

Pre-Menstrual Syndrome and Women Criminality: Applicability of Pre-Menstrual Syndrome as a criminal defence in the Sri Lankan Context

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Abstract: *Pre-Menstrual Syndrome (PMS) is a group of psychological and physical symptoms experienced by reproductive-aged women before their menstruation. Its aetiology is unknown and the prevalence is varying from woman to woman. Various researchers have been working for about 30 years and revealed that the nature of behavioural changes of severe PMS and female criminality has a close relationship. Many criminal justice systems allow female suspects to plead PMS as a diminish responsibility to mitigate their punishments. The main purpose of this research is to study the applicability of PMS as a criminal defence in the Sri Lankan context. Further, the researcher will explore the utilization of substantive laws such as the Penal Code of Sri Lanka relating to PMS as a diminish responsibility/mitigatory factor. This research is mainly based on the normative method and qualitatively retrieved internet documentary analysis. Through this work, it is revealed that the national jurisdiction is in backwater to address PMS as a criminal defence although, in the light of the Penal Code, the defence of PMS could be applied in court houses of Sri Lanka. Further, it found that none of the reported cases addresses the issue of PMS so far in Sri Lanka. Through this research, it is recommended that the defence counsels and expert medical personnel should take immediate actions to introduce PMS as a criminal defence and /or mitigating factor in the Criminal Justice System of Sri Lanka. Further, the judiciary needs to apply the defence of PMS when delivering judgments in order to bring justice to*

female suspects severely suffering from this syndrome.

Keywords: Pre-Menstrual Syndrome, Criminal Defence of Insanity, Diminish Responsibility

1. Introduction

Menstrual cycle of a woman associates with physical, and endocrinological factors and it could be identified as a complex biological process in the female body. Menstruation is a common process for every woman of childbearing age. Pre- Menstrual Syndrome (PMS) is a physio-neuro-endocrinal disorder often noticed one or two weeks before menstruation and disappears the symptoms within five days after bleeding begins.

Many researchers revealed that the significant behavioural changes in PSM have a close relationship with crimes. The behavioural changes of the women such as aggression, mood swings and hallucination may lead to increase criminal actions. According to research, almost half the women perpetrators committed alleged crimes within the period of menstruation or premenstrual.

In the past, PMS is applied as a mitigatory factor in English courts but American Criminal Courts PMS is used as a criminal defence. In India a landmark judgment Kumari Chandra V The State of Rajasthan the High Court of Rajasthan held that PMS could be applied as a defence of

insanity in the Indian context even though it did not categorize as a general defence under the Penal Code of India.

Sri Lankan society is reluctant to discuss any topic in relation to the menstrual cycle of women.

Throughout history, the process of menstruation has been an object of fear and disgust in South Asian Culture. It has existed as a taboo and a secret among only women who are concealed from the general public. But PMS is a syndrome that relates to both the physical and mental status of a woman and it can convert an innocent woman into a mobster. The awareness regarding the relationship between PSM and criminal behaviour of women is an important part of forensic criminal studies. According to research conducted among school adolescents in Sri Lanka PMS is a common condition among adolescents and it affects the routine life of the young female generation.

Through this work, the researcher tries to identify the application of PMS as criminal defence or mitigatory factor in the criminal justice system of Sri Lanka. Further, contemporary developments in case law and legislation in India and other jurisdictions in relation to PMS may be explored and the applicability of such developments to the Sri Lanka context with constructive changes may be ascertained.

2. Research Problem

The Judiciary of Sri Lanka is unable to procure sufficient room to adopt the PSM as criminal defence of insanity or as a diminish responsibility to mitigate the criminal responsibility of women suspects who are suffering from PMS.

Objectives

- To analyze existing National and International criminal law provisions which address PMS

- To explore the application of diminish responsibility or defence of insanity as a mitigatory factor or as a ground for total exoneration from criminal responsibility of women perpetrators who are suffering from PMS in the Sri Lankan context
- To suggest possible legal recommendations which could be adopted from a foreign jurisdiction to mitigate the criminal responsibility of PMS criminals in Sri Lanka

Limitations

This work is based on internet-based journals and scholarly articles only.

3. Methodology

This research has applied the Qualitative systematic review (qualitative evidence synthesis) method by retrieved internet-based documents. The procedural laws such as Penal Code and case laws may be critically evaluated in relation to the Pre-Menstrual Syndrome (PMS) in the Sri Lankan context as the primary source.

Scholarly articles, journals and other internet-based documents in relation to the applicability of PMS as criminal defence of insanity among women criminals will be explored as the secondary source in order to understand the relationship between women criminals and PMS.

4. Discussion

A. What is PMS?

PMS is a psycho- neuro-endocrinal disorder of unknown aetiology. WebMD (2010) defines PMS as "the physical and psychological symptom that occurs in the week before a women's menstrual period". The women who are suffering from this disorder show behavioural changes in the pre-menstrual period. The symptoms develop and increase seven to fourteen days before the onset of menstruation and disappear rapidly when bleeding begins. These behavioural changes may vary from patient to patient from mild to severe. Leg and stomach cramping, social isolation, hysteria, insomnia, mood swing, excessive thirst

and appetite, headache, depression, irritability and lethargy could be noticed as multiple symptoms and medical professionals use hormonal assay and psychological observations to identify the women who are suffering from this disorder. According to medical professionals, there are more than 150 symptoms of PMS and they could be categorized as Physical, Behavioral and Emotional and these symptoms may vary not only to women but also from month to month. But only a small percentage of women may suffer from severe symptoms.

According to Downs (2002), Premenstrual Syndrome (PMS) is believed to affect up to 90% of women of reproductive age. A small subset of women has been identified who experience psychotic symptoms in the premenstrual phase of their cycles.

B. PSM as a defence in other jurisdictions

Under this section, the applicability of PSM as a defence or as a mitigatory factor in four jurisdictions will be discussed. United States of America, United Kingdom, Canada and Indian judgments will be critically evaluated in order to understand the applicability of PMS in the criminal justice system in respective countries.

C. PMS in the United Kingdom

Regina V Craddock an England Case reported as the first major case in which PMS was applied as a mitigatory factor in English courts. Sandie Craddock has been arrested for stabbing a fellow barmaid to death. She had a criminal record of more than 30 convictions and several suicide attempts. Dr Katharina Dalton, an expert witness for the defence diagnosed that the suspect was suffering from PMS and she prescribed hormonal therapy to the suspect. The court convicted Sandie for all the criminal counts but mitigated her sentence by placing her on a probation order based on PMS.

Regina V English an unreported UK Case, a woman named English deliberately pinned her

boyfriend against a pole and killed him. She testified by several Physicians, and they identified that she was suffering from extreme PMS. The court reduced her charge to a lesser offence of manslaughter instead of murder. English plead guilty to her offence and the court accepted PMS as a diminish responsibility.

Through these case histories, it could be identified that UK courts use PMS as a mitigatory factor in sentencing policy. Through the expert witnesses, the PMS cases were diagnosed and are used as a mitigatory factor to reduce the sentences.

D. PMS in the USA

In USA criminal justice system, PMS used as a criminal defence rather than a mitigatory factor. People V Santos case was the first attempt to apply PMS as a criminal defence in the USA.

In State V Lashwood case, the medical experts confirmed that the defendant suffered from PMS at the time of the traffic offences she committed. Lashwood tried to use PMS as a criminal defence. Further, she had previous records of mental illnesses. The court held that the defendant still can differentiate right from wrong therefore she has the opportunity to use her self-defence.

E. PMS in India

Kumari Chandra V State of Rajasthan a landmark judgment delivered by the Rajasthan High Court in 2018 regarding the PMS. Kumari Chandra, the suspected woman acquitted of the alleged murder on the ground of an unsound mind triggered by PMS. Although the law has not much developed in India as the PMS being set up as a defence of insanity, the High Court mentioned that the alleged crime was done by her as an involuntary act without mens rea due to unsoundness of mind.

According to Goverdhan Bardhar J "in India, PMS could not be categorized under the defence of insanity, yet the accused has the opportunity to apply the defence to show that she was suffering from PMS when the crime was committed

because her alleged crime was an involuntary act done by her due to psychological disorder or unsound mind. Further, it was held that while committing the crime she was suffering from the unsoundness of the mind and was labouring under the defect of the reason triggered under PMS.

F. PMS in Sri Lanka

Defence of Insanity in Sri Lanka Unsoundness of mind is one of the general exceptions to criminal responsibility mentioned in the Penal Code of Sri Lanka. If any person proves that he was suffering from a mental illness at the time of committing a crime his criminal responsibility is excluded. Under the criminal law, two elements should be proved to convict a suspect; the physical status and mental status of the accused at the time of committing the crime. In other words, the guilty conduct (*actus reus*) and the guilty mind (*mens rea*) of the particular person should be proved by the prosecutor. When a perpetrator commits a crime while he was in an unsound mind or insanity, he is not known the nature and quality of his act or if he knew this but did not know that he was doing wrong therefore the law considers that he has no responsibility for his actions. In other words, *mens rea* cannot be proved as the offender cannot differentiate right from wrong as his mind is not functioning properly.

"Mc Naghten Rules are a set of rules developed by the English courts to apply in defence of insanity and Sri Lankan courts have incorporated these rules with some modifications" (Peiris G.L,1972). In *Nimalaratne V The Republic of Sri Lanka* it was held that it was a duty of the defence to establish that the accused did not know the nature of the particular act and it was contrary to law. In *James Chandrasekara's* case the court held that it was a burden to prove the unsoundness of the mind by the accused".

G. Definition of Mental Illness

Section 77 of the Penal Code of Sri Lanka mentioned the "unsoundness of mind" of the person and incapable of knowing the nature of the act which he was committed as "Insanity". But unfortunately, none of the legislation clearly defines "Mental Illness". The Mental Health Ordinance, Evidence Ordinance also used the term "unsoundness of mind" but none of the pieces of legislation describes the term "unsoundness of mind".

In a landmark, Indian judgment *Kumari Chandra V State of Rajasthan* court held that "unsoundness of mind has often been used as a synonym for other terms such as insanity, lunacy, madness, or mental derangement or disordered of state of mind owing to which an individual loss the power of regulation his action and conduct according to rules of the society to which he belongs".

Through case laws *Epileptic Insanity*, *Hypoglycemia* and *Schizophrenia* are few mental disorders that are applied to prove the insanity of the accused.

The concept of diminish responsibility is not a common concept in Sri Lankan Criminal Law. According to Professor G.L Peiris "the concept of diminish responsibility, as embodied in contemporary English law, is indicative of a considerably wider approach to the problem of insanity than the principles which govern the relevant test under the M'Naghten rules and the law of Ceylon". Diminish Responsibility is not a concept that could be argued in court houses in Sri Lanka. Therefore, the PMS cannot be applied under the diminish responsibility.

Irresistible Impulses as a diminish responsibility and Automatism as a defence of insanity have not been applied in Sri Lanka but in *Gamini V Attorney General* (1998) case the accused tried to apply "Automatism" as a mitigatory factor. In this case, the court held that "Distinguish the plea of automatism from insanity is wholly incongruous in the law of Sri Lanka. Further, it

mentioned that the accused should lead the evidence to prove that his mind was not controlling his limit at the time of the commission of the crime. It is not sufficient to establish that his mind was acting imperfectly at that time if he was still reacting to stimuli and controlling his limbs in a purposive way. He must establish that his acts were wholly conclusive and not purposive in any manner".

H. PMS in Sri Lanka

None of the legislatures mentions the PMS as a defence of insanity or mitigatory factor in Sri Lanka and the researcher was unable to retrieve any cases where the accused tried to establish a plea of PMS as a mitigatory factor in Sri Lanka. Indian courts applied the defence of insanity for PMS even though none of the acts mentioned the PMS as a defence or mitigatory factor.

The accused who was suffering from PMS when the crime was committed was an involuntary act as the accused suffering from a psychological disorder or unsoundness of mind. Under section 77 of the Penal Code of Sri Lanka, the accused who establishes the defence of insanity should prove two factors; they are unsoundness of his mind and incapable of knowing the nature of the act or either knowing is it wrong or contrary to the law. Under section 45, illustration (b) of the Evidence Ordinance, it mentions that the opinion of the expert witness could be applied to determine the unsoundness of the particular perpetrator. Therefore, the opinion of the expert witness is gained more importance while determining the unsoundness of the particular perpetrator. But the defence witnesses have more responsibility to bring circumstantial evidence to prove the insanity triggered by PMS of the particular accused. As mentioned in Indian, and United Kingdom judgments the suspect cannot bring the PMS without any prior history. The particular suspect should prove that she is suffering from PMS for a considerable period of time through medical history and other circumstantial factors.

In Sri Lanka whenever an accused tries to establish the defence of insanity for PMS or as a mitigatory factor she may face a number of obstacles, as PMS is a new defence in Sri Lankan criminal justice system. None of the legislatures mentions the PMS as a defence or mitigatory factor. Further none of the reported judgments mentioned the applicability of PMS therefore it is difficult to find any guidelines to follow by the Attorneys.

5. Conclusion

While analysing the aforementioned information it could be identified that the Judiciary of Sri Lanka is unable to procure sufficient room to adopt the PSM as a criminal defence of insanity or as a mitigatory factor to mitigate the criminal responsibility of a woman suspect who is suffering from PMS.

While examining the reported judgments it could be identified that none of the cases arrives at the Superior courts in the matter of PMS as a defence or mitigatory factor.

The adversarial system is practiced in our courts therefore judges are acting a passive role and the prosecutor and defence have more responsibility to prove their case through the evidence. After each party proffer their case by the evidence the particular judge is acting as an impartial umpire and the judge delivers the judgment based on the evidence led by both parties. Therefore the defence has the responsibility to bring their defence through the facts or facts in issue and prove their case through evidence. Hence the defence attorney has the accountability to bring the PMS as a defence of insanity or mitigatory factor on behalf of the accused. Therefore, the defence attorneys should investigate to introduce such defence based on facts or facts in issue to prove their case while bringing expert testimony and lay witnesses to the courthouse.

6. Recommendation

While studying the facts it could be identified that the relationship between PMS and women criminality is not a familiar topic in Sri Lanka's legal arena, therefore specific professionals have distinct responsibilities to apply the defence of insanity or PMS as a mitigatory factor to the court house.

The legislature has more responsibility to amend particular legislations such as the Penal Code of Sri Lanka. Introduce the PMS as a general defence or as a mitigatory factor. Section 294 of the Penal Code mentioned that culpable homicide amount to murder. In this section, it mentioned on 5 exceptions where culpable homicide does not amount to murder. They are Grave and sudden provocation, right of private defence, advancement of public justice, a result of a sudden fight and the mother killed her child who was under 12 months of age due to unable her balance her mind after giving birth to the child or due to the effect of lactation. The legislature could amend these exceptions for culpable homicide not amount to murder by adding PMS as an exception. Further Interpret the term "unsoundness of mind" which contains in the Penal Code, Evidence Ordinance, Criminal Procedure Code and Mental Health Ordinance by amending the Interpretation Ordinance and other particular legislations.

The Legal Researchers should conduct legal researches to retrieve the nexus between PMS and criminal behaviours of women. Further, the researchers have to explore new judgments in relation to criminal behaviours and PMS from foreign jurisdictions and examine the way of applying such judgments to the national jurisdiction. Moreover, discover the new researches conducted by foreign researchers and explore their findings of them which could be applied to the national level.

The Attorneys have inalienable responsibility to appear on behalf of their clients and it is the responsibility of the defence lawyers to apply a particular defence to defend the defendants.

Hitherto defence lawyers are reluctant to apply the PMS as a defence or as a mitigatory factor in Sri Lanka in court houses. Therefore, they should be more attentive to applying such defences when necessary, with the aid of expert testimony. Further, the Experts in Gynecology could give their opinion regarding PMS and the Psychiatrists also have a responsibility to examine the mental condition of the particular suspects who are suffering from PMS. Finally, their expert testimony could be applied to the court house as a relevant fact regarding the suspect under section 45 of Evidence Ordinance.

Finally, the judges have the accountability to apply the contemporary developments in the law to the national jurisdictions through their judgments. They have the responsibility to explore the most convenient and competent method for the application of PMS to the criminal justice system of Sri Lanka. In this process, not only the judiciary but also the entire legal professionals have a responsibility to lend their hands to bring new legal concepts to Sri Lankan criminal justice arena.

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