WOMEN AND DEPRESSION: THE EMERGING NARRATIVE IN INDIAN LEGAL JURISPRUDENCE

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Abstract—Depressive disorders have been a cause of global concern for decades and are a silent epidemic in India. Not only are women more prone to depressive disorders than men, certain depressive conditions are diagnosed only in women. Depressive disorders specific to women impose a high burden of disease, yet, they are under-recognized in literature. Further, a discourse around these disorders can, at best, be seen as just emerging in the Indian legal context even though they have long been recognised in Western legal literature. This paper discusses the use of two women-centric depressive disorders – premenstrual dysphoric disorder and peripartum depression – as legal defences with special reference to the Indian legal context. It is argued that this emerging legal recognition in recent judgements in India is extremely reassuring both from a psychological as well as legal standpoint. It is likely to propelsocial acceptance of women's mental health issues which have long been brushed under the carpet in India. It is also likely to ensure adequate care and treatment, both psychological and legal, to women in distress and safeguard their right to mental health. Despite the long way that the Indian legal jurisprudence has yet to go before the discourse on women's mental health enjoys adequate representation in it, the recent judgements have been a step forward in the right direction.

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I. INTRODUCTION

Depressive disorders have been a cause of global concern for decades. Depression is a major contributor to the Global Burden of Disease (2019) and depressive disorders are the sixth leading cause of Disability Adjusted Life Years (DALYs) lost among young and middle-aged adults within the age range of 25-49 years.[1] According to the World Health Organization (2021), about 5% of the world's adult population suffers from depression.[2] In India, depression is a silent epidemic. According to The Lancet Psychiatry report (2017), 14.3% of the Indian population suffers from some mental health concern, with depression being the most prevalent mental disorder.[3] These figures have further expanded in the past couple of years with depressive disorders taking a mammoth form due to the COVID-19 pandemic. As per WHO (2022), rates of depressive and anxiety disorders have risen by 25% globally – an increase primarily triggered by the pandemic.[4] A report in the Times of India quoted that four months into the pandemic, 43% of Indians suffered from depression by July 2020.[5]

It is important to note that there are clear gender differences in depression. Women are significantly more likely to be depressed than men.[6] Further, women's mental health has been more severely impacted by the pandemic as com-

[1] GBD 2019 Diseases and Injuries Collaborators, Global Burden of 369 Diseases and Injuries in 204 Countries and Territories, 1990-2019: A Systematic Analysis for the Global Burden of Disease Study 2019, 396 The Lancet, 1204-1222 (2020), https://www.sciencedirect.com/science/article/pii/S0140673620309259 (last visited on Jan. 14, 2023).

[2] World Health Organization, Depression (Sept 13. 2021), https://www.who.int/news-room/fact-sheets/detail/depression (last visited on Jan. 14, 2023).

[3] India State-level Disease Burden Initiative Mental Disorders Collaborators, *The Burden of Mental Disorders Across the States of India: The Global Burden of Disease Study 1990-2017*, 7 The Lancet Psychiatry 148-161 (2020), https://www.thelancet.com/journals/lanpsy/article/PIIS2215-0366(19)30475-4/fulltext (last visited on Jan. 14, 2023).

[4] World Health Organization, COVID-19 *Pandemic Triggers 25% Increase in Prevalence of Anxiety and Depression Worldwide* (Mar. 2, 2022), https://www.who.int/news/item/02-03-2022-covid-19-pandemic-triggers-25-increase-in-prevalence-of-anxiety-and-depression-worldwide (last visited on Jan. 14, 2023).

[5] The Times of India, *43% Indians Suffering from Depression* (July 28, 2020), https://timesofindia.indiatimes.com/india/43-indians-suffering-from-depression-study/articleshow/77220895.cms (last visited on Jan. 14,2023).

[6] James N. Butcher, Jill M. Hooley & Susan Mineka, Abnormal Psychology (16th edn., Pearson 2014).

pared to men's.[7] Apart from being more prone to depression in general, women are also afflicted by certain depressive conditions which are specific only to them, namely, premenstrual dysphoric disorder (PMDD) and major depressive disorder with peripartum onset (PPD). These two disorders are also recognised by the 5th version of the Diagnostic and Statistical Manual of Disorders (DSM-V, 2013). Clinical literature documents that both of these conditions are significantly prevalent, impose a high burden of disease and cause substantial disability which is considered to be at par with other depressive disorders.[8] Yet, these conditions are under-recognized in literature and under-represented in epidemiological studies.[9] Further, they also lack adequate legal recognition especially in Indian jurisprudence. While these conditions have long been recognised in western legal literature, adiscourse around these women specific depressive disorders can, at best, be seen as just emerging in the Indian legal context and India is way behind the west in legally recognising women centric depressive disorders. However, the recent Indian legal judgements where PMDD and PPD have been upheld as mitigating factors in courts of law are a massive step forward in the right direction. This paper examines the recognition of women-specific depressive disorders as a legal defence in the West and their emergence in Indian legal jurisprudence.

II. PREMENSTRUAL DYSPHORIC DISORDER AS A LEGAL DEFENCE

Premenstrual dysphoric disorder is a severe and disabling mood-related condition that affects women. The symptoms are both mood-related and somatic, and their manifestation follows the hormonal and bodily changes that accompany the menstrual cycle of women. To warrant a diagnosis, the patient must have experienced at least 5 out of the 11 symptoms listed in DSM-V(2013) through the majority of their menstrual cycles. The symptoms are clubbed into two categories and include affective lability, irritability, anger, depression, anxiety, tension, difficulty in concentrating, sleep problems, changes in appetite, loss of interest in usual activities, difficulty in concentrating, fatigue, breast tenderness, bloating etc.[10] The symptoms surface in the luteal phase a week prior to the onset of the menses. They begin to dissipate after the onset of menses and disappear completely or persist only minimally following menses.[11]

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[7] World Health Organization, *COVID-19 Pandemic Triggers 25% Increase in Prevalence of Anxiety and Depression Worldwide* (Mar. 2, 2022), https://www.who.int/news/item/02-03-2022-covid-19-pandemic-triggers-25-increase-in-prevalence-of-anxiety-and-depression-worldwide (last visited on March 14, 2023)

[8] Pooja Thakrar, Kalyani Bhukar & Rajat Oswal, *Premenstrual Dysphoric Disorder: Prevalence, Quality of Life and Disability Due to Illness Among Medical and Paramedical Students*, 4 Journal of Affective Disorders Reports (2021).

[9] *Ibid*.

[10] American Psychological Association, Diagnostic and Statistical Manual of Mental Disorders (5th edn. 2013).

[11] *Ibid*.

Studies indicate that about 3-9% of menstruating women are estimated to be affected by PMDD.[12] Even when the symptoms are not extremely pronounced so as to fulfil the criteria required for the clinical diagnosis of PMDD, a large majority of women do experience some form of distress and disability associated with menstruation. The milder version of PMDD, usually referred to as pre-menstrual syndrome (PMS), is expected to be way more common. About 13-18% of women experience symptoms which are severe enough to cause significant distress and marked impairment but do not satisfy the criteria required for making a diagnosis.[13]

The English legal literature is replete with cases where PMDD has been recognised as a valid legal defence. Most of these cases have been supported by the testimony and the pioneering research works of Dr Katharina Dalton on premenstrual stress syndrome as an acute psychiatric illness. Dr Dalton has been a prominent spokesperson and advocate for victims of PMS. One such landmark case propelled by the testimony of *Dr Dalton is Regina* v *Craddock (1981)*.[14] In this case, Sandie Craddock, who had a history of several prior convictions, was accused of stabbing a fellow barmaid to death. The defendant argued diminished responsibility due to premenstrual syndrome which was upheld by the court. Craddock was convicted of manslaughter instead of murder and was released on probation. Interestingly, about a year later Craddock, who had renamed herself as Smith, was again arrested on several charges including an attempt to murdering a policeman. Her plea for diminished responsibility on the grounds of PMS was again upheld by the court and she was again granted probation.[15] Another prominent case where PMS was successfully used as a mitigating factor is *Regina* v *English (1981)*.[16] Christine English was accused of killing her boyfriend by pinning him by her car. Based on the testimony by Dr Dalton, who diagnosed English as suffering from severe PMS, she was charged with manslaughter instead of murder. She was sentenced to probation and loss of driving privileges for a year. These cases of Craddock and English are only two of the many cases where women have used premenstrual syndrome as grounds for their plea to reduce criminal responsibility.

PMDD surfaced in the Indian legal discourse in the context of Kumari Chandra v State of Rajasthan (2018) where it was raised as the basis of

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[12] U.M. Halbreich, J.E. Borenstein, T. Pearlstein & L.S. Kahn, *The Prevalence, Impairment, Impact, and Burden of Premenstrual Dysphoric Disorder* (PMS/PMDD), 28 *Psychoneuroendocrinology* 1-23 (2003).

[13] *Ibid*.

[14] R. v. Craddock, (1981) 1 CL 49.

[15] R. v. Smith, No.1/A/82, [1982] (C.A. Crim Div.)

[16] R. v. English (Nov. 10, 1981) unreported, Norwich Crown Ct.cited in Rosanna Langer, "*That Time of Month:" Premenstrual Dysphoric Disorder in the Criminal Law-Another Look*, 1 International Journal of Criminology and Sociology, 29-44 (2012).

insanity defence.[17] The appellant, in this case, was convicted of unlawful compulsory labour, murder and attempt to murder three children whom she had pushed into a well. While two children were saved, one drowned and died. Under section 302 of the Indian Penal Code (IPC), she was sentenced to life imprisonment, in addition to other sentences. The accused appealed against the decision of the trial court by arguing that the prosecution had failed to establish any motive for her act. Further, the defence argued that the accused-appellant had committed the act because she was suffering from premenstrual stress syndrome and not because she had intended to kill innocent children since she had no reason to do so. The defence claimed the benefit of Section 84 of the IPC which states that "nothing is an offence which is done by a person who, at the time of doing it, by reason of 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."[18] Testimonies of three expert witnesses were heard in the court with respect to premenstrual syndrome and the condition of the accused-appellant. Two of these expert witnesses had also treated the accused-appellant for her condition. Testimonies from her relatives also confirmed that she depicted abnormal behaviour during and around her menses. Several research papers and articles on premenstrual syndrome were referred to by the court. More specifically, the works of Dr Katharina Dalton were also presented by the defence. Further, the court also made reference to the Western cases of Sandie Craddock (1981)[19] and Christine English (1981)[20] in the judgement. Despite arguments from the prosecution stating that the "menstrual cycle is a natural cycle with every woman. It can in no way affect her mental condition",the court opined that the evidence presented raised "a reasonable doubt as to the existence of mens-rea on the part of the accused-appellant".[21] The court asserted that "the appellant has been able to probabilize her defence that at the time of the incident, she was suffering from unsoundness of mind and was labouring under a defect of reason triggered by premenstrual stress syndrome."[22] Consequently,the court upheld the insanity plea acquitting the accused of all charges.

This judgement by the Rajasthan High Court is a landmark judgement. It is path-breaking to the extent that it integrates the anguish and the incapacitation that women experience because of menstruation with the legal discourse in India. The judgement was enwrapped with controversy and critiques termed it as a mockery of the judicial process. However, the argument made by the prosecution, and the critics, that menstrual cycles are natural and cannot

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17 Kumari Chandra v. State of Rajasthan, (2018) SCC OnLine Raj 1899.

18 Penal Code, 1860, S. 84, Act No. 45 of 1860.

19 R. v. Craddock, (1981)1 CL 49.

20 R. v. English (Nov. 10, 1981) unreported, Norwich Crown Ct.cited in Rosanna Langer, *"That Time of Month:" Premenstrual Dysphoric Disorder in the Criminal Law-Another Look*, 1 International Journal of Criminology and Sociology, 29-44 (2012).)

21 Kumari Chandra v. State of Rajasthan,(2018) SCC Online Raj 1899

22 *Ibid*.

hamper the mental condition of women in any way is testimony to the widely prevalent ignorance with respect to women-specific mental disorders and their consequent normalization. Such a line of contention is also not new in the context of PMDD. The recognition of PMDD as a disorder by the American Psychological Association in the fifth revision of the Diagnostic and Statistical Manual of Disorders (DSM-V) in 2013 attracted severe criticism on similar grounds. It was labelled as biological reductionism and pathologization of women.[23] Critiques argued that establishing women's natural biological menstrual cycles as the cause of deviant behaviour enforced the biological inferiority of women and reduced women to nothing more than their biology. Further, such recognition asserted that all women were inherently pathological. From a legal perspective, it was argued that biology cannot be used as an excuse to evade responsibility for an act of crime. The recognition of PMDD as a psychological disorder by DSM-V appreciates the emotional, cognitive and behavioural disability and distress witnessed by a substantial number of women due to their menstrual cycles. This, however,certainly does not imply that all menstruating women are a danger to society and can engage in deviant behaviour. PMDD is not a blanket condition that applies to all women. Despite the fact that a vast majority of women do experience some kind of psychological and/or somatic upheaval associated with their menstrual cycles, in most cases it is mild or moderate and can pass without causing much disruption. These cases, however, do not represent a clinically diagnosable condition. PMDD, on the other hand, is a severely disabling disorder that afflicts a smaller yet sizablefraction of menstruating women and can cause significant dysfunctionality. This dysfunctionality can manifest as criminally deviant behaviour in a few. The said judgement by the Rajasthan High Court (2018)is a reflection of this nuanced understanding of mental conditions by the legal fraternity and is much welcomed.

III. PERIPARTUM DEPRESSION AS A LEGAL DEFENCE

Major depressive disorder with peripartum onset (PPD)is another women specific disorder that has recently surfaced as a legal defence in India. It is marked by mood related issues which emerge and intensify during pregnancy or after the delivery of the child. The symptoms are similar to a depressive episode and may include irritability, panic, frequent crying, etc. To warrant a peripartum onset diagnosis the major depressive episode should have started either during pregnancy or within four weeks following the delivery.[24] DSM-V (2013) marks a change in the nomenclature from 'postpartum' on set to 'peripartum' onset. This shift is in due recognition of the fact that,in about half of the cases,depressive symptoms begin during pregnancy and not always

[23] Rosanna Langer, *"That Time of Month:" Premenstrual Dysphoric Disorder in the Criminal Law-Another Look*, 1 International Journal of Criminology and Sociology, 29-44 (2012).

[24] American Psychological Association, Diagnostic and Statistical Manual of Disorders (5th edn. 2013).

after the delivery, as was previously conceptualized. Approximately 10-15% of adult mothers are estimated to be suffering from peripartum depression.[25] Additionally, the milder form of PPD, usually known as peripartum blues or baby blues, is far more common. However, it does not constitute a clinical disorder and the term baby blues is usually used to describe the mild to moderate mood-related, cognitive or behavioural symptoms that accompany the biological changes as well as the life transition that early motherhood brings with it. Peripartum depression may also be accompanied by psychotic features in which case it is referred to as peripartum psychosis. Both peripartum depression and peripartum psychosis are legally relevant conditions, especially in cases where they have been raised as a legal defence to crimes committed by mothers.

In Western legal literature, one of the most prominent cases centred on the acceptance of peripartum psychosis as a mitigating factor in a court of *Lawis Yates* v *State* (2005).[26] Yates was charged and convicted of murdering her 5 children and was sentenced to life imprisonment after her insanity plea was rejected. However, her conviction was overturned by the court of appeals and her insanity defence, based on postpartum psychosis, was granted. Consequently, she was moved to a mental hospital for treatment.

Within the Indian legal context, one of the most prominent instances where peripartum depression surfaced as a mitigating factor was in Savita Manish Chaudhari v State of Maharashtra (2017) where it became the basis for quashing of an FIR against a mother for the attempted murder of her three-month-old son.[27] The accused had fled with her infant who was hospitalized in the intensive care unit and was in a critical condition. After attempting to crush the child with a rock, she abandoned him. Possibly, she had also attempted to kill the child earlier by poisoning him which had led to his subsequent hospitalization. After the filing of the FIR, the accused mother applied for its quashing pleading that she had not committed any crime since she was suffering from postpartum depression and hence the case fell within the preview of insanity defence under section 84 of the IPC. The plea of the applicant was supported by testimonies of her husband and relatives who affirmed that the applicant was suffering from mental illness after the birth of the child three months ago. The medical and treatment records of the applicant were also put on record. The court affirmed that since the birth of her child, the applicant was suffering from postpartum depression disorder and it was amply clear that she was incapable of appraising "the nature and consequences of her act. Therefore, in view of the general exception under section 84 of the IPC, the act which she had committed to kill her minor newly born baby

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[25] C.T. Beck, K. Records & M. Rice, *Further Development of the Postpartum Depression Predictors Inventory-Revised*, 35 J ObstetGynecol Neonatal Nurs., 735-745 (2006).

[26] Yates v. State, 171 SW3d 215 (2005).

[27] Savita Manish Chaudhari v. State of Maharashtra,2017 SCC OnLine Bom 369.

would not be appreciated as an offence under the IPC. Hence, there would not be any propriety for the continuation of criminal proceedings against her."[28] Postpartum depression, thus, formed the basis for quashing of the FIR against her.

This is yet another instance where a women-centric depressive condition was upheld by an Indian court of law as a valid ground for defence. This judgement is also reflective of the growing appreciation by the Indian legal fraternity of the so far dismissed plight experienced by several new mothers. As the Bombay High Court (2017) opined "The applicant is innocent of the charges pitted against her. She had not committed any crime with ill intention, but alleged act of attempt to kill her own minor infant son, was under the attack of psychiatric disorder."[29] Such an observation potentially lays the founding stone for the recognition of depressive conditions specific to women as a mitigating factor within the context of the Indian legal jurisprudence.

IV. LEGAL RECOGNITION OF WOMEN'S DEPRESSIVE DISORDERS IN INDIA: FIRST STEP IN THE RIGHT DIRECTION

While India has been late at integrating women-specific psychological disorders with the legal discourse, there certainly has been some movement in the positive direction. The successful admission of PMDD and PPD as legal defences and the courts' recognition that they fall within the ambit of insanity defence as conceptualized under section 84 of the IPC reflects the emergence of a highly nuanced understanding of mental disorders within the Indian legal fraternity – that the recognition of disorders specific to women does not amount to their biological reductionism and does not bring all menstruating women and new mothers within the ambit of abnormality. It is not meant to foster the beliefs that all menstruating women are deviant or that every other new mother becomes dysfunctional by virtue of the biological changes that accompany pregnancy and childbirth. On the contrary, it is meant to ensure adequate and rightful care and treatment, both psychological and legal, to the selected few who experience severe distress and disability due to these conditions. The impairments resulting from these disorders are usually overarching and may percolate into several arenas of functioning of the afflicted – cognitive, affective and behavioural. These can sometimes potentially lead to an inability to appraise the criminal nature of an act and evaluate the rightness and the wrongness of it.

Further, the recognition of PMDD and PPD as legal defences in India is extremely reassuring from a psychosocial standpoint. Not only is legal

[28] *Ibid*.
[29] *Ibid*.

recognition preceded by social recognition, but it also serves to reinforce and foster social recognition. This implies that the very fact that women-centric mental disorders are being admitted in Indian courts of law is indicative that they have gained at least some social recognition in the country. Further, the upholding of these conditions as a valid ground for defence is likely to propel the acceptance of women's mental health issues which have been brushed under the carpet for a long in India. Discussions around these issues in courts of law not only facilitate their legal integration but is also testimony to the emerging narrative of women's mental health at a social level as well. This is extremely encouraging from the perspective of giving due importance to women's mental health within the ambit of both psychology and law.

V. CONCLUSION

It has been established by several empirical studies that pre-existing mental health conditions make women more prone to disorders like PMDD and PPD.[30] Further, perceived social support by the new mother has been established to be a critical factor in determining the severity of peripartum depression.[31] These findings highlight the urgent cry for support and intervention that is needed by women suffering from these disorders. Over the past few decades, legal discourses in India have become increasingly sensitive to women's mental health conditions. Apart from the recognition granted to PMDD and PPD by the Rajasthan High Court (2018) and the Bombay High Court (2017) respectively, this trend is also reflected in the judgements of *Poovammal* v *State of T.N. (2012)*[32] and *Manju Lakra* v *State of Assam (2013)*[33] in the context of *Battered Women Syndrome, and "A" through her father "F"* v *State of U.P. (2015)*[34] and *Sri Rakesh B.* v *State of Karnataka (2020)*[35] in the context of Rape Trauma Syndrome. It can be expected that the much-deserved legal recognition of women's mental disorders in India and the wide impact that these disorders have, not just on women but also on their families and the society at large, would safeguard these women's right to mental health by ensuring greater accessibility to quality mental healthcare and treatment.

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[30] Rosanna Langer, *"That Time of Month:" Premenstrual Dysphoric Disorder in the Criminal Law-Another Look*, 1 International Journal of Criminology and Sociology, 29-44 (2012).

[31] Atefeh Vaezia, Fatemeh Soojoodi, Arash Tehrani Banihashemi& Marzieh Nojomi, The Association Between Social Support and Postpartum Depression in Women: A Cross Sectional Study, 32 Women and Birth (2019), https://www.researchgate.net/profile/Atefeh-Vaezi-2/publication/327945762_The_association_between_social_support_and_postpartum_depression_in_women_A_cross_sectional_study/links/5f819c12458515b7cf74dcce/The-association-between-social-support-and-postpartum-depression-in-women-A-cross-sectional-study.pdf (last visited on Jan. 14, 2023).

[32] Poovammal v. State of T.N., MANU/TN/0189/2012.

[33] Manju Lakra v. State of Assam, 2013 SCC OnLineGau 207.

[34] "A" v. State of U.P., 2015 SCC OnLine All 4735

[35] Rakesh B. v. State of Karnataka,2020 SCC OnLine Kar 844.

It needs to be stressed that, despite the positive movement, the Indian legal jurisprudence has a long way to go before the discourse on women's mental health enjoys adequate representation in it. To propel this progress further, it is urgently required that the legal fraternity – lawyers, judges and all personnel associated with the criminal justice system – be trained in mental health conditions, in general, and women-specific disorders, in particular. With increased awareness, greater sensitivity in handling the relevant cases and more informed decision making is likely to follow. Further, more accessible psychological counselling services for women involved in the criminal justice system – both victims and offenders – need to be provided. This would facilitate a better understanding of women about their own mental health conditions and enable them to extend greater assistance to their advocates in developing their legal arguments or defence.

The stance taken by the Rajasthan High Court (2018) in the context of PMDD that "despite the lack of domestic jurisprudence, the accused nonetheless has the right to plead this defence"[36] opens up several new possibilities for the due appreciation of mental disorders, especially women specific disorders, which have lacked recognition for long within the ambit of the law in India. While the recognition of disorders like PMDD and PPD must in no way undermine the position of women in society, it is essential that they be recognised, both socially and legally, to ensure the rightful treatment that women in distress deserve.

[36] Shivani Saxena, *Premenstrual Stress Syndrome, A Valid Criminal Defense: Rajasthan High Court*, The Quint (Aug. 17, 2018) https://www.bloombergquint.com/law-and-policy/premenstrual-stress-syndrome-a-valid-criminal-defense-rajasthan-high-court.