the Supreme Court clarified that the symptoms of unsoundness of mind are temporary loss of memory and violent behaviour. For the current case falls under the latter category, the accuse-appellant has been successful in probabilities her defence, exerting significant doubt upon the *Mens rea* of the accused in the case. Hence, the appeal deserved to succeed and the trial judgement was set aside. The accused Kumari Chandra alias Sati was acquitted with just a surety bond of Rs. 20,000.

## CONCLUSION

---

Insanity may be defined in two ways as under the IPC that the person claiming the defence should either be incapable to understand the nature as well as consequences of the act or be incapable of understanding the laws applicable to that act while committing that act. This vitiates the establishment of *Mens rea* which is climacteric in proving a person's guilt. And as we've already analysed, PMS clearly falls under the first category and hence the defence of PMS, if able to probabalize the preponderance of probabilities of the prosecution's stance should be held as a credible defence available against a criminal act.



---

<sup>19</sup> State of Rajasthan v Shera Ram alias Vishnu Dutt (2012) 1 SCC 602.