

Premenstrual Syndrome and Criminal Liability in Iranian Law: A Legal Lacuna

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Abstract

Objectives: This study examines whether Iranian law and jurisprudence support the hypothesis that certain women are more predisposed to criminal behavior during their menstrual cycle, which then warrants a reduction in their punishment.

Methodology: Using a descriptive-analytical approach, this research explores perspectives from medical professionals, lawyers, and jurists regarding premenstrual syndrome (PMS) as a mental disorder with potential implications for mitigating criminal liability.

Findings: A key finding of this study is that PMS has been categorized as a type of mental disorder. By analyzing legal provisions related to mental disorder in Iranian law and interpretations of the term ‘harm’ (*adhā*) in Qur’an 2:222 (*Al-Baqarah/The Cow*) concerning menstruation, this study assesses whether PMS can serve as a mitigating factor in criminal sentencing under Iranian law.

Originality: While many jurists argue for a correlation between PMS and criminal behavior, which suggests that it should be considered in sentencing reductions, Iranian law discourse has largely overlooked this issue. Notably, PMS serves as a mitigating factor in various legal systems worldwide, yet its legal implications remain unexplored in Iranian law.

Keywords: Women; Menstruation; Premenstrual syndrome disorder (PMS); Punishment; Mitigation; Harm (*adhā*)

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متلازمة ما قبل الحيض (PMS) والمسؤولية الجنائية في القانون الإيراني: دراسة حالة فراغ فقهي

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ملخص البحث

أهداف البحث: يهدف البحث التحقق مما إذا كان القانون والفقه الإيراني يدعمان الفرضية القائلة إن مجموعة من النساء الحَيض لديهن ميل أكبر إلى ارتكاب الجرم، مما يستلزم ضرورة تخفيف العقوبة.

منهج الدراسة: تبنى البحث المنهج الوصفي التحليلي من خلال النظر في آراء بعض الأطباء والمحامين والفقهاء حول متلازمة سابقة للحيض؛ كنوع من الاضطرابات النفسية الفاعلة في تخفيف العقوبة.

النتائج: من أبرز نتائج البحث تشخيص هذه المتلازمة كنوع من الاضطرابات النفسية، ومراجعة المقالات القانونية المتعلقة بالاضطراب النفسي في القانون الإيراني، ومراجعة التفسيرات الحالية لمصطلح الإيذاء (أذى) في الآية ٢٢٢ من سورة البقرة، يمكننا التحقق مما إذا كان للمتلازمة تأثير مخفف على العقوبة في قوانين إيران أم لا.

أصالة البحث: يعتقد كثير من الفقهاء أن هناك علاقة بين متلازمة سابقة للحيض وبين الجرم، وهو ما يجب مراعاته عند تخفيف العقوبة؛ فهي متلازمة سابقة للحيض لها تأثير مخفف على العقوبة في النظم القانونية لعدد من البلدان؛ لكن هذه القضية لم تطرح في القانون الإيراني.

الكلمات المفتاحية: المرأة، الحيض، متلازمة ما قبل الحيض (PMS)، العقوبة، التخفيف، الأذى

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Introduction

Crime prevention efforts can yield better results if all risk factors are evaluated. Since there is an interest in finding a connection between biological characteristics and criminal behaviors, attention to biological factors, such as menstruation, is not unexpected. Studies in this area can play an important role in concepts such as punishment and criminal responsibility, behavior, and crime prevention.

The effect of menstruation on women's lives, known as premenstrual syndrome (PMS), has led to research into the importance of this factor in crime. The reason for such attention is that PMS is a process that affects all adult women during their menstruation. The earliest study regarding this was done by Lombroso and Ferrero in 1985. They studied a group of 80 women arrested for resisting public officials acting in the course of their duties, and of these, 71 women were undergoing menstruation at the time of the offense.¹

Although there is some talk of premenstrual syndrome and its impact on crime, it is undeniable that a high percentage of women suffer from it. However, there have been many cases over the last century in which this syndrome has been used as a mitigating factor. So, if there is evidence of a link between crime and premenstrual syndrome in women, the legal community should not be indifferent to this evidence.

In verse 222 of *Surah Al-Baqarah*, the issue of menstruation and its effect on women is mentioned. In this verse, the man is advised to pay more attention to the woman during menstruation. But despite these recommendations and even though Islamic scholars have consistently and throughout history tried to interpret the verses of the Qur'an following the conditions of the day, and given that today in legal and medical discussions, the issue of premenstrual syndrome has been considered, but in Iranian law, the issue of premenstrual syndrome has not been considered as it should be.

So, it is necessary to examine this issue in the Quranic verses and jurisprudential issues. Since Iranian law is rooted in Islamic jurisprudence, and in order to pay attention to the issue of PMS in the courts, it is necessary to first examine this issue in jurisprudential issues and the opinions of jurists. The present study seeks to examine how PMS can be used to explain and investigate criminal and antisocial behavior in some women, but not necessarily as an excuse for women to escape punishment. Also, according to verse 222 of *Surah Al-Baqarah* and the existing interpretations of it, the premenstrual syndrome can be used to reduce the punishment in cases related to women. Before proceeding to the analysis, it should be noted that all translations of Arabic scholarly sources in this study are original to the authors unless otherwise indicated.

1 Yadukul S., Sumangala N., Parinitha, and Suresh M., "Pre-Menstrual Syndrome and Crime: A Study in Parappana Agrahara Central Jail, Bengaluru," *Journal of South India Medicolegal Association*, vol. 8, no. 1 (2016), pp. 6-9.

1. Criminal Biology

Criminal biology is the science that examines the causes of crime based on medical data. Disorders in various biological systems, such as genetics, hormones, and brain function, can be linked to criminal behavior. Criminal biology is responsible for investigating these cases.

In general, an improved understanding of how biology contributes to antisocial and criminal conduct may boost the explanatory power of present ideas and studies, as well as guide policy and treatment alternatives.¹ This knowledge studies factors in three areas: genetics, biochemical factors, and neurological factors. These three cases are mentioned below.

1.1. Genetics

There is considerable evidence that genetic factors affect or predispose humans to both favorable and unfavorable behavior.² In other words, genetic factors may play a role in predisposing certain individuals to criminal behavior.³ While there is currently no gene directly linked to criminality, there are genes that are responsible for such functions as aggressiveness and impulsiveness to some degree.⁴

Excluding genetic influences from consideration could limit the knowledge of why some people end up as criminals. This kind of genetic study may help avoid diseases in addition to satiating our scientific curiosity.⁵

1.2. Biochemical Factors

In addition to genetic factors, criminal biologists have also noticed biochemical factors and tried to understand the relationship between biochemical factors and criminal behavior.

Preliminary evidence suggests that chemical imbalances in the body may be as important an influence on behavior as are poverty, abuse, and other environmental factors that traditionally have been accepted as the root causes of aberrant behavior.⁶

1.3. Neurocriminology

Neuropathology can be considered a new approach in cases such as violent crime analysis.

We are learning more about how our biology affects both good and poor behavior, thanks to

1 Shichun Ling, Rebecca Umbach, and Adrian Raine, "Biological Explanations of Criminal Behavior," *Psychology, Crime, and Law*, vol. 25, no. 6 (2019), pp. 626-640.

2 Ludwig Lowenstein, "The Genetic Aspect of Criminality," *Journal of Human Behavior in the Social Environment*, vol. 8, no. 1 (2004), pp. 63-78.

3 Jasmine A. Tehrani and Sarnoff A. Mednick, "Genetic Factors and Criminal Behavior," *Federal Probation*, vol. 64, no. 2 (2000), pp. 24-27.

4 Lowenstein, "The Genetic Aspects of Criminality," pp. 63-78.

5 Tehrani and Mednick, "Genetic Factors," pp. 24-27.

6 William J. Walsh, Laura B. Glab, and Mary L. Haakenson, "Reduced Violent Behavior Following Biochemical Therapy," *Physiology and Behavior*, vol. 82, no. 5 (2004), pp. 835-839.

advancements in neuroscience. The rapidly developing discipline of Neurocriminology aims to use methods and ideas from neuroscience to enhance our comprehension, prediction, and ultimately the prevention of crime.¹

2. Premenstrual Syndrome (PMS)

The definition of premenstrual syndrome (PMS) is a cyclic physical and behavioral symptom that appears in the days preceding menses, and is bothersome enough to interfere with work or lifestyle.²

The term “premenstrual tension,” which was first used in the medical literature in 1931 to describe this disease, has been changed to “premenstrual syndrome” (PMS) to reflect the various clinical manifestations that may arise.³

It is a complex cluster of symptoms that starts 7 to 14 days before menstruation and lasts until 1 to 2 days following. Symptoms of premenstrual syndrome can lead to serious, incapacitating psychological and physical issues.⁴

However, it's important to separate PMS from less severe premenstrual symptoms like breast soreness and bloating that don't affect how you live your life.⁵ When estrogen and progesterone levels fall in the late luteal phase of the menstrual cycle and then rise at or shortly after the start of menses, PMS symptoms arise. Therefore, hormonal changes that take place during the luteal phase of the menstrual cycle could cause PMS.⁶

There are three types of PMS symptoms: 1) the presence of physical symptoms such as headaches, bloating in the abdomen, exhaustion, breast tenderness, acne, lack of coordination, cramping in the legs and pelvis, constipation, dizziness, joint discomfort, itching, nasal congestion, and heart palpitations; behavioral symptoms include intolerance, being overly critical, restlessness, social isolation, cravings for sweets, increased alcohol use, hysteria, confusion, forgetfulness, insomnia, physical violence, accident proneness, and decreased libido. Emotional symptoms include depression, anger, hostility, anxiety-tension, guilt, rapid mood changes, feeling overwhelmed,

1 Neethu Jose and Jayesh K. Joseph, “Neurocriminology,” *International Journal of Nursing Education and Research*, vol. 5, no. 1 (2017), pp. 108–114.

2 Hugh S. Taylor, Lubna Pal, and Emre Sell, *Speroff's Clinical Gynecologic Endocrinology and Infertility* (Philadelphia: Wolters Kluwer, 9th ed., 2019), pp. 11-53.

3 Joseph L. Mayo, “Premenstrual Syndrome: A Natural Approach to Management,” *Applied Nutritional Science Reports*, vol. 5, no. 6 (1999), pp. 1-8.

4 Yadukul et al, “Pre-menstrual Syndrome and Crime,” pp. 6-9.

5 Lori M. Dickerson, Pamela J. Mazyck, and Melissa H. Hunter, “Premenstrual Syndrome,” *American Family Physician*, vol. 67, no. 8 (2003), pp. 1743–1752.

6 Tracey J. Shors and Benedetta Leuner, “Estrogen-Mediated Effects on Depression and Memory Formation in Females,” *Journal of Affective Disorders*, vol. 74, no. 1 (2003), pp. 85-96.

panic, and suicidal thoughts.¹

According to the Royal College of Obstetricians and Gynecologists, 4 out of 10 women experience premenstrual symptoms, and 5-8% of those women experience severe symptoms.² Additionally, it is said that PMS causes drug addiction, an increased risk of accident and crime, economic losses, and a drop in scholastic attainment.³

3. How the PMS occurs

It is yet unclear what causes PMS; however, it could be complicated and multifactorial. Although the function of ovarian hormones is unclear, suppressing ovulation frequently improves symptoms. Changes in hormone levels may have an impact on serotonin and other centrally acting neurotransmitters. Deficiencies in prostaglandins, related to an inability to convert linoleic acid to prostaglandin precursors, may be involved in PMS.⁴

It seems genetic factors also play a role in PMS, because the rate of adaptation in monozygotic twins is twice as high as in dizygotic twins; however, there is no significant difference between symptomatic and asymptomatic women in terms of progesterone levels.⁵

4. Premenstrual Syndrome Disorder

Gender difference is one of the factors affecting individual characteristics. This difference, in turn, is reflected in the actions and ways of dealing with different situations and conditions of each man and woman. These differences are considered in some legal assignments and should be compatible with the characteristics of each of them.⁶

Mental health is one of the main aspects of a person's health, which has a significant impact on the quality of life. Many factors can affect mental health, including premenstrual syndrome, according to medical findings. The medical community has accepted PMS as a disorder, producing a diverse number of physical and emotional changes.⁷

According to studies, premenstrual syndrome has an impact not only on the affected person but also on her family and, in extreme circumstances, can modify a girl's personality and conduct.⁸ Relationships between women and other family members or community members may be impacted

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

2 Halime Abay and Sena Kaplan, "Current Approaches in Premenstrual Syndrome Management," *Bezmialem Science*, vol. 7, no. 2 (2019), pp. 150-156.

3 Ibid.

4 Dickerson et al., "Premenstrual syndrome," pp. 1743-1752.

5 Abay and Kaplan, "Current Approaches," pp. 150-156.

6 Nouri Ben Ashur Gazala and Qadir Al-Zanki Salih, "The Islamic Prescriptive Discourse on Individual Differences" (in Arabic), *Journal of College of Sharia and Islamic Studies*, vol. 41, no. 1 (2023), pp. 101-128.

7 Mayo, "Premenstrual Syndrome," pp. 1-8.

8 Maliheh Abootalebi, Mansoureh Dehghani, and Marzieh Akbarzadeh, "Implementing Mental Health Training Programs for Promotion of Health Affected Teenage Girls to Premenstrual Syndrome: A Community-Based Study," *Journal of Education and Health Promotion*, vol. 9, no. 1 (2020), pp. 1-6.

as a result of this development.

It is undeniable that the opinion of the medical community about PMS is important since doctors play a basic role in diagnosis and defining the legal significance of PMS within the criminal justice system. In fact, the medical community with this role can help in exploring the possible defenses that the legal community could employ. With the cooperation of these two groups, it is possible to examine this hypothesis of whether PMS can be used as a mitigating factor for women for criminal responsibility or not.

On the other hand, the crucial role played by ovarian hormones in the genesis of female depression raises the possibility that estrogen and progesterone may be used to treat female affective disorders. According to the available data, estrogen may be pharmacologically useful in reducing depression symptoms. For instance, estrogen therapy consistently reduces PMS's physical and psychological symptoms.¹ Therefore, the effect of premenstrual syndrome on the *mens rea* can't be ignored. Moreover, women who are going through premenstrual syndrome have a higher tendency to have a panic attack when they are exposed to any panicogenic agent.²

5. The Effect of the Syndrome on the Nervous System

In the medical and psychology fields' scholarly literature, premenstrual syndrome is a hotly debated topic. There is currently no agreed-upon definition of what the syndrome or syndromes (there could be more than one) actually are. It seems crucially important to determine if premenstrual syndrome always represents psychiatric disease or can lead to criminal behavior.³ However, it should be noted that whatever the mental disorder's original cause, it must be considered a manifestation of behavioral, psychological, or biological dysfunction in the individual, not deviant behavior (like political, or sexual).⁴

As a result of this disorder, there may be repercussions for educators who train women for leadership roles in the workforce and at home, as well as for women themselves and their self-image. The concerns are nevertheless extremely pertinent in politics, education, and interpersonal relationships, even though only some of the women are participating.⁵

Researchers attribute PMS to various causes, including psychological, social, and biological factors, suggesting the involvement of the endocrine, neurological, and immune systems as well

1 Shors and Leuner, "Estrogen-Mediated Effects," pp. 85-96.

2 Upma Gautam and Sonali Sharma, "Road-Mapping the Contradictions Around Premenstrual Syndrome: A Medico-Legal Quandary," *Journal of Victimology and Victim Justice*, vol. 3, no. 2 (2021), pp. 19-23.

3 Ceinwen E. Cumming, Eugene E. Fox, and David C. Cumming, "Intermenstrual Affect in Women with Symptomatic Premenstrual Change," *Journal of Psychosomatic Research*, vol. 39, no. 3 (1995), pp. 261-69.

4 Stephen J. Morse, "Mental Disorder and Criminal Law," *Journal of Criminal Law and Criminology*, vol. 101, (2001), p. 885.

5 Cumming, Fox, and Cumming, "Intermenstrual Affect," pp. 261-69.

as disordered mood and thought processes.¹

One of the reasons that can be used to confirm the effect of premenstrual syndrome on the nervous system is the use of psychotherapeutic drugs to reduce the symptoms of this syndrome. The antidepressant Fluoxetine, a Serotonin reuptake inhibitor, and the Benzodiazepine Alprazolam produce symptomatic relief, as do GnRH-releasing agonists at doses that suppress the pituitary–ovarian axis.²

Interestingly, in clinical samples of women affected by PMS, 31% of them matched the criteria for mood disorders. Finally, several studies found a significant association between neuroticism and PMS.³

Recent researchers characterize PMS as an imbalance of complex interactions of hormones, essential nutrients, and neurotransmitters, in combination with psychosocial stress.⁴

In a description of the effect of PMS on women's behavior, three PMS symptoms that are frequently seen in women who commit crimes were described in a study from the year 1986: first, depression that results in suicide, arson, shoplifting, or window-shattering; second, psychosis that was brought on by premenstrual syndrome and manifests as amnesia, paranoia, and hallucinations. The third one is irritation, which can result in total loss of control and be described as an irresistible impulse to take control of the woman, and irritation.⁵

PMS has also been described as an involuntary act of being in an automatic state, thereby negating intent, *actus reus*, or both. On the other hand, automatism has been categorized as both the product of a disease of the mind, therefore resulting in a finding of insanity, and alternately, as a product of another condition, whether physical or physiological, thereby providing a defense based on the absence of intentional action stress.⁶

Some studies also relate premenstrual syndrome (PMS) to delinquency and conclude that women are at greater risk of aggressive and suicidal behavior before and during the menstrual period.⁷

Menstruation seems to be of greater importance in crimes of theft: 56% of such crimes occurred

1 Langer, "That Time of Month," pp. 29-44.

2 Section on the reproductive development and function of the female reproductive system in, Kim E. Barrett et al, eds. *Ganong's Review of Medical Physiology* (New York: McGraw-Hill Education, 25th ed., 2016), p. 410.

3 Déborah Ducasse et al., "Personality Traits of Suicidality are Associated with Premenstrual Syndrome and Premenstrual Dysphoric Disorder in a Suicidal Women Sample," *PLoS One*, vol. 11, no. 2 (2016), pp. 1-19.

4 Langer, "That Time of Month," pp. 29-44.

5 Upma Gautam and Sonali Sharma, "Road-mapping the Contradictions around Premenstrual Syndrome: A Medico-legal Quandary," *J. Vict. Justice*, 3(2), (2021): 19-236.

6 Langer, "That Time of Month," p. 29-44.

7 Freda Adler, William S. Laufer, and Gerhard W. Mueller, *Sociology: Criminology* (McGraw-Hill Education, 6th ed., 2008), p. 75.

during menstruation and the premenstrual, whereas for prostitution the figure was 44%.¹ So it can be said that premenstrual syndrome (PMS) is considered a health problem that is associated with physical and mental symptoms, the frequency and severity of which vary from one woman to another.² The severity of these symptoms is sometimes to the extent that it affects women's behavior, which is why the relationship between the menstrual cycle and criminal behavior has been the focus of interest for many researchers.

6. The Mitigating Effect of Premenstrual Syndrome

An act is considered a crime that has three elements: *Actus reus*, *Mens rea*, and Legal element. *Mens rea* is a state of a guilty mind, which is the basic premise of criminal responsibility.³ It should be noted that in criminal liability of an insane person or a person with a mental disorder, in addition to a causal relationship between the perpetrator and the criminal act, another relationship should be sought, namely, the causal relationship between the mental state and the commission of the crime by the individual.

If the defendant can demonstrate that (i) she had premenstrual syndrome at the time the crime was committed and (ii) as a result of her condition, either the criminal act was involuntary or at the time of the criminal act she did not have the mental state required by law for the commission of a crime, premenstrual syndrome may be effective as an affirmative defense to a criminal charge.⁴ So this syndrome can be considered a mitigating factor.

In this case, it can be said that premenstrual syndrome plays a role in reducing the punishment. However, since the defense of diminished responsibility does not lead to a complete acquittal, but instead a conviction, this allows the courts to retain some control over a premenstrual defendant. This might make PMS a more appealing option for the courts because it can be employed, in the relevant instances, to fulfill the fundamental requirement of the criminal law to protect society.⁵

If premenstrual syndrome is going to be utilized as support for a claim of diminished culpability, the accused must demonstrate that she lacked the necessary intent to commit the offense in question. A forensic specialist and an experienced medical professional are needed to make this argument. It is necessary to establish a link between premenstrual syndrome and the crime.⁶ The defense must show that the perpetrator did not know the nature or quality of the act or made a mistake in

1 Katharina Dalton, "Menstruation and Crime," *British Medical Journal*, vol. 2, no. 5269 (1961), p. 1752.

2 Tuğba Uzunçakmak and Sultan Alkaya, "Effect of Aromatherapy on Coping with Premenstrual Syndrome: A Randomized Controlled Trial," *Complementary Therapies in Medicine*, vol. 36 (2018), pp. 63-67.

3 Iryna Marchuk, *The Concept of Crime in International Criminal Law: A Comparative Law Analysis* (Heidelberg: Springer Berlin, 2014), p. 25.

4 James W. Lewis, "Premenstrual Syndrome as a Criminal Defense," *Archives of Sexual Behavior*, vol. 19, no. 5 (1990), pp. 425-441.

5 Caroline Henaghan, "The Premenstrual Defendant: Should she be Held Fully Responsible for her Criminal Actions?" PhD Dissertation (Manchester: The University of Manchester, 2019), p. 44.

6 Gautam and Sharma, "Road-Mapping the Contradictions Around Premenstrual Syndrome: A Medico-Legal Quarterly," pp. 19-36.

knowing the nature and quality.¹

In other words, for PMS to be considered as a disorder that affects a person's criminal capacity, it must be proven that PMS prevented the accused from having the intent (*mens rea*) with hazy thinking, and impairment of self-control, judgment, and willpower.²

Ignoring this syndrome may cause numerous PMS patients to receive punishment for actions they had no control over, and the punishment will still be administered without considering their condition. It is the responsibility of the legal profession, not the medical profession, to see that justice is served. To prevent needless abuse of PMS defendants, the legal profession must somehow incorporate the PMS idea into criminal law.³

7. Premenstrual Syndrome in Iranian Law

Although premenstrual syndrome has been considered a mitigating factor in many countries in recent decades,⁴ it has not been properly addressed in Iran.

There is no direct trace of premenstrual syndrome in Iranian law or in cases involving women. Only in a few legal articles has menstruation delayed the execution of the sentence, not reduced it. However, by examining the interpretations related to verse 222 of *Surah Al-Baqarah*, one can find references to premenstrual syndrome. In jurisprudence, this issue has been considered to some extent, but unfortunately, in Iranian law, there is no sign of a mitigating effect of premenstrual syndrome on punishment. In contrast, the impact of insanity and mental disorders on the mitigation of punishment can be seen in Iranian law. As mentioned, since premenstrual syndrome is known as a disorder, in this part of the study, by examining the articles related to insanity and mental disorders in Iranian law and the interpretations of verse 222 of *Surah Al-Baqarah*, as well as the opinions of jurists.

It is noteworthy that in Iranian law, the word madness or mental disorder is expressed in absolute terms. That is, the legislature did not restrict these terms to a particular state of insanity or a particular type of mental disorder. Rather, in Article 149 of the Penal Code adopted in 1392, the mental disorder is considered a kind of insanity that leads to the elimination of criminal responsibility.

Article 149 of the Islamic Penal Code: "If the perpetrator suffers from a mental disorder at the

1 Patricia L. Easteal, Neil Kaye, and Thomas Reed. "PMS: Legal Usage and Limitations," pp. 2149-2156, in *Wiley Encyclopedia of Forensic Science*, eds. Allan Jamieson and Andre Moenssens (Chichester, UK: John Wiley & Sons, 2009).

2 Ibid.

3 Candy Pahl-Smith, "Premenstrual Syndrome as a Criminal Defense: The Need for a Medico-Legal Understanding," *North Carolina Central Law Journal*, vol. 15, no. 2 (1985), p. 246.

4 Abolfazl Alishahi Ghalehjoughi and Sedigheh Riahi Rad, "The Effect of Premenstrual Syndrome on Delinquency in Iranian Law," *Sefarad*, vol. 19, no. 2 (2024): 20-30.

time of the crime in a way that he lacks will or discernment, he is considered insane and has no criminal responsibility”.

The legislator’s lack of clarity in expressing the meaning of insanity and mental disorder has affected the issuance of verdicts for judges in cases where the perpetrator has a mental disorder. Perhaps the reason for the legislator’s silence or the absolute abandonment of the definition of insanity and mental disorder is the attention to the relative state of mental problems, which cannot be accurately identified.

From the phrase “mental disorders” in Article 149, it can be deduced that disorders can be classified as insane if, at one point, they bear a resemblance to insanity. This point of similarity can be a deprivation of power in distinction because such a deprivation of power will disrupt the intention.¹

In addition to the absoluteness of insanity and mental disorder, the legislator has also used the word disease in absolute terms. Article 38 of the Islamic Penal Code of Iran, which states the reasons for reducing the punishments, also states the term “illness” in absolute terms. “E-Repentance, good record or special condition of the accused, such as old age or illness”.

Other articles that can explain mitigation as a result of a mental disorder are Articles 290 and 291 of the Penal Code. These two articles express the difference between the criteria in intentional and unintentional crimes. According to Article 290, it is a premeditated crime that the perpetrator has two cases, namely, the intention to act and the result is what he is doing.

Also, according to Article 291, a person in his committed act, if only intended to commit an act but did not intend to commit a crime, is considered a quasi-intentional crime and has a lesser punishment. This issue is mentioned in paragraph A:

The crime is considered intentional in the following cases:

A- “If the perpetrator intends to act against the offender but does not intend to commit a crime or similar, and if the crime is not one of the cases that are included in the definition of intentional crime”.

Note that Article 149 of the same law also states the mitigating effect of insanity and mental disorder on punishment. Paragraph T of Article 501 of the Code of Criminal Procedure also states that menstruation is one of the reasons for delaying punishment: Execution of flogging during menstruation. As can be seen, the legislator in this article considers menstruation as one of the cases that delays the punishment of flogging.

Two important issues need to be addressed here: one is that terms such as “illness, insanity, and mental disorder” in articles 38, 149, 290, and 291 are uttered in absolute terms, and since menstrual syndrome has been identified as a disorder and PMS is believed to exist by a large part

1 Ghalehjoughi and Rad, “The Effect of Premenstrual Syndrome,” pp. 20-30.

of the medical profession,¹ we can likely include it in the absoluteness of these three words.

Another issue is the effect of menstruation on delaying punishment. As can be seen, the legislature has paid attention to women's menstruation in the execution of punishment and considers it a factor that delays the execution of punishment. However, in Iranian law, this attention is limited to delaying punishment, and no attention has been paid to this issue at the time of sentencing. Since Iran has derived most of its civil and criminal laws from Islamic jurisprudence, it is necessary to examine the views of jurists in this regard.

Therefore, if some small number of women should be so incapacitated by premenstrual symptoms as to lose control of their behavior, such a plight should be admissible as real evidence, not an excuse, and should have an impact on the adjudication of their culpability.²

Many interpretations of verse 222 have been made. Most of these interpretations are related to the impermissibility of sexual intercourse between couples during menstruation. Several legal effects can be imposed on the prohibition of sexual intercourse during menstruation, such as sexual abuse of a woman by a man. According to Article 1103 of the Civil Code, "husband and wife are obliged to have good relations with each other", because of the request of this relationship by men, which results in the emergence of various diseases for men and women, this cannot be called anything except abuse. Jurisprudence, like medicine, prohibits sexual intercourse during menstruation by imposing the strictest type of prohibition, namely sanctity.³

Nevertheless, the main issue regarding this verse, which is related to the present study, is related to the word "*adhā*", which will be examined later.

8. The meaning of "*adhā*" and its Relation to PMS

As mentioned, many cases demonstrate that courts in various countries are willing to accept pleas of diminished responsibility based on the PMS. These courts consider the PMS plea as a mitigating factor. This issue started in 1980 in the English courts and then in Canada.⁴ In America, the first case that tried to reduce the punishment by using PMS was in the state of New York.⁵ But in Iran, this issue has not been considered until today, while in the Qur'an, there are signs of attention to premenstrual syndrome.

Verse 222 of Surah Al-Baqarah is one of the verses that have been revealed about the menstrual

1 Victoria St. John, "Premenstrual Syndrome in the Criminal Law," *Auckland University Law Review*, vol. 8, no. 2 (1996), pp. 331-351.

2 Ibid.

3 Abdullah Bahmanpouri, Sedigheh Riahi Rad, and Habib Ardekani. "Jurisprudential Explanation of the Sexual Intercourse during Menstruation" (in Persian). *Feghh Journal*, vol. 11, no. 40-41 (2019-2020), 33-44.

4 Bernadette McSherry, "Premenstrual Syndrome and Criminal Responsibility," *Psychiatry, Psychology and Law*, vol. 1, no. 2 (1994), pp. 139-151

5 Nicole R. Grose, "Premenstrual Dysphoric Disorder as a Mitigating Factor in Sentencing: Following the Lead of English Criminal Courts," *Valparaiso University Law Review*, vol. 33, no. 1 (1998), pp. 201-30.

period of women. “They ask you about menstruation. Say, it is an injury. Stay away from women during their menstrual periods and do not approach them until they are cleansed. When they have cleansed themselves, and then come to them from where Allah has commanded you. Allah loves those who turn to Him in repentance and He loves those who cleanse themselves” (Quran, 1:222).¹

Most of the interpretations and research done about this verse are related to the impermissibility of sexual relations between a couple during menstruation. However, by examining the opinions of the jurists about this verse and their special attention to the word “*adhā*”, another aspect can be examined in this verse. In a sense, it can be said that for this verse in the existing interpretations, scientific issues and hormonal causes of menstruation as a natural phenomenon are not well expressed.² Therefore, it is necessary to examine the different meanings of the word “*adhā*” by jurists and its relationship with the menstrual syndrome.

Adhā (Harassment) literally is anything that a person is harassed by. In other words, “*Adhā*” conveys a special kind of harassment, and its meaning is different from harm, which is the opposite of benefit, and impurity, which is the opposite of purity.³

In this verse, the word “*adhā*”, which has different meanings,⁴ can be related to this article. As will be mentioned below, the “*adhā*” has been interpreted as prohibiting couples from having sex, but by studying and analyzing the opinions of jurists, we can express another meaning for this word, which is related to menstruation and PMS. There are three meanings for this word:

8.1. Impurity and Filth

In ignorance, eating, drinking, and sitting with a woman during menstruation were forbidden. The Prophet ﷺ was asked about this, and the Prophet ﷺ said that menstruation is “*adhā*,” which means filth and impurity.⁵ Therefore, some jurists have carried the word *adhā* on menstruation and have interpreted it as impurity.⁶ From the point of view of these jurists, *adhā* is any abominable thing that causes harassment due to disgust, and for this reason, menstruation, which is impure, dirty, and smelly, is called *adhā*.⁷ Qatadah also interpreted *adhā* as filth and impurity.⁸

1 Saheeh International, *The Qur'an: English Translation* (Jeddah: Saheeh International, 1997), 2:222. This verse in Arabic is:

﴿وَيَسْأَلُونَكَ عَنِ الْمَحِيضِ قُلْ هُوَ أَذَى فَأَعْتَزِلُوا النِّسَاءَ فِي الْمَحِيضِ وَلَا تَقْرُبُوهُنَّ حَتَّى يَظْهَرْنَ فَإِذَا تَظْهَرْنَ فَأَتُوهُنَّ مِنْ حَيْثُ أَمَرَكُمُ اللَّهُ إِنَّ اللَّهَ يُحِبُّ الْمُتَوَّابِينَ وَيُحِبُّ الْمُتَطَهِّرِينَ﴾ [البقرة: ٢٢٢].

2 Maid Daneshgar, “The Viewpoint of the Quran and Medicine on Marital Health and Sexual Issues” *Journal of Medical Ethics*, vol. 3, issue 9 (2010), pp. 73-92.

3 Maḥmūd Ṭāliqānī, *Patrovi az Quran* (Tehran: Anteshar, 1983), vol. 2, p.132.

4 Abū Ja‘far Muḥammad ibn Jarīr al-Ṭabarī, *Tafsīr al-Ṭabarī, jāmi‘ al-bayān ‘an tāwīl al-Qur‘ān*, ed. ‘Abd Allāh b. ‘Abd al-Muḥsin al-Turkī (Cairo: Dār Hajar, 2001), vol. 4, p. 347.

5 Aḥmad b. Muḥammad al-Ardabīlī, *Zubdat al-bayān fī aḥkām al-Qur‘ān*, ed. Muḥammad al-Bāqir al-Bahbūdī (Tehran: Al-Maktaba al-Murtaḍawiya, n.d.), p. 32.

6 Muqātil Ibn Sulaymān, *Tafsīr Muqātil ibn Sulaymān* (Beirut: Mu‘assasat al-Tārīkh al-‘Arabī, 2002), vol. 1, p. 118.

7 Al-Ṭabarī, *Tafsīr al-Ṭabarī*, vol. 3, p. 722.

8 Jalāl al-Dīn al-Suyūṭī, *Al-Durr al-manthūr fī al-tafsīr al-māthūr* (Beirut: Dār al-Fikr, 1993), vol. 1, p. 620.

Allameh Majlisi believes that menstruation (Mahid) is an infinitive and can refer to the time of the duration of menstruation or the name of the place for the place of menstruation. “Say it is an injury” also means something that has impurity, and people avoid it.¹

Some jurists consider the addressee of this filth and impurity to be a man and consider the harassment resulting from it to be directed to the person who approaches it, i.e., a man.²

8.2. Blood

Another meaning given to this word is “menstrual blood.”³ The reason that menstruation is interpreted as blood is that the blood is impure and smells, as it comes from the place of urine. All these cases cause persecution.⁴ For this reason, some jurists consider staying away from women in this era because of the blood⁵. Al-Suyūṭī has also quoted from Mujahid that he interpreted *adhā* as blood.⁶

Najafi believes that *adhā* (injury, harassment) and menstruation (as an “infinitive (Mahid)”) do not mean the impurity that men avoid, but harassment (*adhā*) in the verse is the blood.⁷

However, this argument can be criticized because if harassment (*adhā*) is considered as blood, in fact, it is carrying something on something else without cause and effect, and there is no obstacle that *adhā* has any other meaning than impurity. For example, it can be said that *adhā* means something in which there is corruption. Therefore, it is not possible to consider *adhā* as meaning blood because no cause implies this meaning. In addition, if we consider *adhā* to mean impurity, this feature is present in other drops of blood and urine, but in these two cases, the marital relationship is not forbidden.⁸ The jurists have also interpreted menstruation as the blood of menstruation. In the verse, “menstruation as an infinitive (Mahid)” has been used twice. Some jurists consider the first one as the blood of menstruation and the second one as the time of menstruation.⁹ Therefore, it seems unlikely that we also consider the meaning of *adhā* as menstrual blood because the “first Mahid” refers to it, and there is no reason for this repetition.

1 Muḥammad Bāqir al-Majlisī, *Bihār al-anwār al-jamī‘a li-durar akhbār al-‘imma al-aṭhār* (Beirut: Mu’assasat al-Wafā’ and Dār Iḥyā’ al-Turāth al-‘Arabī, 1983), vol. 81, p. 74.

2 Al-Ardabīlī, *Zubdat al-bayān*, p. 32.

3 Al-Ṭabarī, *Tafsīr al-Ṭabarī*, vol. 3, p. 722.

4 Ibn Rajab al-Ḥanbalī, *Tafsīr Ibn Rajab al-Ḥanbalī: rawā’i‘ al-tafsīr al-jāmi‘ li-tafsīr al-Imām Ibn Rajab al-Ḥanbalī*, ed. Ṭāriq b. ‘Awaḍ Allah b. Muḥammad (Riyadh: Dār al-‘Āshimah, 2001), vol. 1, p. 167.

5 Muḥammad b. Idrīs al-Shāfi‘ī, *Al-Umm: mawsū‘at al-Imām al-Shāfi‘ī*, ed. Aḥmad Badr al-Dīn Ḥassūn (Beirut: Dār Qutayba, 2003), vol. 5, p. 184.

6 Al-Suyūṭī, *Al-Durr al-manthūr*, vol. 1, p. 620.

7 Muḥammad Jawād al-Blāghī, *Ālā’ al-raḥmān fī tafsīr al-Qur’ān* (Beirut: Dār Iḥyā’ al-Turāth al-‘Arabī, 1936), vol. 1, p. 198.

8 Abī Ja‘far Muḥammad ibn Idrīs al-Ḥillī, *Al-Sarā’ir al-ḥāwī li-taḥrīr al-fatāwī* (Qum: Mu’assasat al-Nashr al-Islāmī, 1989), vol. 2, p. 607.

9 Al-Majlisī, *Bihār al-anwār*, vol. 81, p. 74.

8.3. Harassment (Syndrome Related Perspectives)

The scientific explanation of the potential danger and the Islamic ethics around sexual activity during menstruation are in sync. Respecting this moral code assures that a marriage will be happy and harmonious. The word “*adhā*” certainly does not mean impurity; the maximum is that impurity causes harassment (*adhā*), and because it is not specified in the verse whether *adhā* is for men or women, it can be said that *adhā* is for women. Since it is very unlikely that it is asked about menstruation, which is related to women (especially considering the status of revelation), the answer given is related to men.¹

Since menstruation is harassment (*adhā*) and a disease² it can be said that menstruation expresses a fact that is a kind of illness a woman suffers from during menstruation. Therefore, it is necessary to pay attention to the woman and her physical weakness during this period.

The Qur'an has also paid attention to this issue and asked that women should be loved and cared for during this period, not to be abandoned or mistreated. Therefore, it can be said that harassment is a state of illness that a woman suffers from, not impurity or blood as mentioned.³

As already said, many interpreters have interpreted the verse as forbidding marital intercourse during menstruation. On the other hand, some jurists have clarified the issue and considered the prohibition of marital relations in this period due to the hardships that menstruation has for women.⁴ During menstruation, nervous conditions occur for women that are difficult to treat, which is why marital relations are prohibited during this period. It is after the menstrual period that a woman's attractiveness and calmness return, and the things that harm her health disappear.⁵

In other words, marital relations in this period cause damage to women's health.⁶ This issue can indicate the physical and mental sensitivity of women during this period, which indicates the need to observe the woman's condition due to the disorders that occur. The specific concentration, infection, and burning of menstrual blood cause mood disorders and convulsions in women. Therefore, harassment can be a comprehensive term that describes the disturbing and annoying status of women during menstruation.⁷

1 Shahīd Murtazā Muṭahharī, *Majmū'ih Āthār* (Tehran: Ṣadrā, 2012), vol. 19, p. 579.

2 Siti Fatimah Salleh et al., “Intercourse during Menstruation,” *Islamic Ethics and Medical Views*, vol. 8, no. 10 (2018), pp. 212-217.

3 Ma'rifat, Muḥammad Hādī. *Al-Tamhīd fī 'ulūm al-Qur'ān* (Beirut: Dār al-Ta'āruf, 2011), vol. 6, p. 182.

4 Abū 'Alī al-Faḍl b. al-Ḥasan Al-Ṭabarsī, *Majma' al-bayān fī tafsīr al-Qur'ān* (Beirut: Mu'assasat al-A'lamī, 1994), vol. 2, p. 86.

5 Fahd b. 'Abd al-Raḥmā al-Rūmī, *Ittijāhāt al-tafsīr fī al-qarn al-rābi 'ashar* (Riyadh: Idārāt al-Buḥūth al-'Ilmiyah wal-Iftā', 1986), vol. 2, p. 619.

6 Muḥammad Taqī Mudarrisī, *Min Hudā al-Qur'ān* (Beirut: Dār al-Qāri', 2nd ed., 2008), vol. 1, p. 308.

7 Mahmood Taleghani, *A shining ray from Quran*, vol. 2 (1983), p. 132; and Sayyid 'Alī Akbar Qarshī, *Qāmūs Qur'ān* (Tehran: Dār al-Kutub al-Islāmiyah, 1992), vol. 1, p. 59.

According to some jurists, from the beginning of the verse,¹ which indicates that women are harassed, it is possible to understand the obligation to stay away, which means staying away from marital relations in this period. Sexual intercourse, in this case, in addition to being unpleasant, brings much harm that has been proven by new medicine.²

This concept of *adhā* is also mentioned in verse 196 of *Surah Al-Baqarah*, “and whoever among you is ill or has an ailment of the head [necessitating shaving], must offer a ransom of fasting or charity or sacrifice”³, which is related to Hajj. According to this verse, the meaning of “hurt in the head” is other than headache, but it is an allusion to being bothered by something like insects (such as lice). Custom also pays attention to the issue of menstruation and pays more attention to women and girls in this period than at other times, and treats women and girls as sick people during menstruation.⁴

Another reason that confirms the third meaning of *adhā* is the delay in the punishment of a menstruating woman. According to the narration, “Punishment will not be imposed on a menstruating woman until her menstruation is over.” The jurists consider the reason for this ruling to be that a menstruating woman is like a sick person.⁵ Some mystics consider menstruation a disease, so it is necessary to treat women kindly during this period.⁶

Article 1140 of the Civil Code of Iran is one of the cases that show the effect of menstruation on the execution of punishment. According to this article, the divorce of a woman during menstruation is not valid, which has been mentioned by the jurists above. Also, according to Article 10 of the Rules of Procedure, the judge has the authority to postpone the execution of criminal sentences after obtaining a forensic opinion until the obstacle is removed. In this article, menstruation is mentioned along with physical and mental diseases, as well as insanity.

Therefore, it can be said that “*adhā*” only means harassment of a woman during menstruation, not blood or impurity or anything else. Moreover, beyond the different and sometimes different opinions of jurists, Islam’s treatment of women during menstruation can itself indicate the illness and physical and mental disorders of women at that time and the need to observe their condition. In other words, Islam commands men to abstain and not to have marital relations during menstruation, which can cause harassment, as well as reducing acts of worship for women during menstruation,

1 Mūsawī al-Khumaynī, *Kitāb al-ṭahāra* (Tehran: Mu’assasat Tanzīm, 2013), vol. 1, p. 254.

2 Nāṣir Makārim al-Shīrāzī, *Al-Amthal fī tafsīr kitāb Allah al-munazzal* (Qum: Madrasat al-Imām ‘Alī, 2001), vol. 2, p. 130.

3 Saheeh International 1997, 2:196. This verse in Arabic is:

﴿فَمَنْ كَانَ مِنْكُمْ مَّرِيضًا أَوْ بِهِ أَذًى مِنْ رَأْسِهِ﴾ [البقرة: ١٦٩].

4 Muḥammad Riḍā al-Galpāyagānī, *Al-Durr al-manḍūd fī ahkām al-ḥudūd* (Qum: Dār al-Qur’ān al-Karīm, 1993), vol. 1, p. 381.

5 Ibid.

6 Al-Shīrāzī, *Anwār al-faqāha: kitāb al-nikāḥ* (Qum: Madrasat al-Imām ‘Alī, 2004), p. 341.

such as falling short of prayer and pardoning fasting during Ramadan and making up for it. It has emphasized her physical and mental disorder and has considered her in need of kindness.¹

9. Conclusion

According to what has been said, we can say that the changes and effects of menstruation can cause premenstrual syndrome, which can be considered a mental illness. It is also noteworthy that mental disorders affect the *mens rea* and cause the loss of penal capacity. Examining the laws related to insanity and mental disorder in Iranian law has the legal potential to consider this syndrome in mitigating punishment. Since, the word insanity and mental disorder are expressed in absolute terms in most laws, and on the other hand, since most of the laws of Iran are taken from jurisprudence, by referring to verse 222 of *Surah Al-Baqarah* and considering the existing interpretations of the word harassment in this verse, we can also observe the jurisprudential basis for the mitigating effect of the syndrome.

It is important not to abuse PMS as an excuse; some women suffer from its more severe form of the disorder. Therefore, PMS should be accepted as a real problem in such women. So, this issue emphasizes the necessity of keeping records of the symptoms that are complained of by women who have PMS. By doing so, women cannot escape punishment. In this case, the issue can provide a basis for a legal excuse or be considered as a request for a reduction in punishment.

1 Ghalehjoughi and Rad, "The Effect of Premenstrual Syndrome on Delinquency," pp. 20-30.

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