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Postpartum Depression: Are Mothers Getting Away with Crime?

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ABSTRACT

There are several debates about whether a person suffering from postpartum depression can be regarded as legally insane. The physical adjustments occurring in a woman cannot explain the killing of the child. Several issues ought to be answered. Why is a child only target to their disease and why it always seems that the killing was a reaction to the burden of motherhood? I am not suggesting that all the mothers are sane. The facts and conditions in each situation were different. The argument must be carefully inspected and must go to a rigorous examination to apply for the defense of insanity.

An offender must be accountable for his actions. We can also show that the women who has performed infanticide has tried to destroy more than one of her infants. We must not take any risks, there is no assurance that a mother who has killed a boy would not kill the other one. This paper is an attempt towards analysing the same.

Keywords: Postpartum depression, Legal, Insanity, Medical, Mental Illness.

I. INTRODUCTION

Postpartum depression is a term which is used to describe a type of mood disorder which a woman experiences after giving birth to her child. It is used as a defense for negating the criminal responsibility. There have been many cases in history where mothers have killed their own children and escaped the punishment by taking the defense of insanity. The story of Andrea Yates, Susan Smith etc. has created a lot of controversies, dividing the sexes along the gender lines. While there are some people who sympathize with these women, there are others who consider this postpartum psychosis as an excuse used by the mothers to protect themselves.

Postpartum depression is more serious than baby blues. Approximately 50-80 percent suffer some type of depression after giving birth to their babies. Out of that percent, around one sixth of them suffer from serious depression and can have suicidal tendencies and may also result in infanticide.

The defense of insanity excuses a mother's actions if it is proved that she was legally insane at

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the time of doing the heinous act. The law in India is that a person committing a crime must have a criminal intention. Therefore an insane person who is not aware of anything cannot be held accountable for his crime. The court has laid down several guidelines which a person must fulfil so as to get relief with the help of defense of insanity.

(A) Objectives

1. To study what is postpartum depression.
2. To understand the situations in which this may occur.
3. To understand the legal position of postpartum depression.

(B) Research Questions

Several questions pop up in our minds when we see cases where mothers are getting away with murders by using insanity as a defense is there any evidence of mental illness in such cases? Are these mothers simply trying to get away with the charges of murder? What should be done to prevent the misuse of the defense of insanity? What should be the response of the Court to the justification given by the accused? Whether they should be allowed to take the defense of insanity just because of several physical changes in their body?

In this article, we will discuss who are eligible to take the defense of insanity, what are the measures that can be taken to prevent the misuse of this defense, whether a person suffering from postpartum depression can take the defense of insanity.

(C) Literature Review

1. Postpartum Depression Defense: Are Mothers Getting Away with Murder, 24 New Eng. L. Rev. 953 (1989-1990)

This article is available on Hien Online and covers all the legal developments in the fields of the medieval times, till the 1990's. However, it only gives a British perspective, and not the Indian one.

2. Postpartum Depression: A Review, Journal of Health Care for the Poor and Underserved.

Postpartum stress treatment is a critical part of appropriate medical care. In screening for and treating postpartum depression, the obstetrician and paediatrician may serve important roles. It is critical that all health care providers and nurse practitioners are aware of particular signs and symptoms, adequate screening procedures, and proper treatment in order to avoid adverse effects associated with depression and its effect on the child. The key traits of postpartum depression are covered in this review report.

II. INFANTICIDE IN INDIA

In India, since time immemorial, women have been harassed, abused and tortured physically as well as mentally. There have been a large number of cases of female infanticide which has resulted in an unfavourable sex ratio in India. Even though this horrendous crime is illegal, it is still prevalent.

India has one of the highest infanticide rate in the world. It is still practiced in rural areas of the country.

(A) Law in India Regarding Infanticide

Indian Penal Code states that “Act done with intent to prevent child being born alive or to cause it to die after birth.—Whoever before the birth of any child does any act with the intention of thereby preventing that child from being born alive or causing it to die after its birth, and does by such act prevent that child from being born alive, or causes it to die after its birth, shall, if such act be not caused in good faith for the purpose of saving the life of the mother, be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both.”²

If any person is committing the offence of infanticide, he will be charged with murder and convicted under Section 302 of IPC.³

IPC also states that “Punishment for murder.—whoever commits murder shall be punished with death, or [imprisonment for life], and shall also be liable to fine.”⁴

III. POSTPARTUM DEPRESSION

Postpartum depression is a type of depression that women experiences after giving birth to their child. It is a serious condition and requires medical treatment. According to the research done by the researchers and doctors of WHO, it was found that about 22 percent of women in India suffer from this depression. Symptoms of this disease emerge after few days of delivery. If it is not treated immediately, the person becomes irrational, confused, starts having irrational thoughts and gets panic attacks over minor occurrences.

IV. LEGAL INSANITY

It is not always the case that a person committing a crime has a criminal mind. A person who is not aware about his surrounding, who does not know whether he is doing right or wrong,

² Section 315, Indian Penal Code, 1860

³ *Lulano Lotha v The State of Nagaland*, 1981 CriLj 522.

⁴ Section 302, Indian Penal Code, 1860

should not be punished. If he is still held responsible for the crime then it will violate the basic principles of natural justices as the person is not in the position to defend himself.⁵

Section 84 of Indian Penal Code states that “Act of a person of unsound mind.—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.”⁶

In one of the cases, the court held that “Section 84 IPC, is based on two principles; *Actus nonfacit reum nisi mens sit rea* which means that nothing is wrong unless done with a guilty intention and *Furiosi nulla voluntas est* which means that a person who is mentally unstable has no free will and therefore he/she can do no wrong.⁷”

In one of the cases, the Supreme Court of India held that if the accused wants to take the help of section 84 then he must prove legal insanity and not medical insanity.⁸

Legal insanity is different from medical insanity. Medical insanity means a person is suffering from a disease which messes with the mental faculty of the person which results in unsoundness of mind. Legal Insanity on the other hand means that the person was not capable of understanding what is right and what is wrong and also incapable of determining the nature of the act.

The burden of proving the offence is always on the prosecution, the prosecution has to prove the offence beyond reasonable doubt. But if a person wants to get relief under Section 84, the onus is on the accused.

V. POSTPARTUM DEPRESSION AS LEGAL INSANITY

One study of patients diagnosed with postpartum psychosis found that every mother felt negatively about her infant. A mother suffering from postpartum depression may become suicidal, wishing to destroy a bad part of herself. Unfortunately, the baby is often viewed as the bad part, and infanticide may result. This depression has been used as a defense in many cases where mothers are charged with the murder or manslaughter of their infants.

An FIR was filed against a woman who tried to kill her son twice. The Aurangabad bench of the Bombay High Court was convinced that the mother was suffering from postpartum

⁵ Gostin LO, Larry OG. A Human Condition: The law relating to mentally Abnormal Offenders. Vol. 2. MIND; 1977

⁶ Section 84, Indian Penal Code, 1860

⁷ Gajraj Singh vs State of Rajasthan. Appeal (crl.) 1313 of 2006

⁸ Surendra Mishra v. State of Jharkhand. 2011, 11 SCC 495.

depression and was not of mind while she was attempting to kill her child. She was incapable of understanding the seriousness of her act.

Justice S S Shinde and Justice K K Sonawane while giving the judgment said that "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. Therefore, she has not committed any crime with ulterior motive." The court also said that no mother would deliberately kill her own child, she committed the crime because of her mental condition.

She committed the crime when she was of unsound mind, which is not an offence under the general exception of Section 84. The accused was not mentally conscious and not aware that whatever she was doing is contrary to law. She had no idea about the repercussion of her act. Sec 84 provides protection to the person who has committed an offense without knowing what he was doing.

So we see that postpartum depression can be used as a defense of insanity in India. However the onus is on the accused to prove that while committing the crime, she was suffering from postpartum depression and was incapable of understanding the seriousness of the act.

VI. CONCLUSION

There are high chances that people can misuse the defense of insanity and escape the criminal responsibility. The courts have to play an important role in ensuring that the person who is of sound mind does not get away with murder by using this defense. The misuse of Section 84 is possible, the judges have to rely on the medical reports and evidences produced before them and it is extremely difficult for them to know whether the accused was legally sane or not while committing the crime.

According to some people, the crime of infanticide is not receiving as much attention as it should and the circumstances under which a mother kills her child does not justify the crime done by her." Retribution in punishment is an expression of the community's disapproval of crime, and if this retribution is not given recognition then the disapproval may also disappear. A community which is too ready to forgive the wrongdoer may end by condoning the crime."⁹

There are already many controversies over whether a person suffering from postpartum depression should be treated as legally insane. The physical changes happening in a women cannot justify the killing of the child. Several questions need to be addressed. Why is an infant

⁹ A. GOODHART, ENGLISH LAW AND MORAL LAW 93(1953)

only victim of their illness and why it often appears that the killing was a response to the stress of motherhood? I am not saying that all the mothers are sane. The facts and circumstances of each case is different. The case must be closely inspected and must go through a strict test to qualify for the defense of insanity.

A criminal must be accounted for his acts. We have often seen that the women who has committed infanticide has attempted to kill more than one of her infants. We must not take any chances, there is no guarantee that a woman who has killed a child will not kill the other one.

"In a very real sense, the confinement of the insane is the punishment of the innocent; the release of the insane is the punishment of society." When a criminal is not insane, she deserves punishment; when a criminal is insane, we deserve protection.
