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# **BATTERED WOMEN SYNDROME - NEED FOR A LEGAL DEFENSE**

AUTHORED BY - SHIVIKA GOYAL

## **Introduction:**

The family is meant to be a safe haven, a loving, nurturing place guided by a moral code of compassion and selflessness that shields its members from the perils of an authoritarian state and from the anarchistic incursions of private third parties. But in some unfortunate situations, the family can cease to be a haven and become instead, a centre of oppression, raw will and authority, violence and brutality, where the powerful economically and sexually subordinate and exploit the powerless. Domestic Violence is not a phenomenon uncommon in India<sup>1</sup>. Women have been facing domestic violence or intimate partner violence since ages. Even in modern times their situation has not changed, women continue to suffer violence in their homes. It may be sexual abuse that she may have witnessed as a girl at the hands of some elder of her family or domestic/intimate partner violence at the hands of her husband. The area of this article is limited to domestic violence. Women who have been subjected to prolonged domestic violence may exhibit psychological and behaviour symptoms. The situation may worsen to such an extent where the subordinate partner experiences a state of helplessness, when she can't escape and at the same time it is not possible for her to live with her batterer, so she may kill the abusive partner after suffering at their hands. She does this when she finds herself in a do or die situation, to save her own life she may find killing the batterer a viable option. While the inadequacies of Protection of Women from Domestic Violence Act, 2005<sup>2</sup> are often discussed in Indian, battered women who retaliate are rarely or never mentioned<sup>3</sup>.

## **Battered Woman Syndrome:**

“**Battered woman syndrome**” (BWS) is a psychological theory propounded by Dr. Lenore Walker to aid in explaining why battered women choose to kill their batterer instead of simply

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<sup>1</sup> Shreya Bhandari & Jennifer C Hughes, Lived Experiences of Women Facing Domestic Violence in India (2017).

<sup>2</sup> Act no 43 of 2005

<sup>3</sup> Shalu Nigam, Battered Women Syndrome: Applying This Legal Doctrine in the Indian Context, (2016), <https://papers.ssrn.com/abstract=2819322> (last visited Feb 17, 2024).

leaving them<sup>4</sup>. She developed a theory studying the cycle of abuse known as the 'Walker Cycle Theory'. A battering relationship goes through three distinct phases, which are explained by the '**Walker Cycle Theory**'<sup>5</sup>. The first is the 'tension building phase', during which there are verbal fights between the man and the woman. This leads to an 'acute battering incident', i.e. the second phase, during which the batterer is overcome with irrational hatred and anger. These two phases are then followed by a 'loving contrition' phase during which the batterer repents his acts and profusely apologizes, promising to never do it again. This operates as a 'positive reinforcement to remain in the relationship'. However, this is a continuous cycle of violence, which soon leads to the 'tension building phase'. This cyclical violence leads to 'learned helplessness', a psychological state of mind introduced by psychologist Martin Seligman where battered women believe that they are in a helpless situation. According to the theory of learned helplessness, a woman who experiences constant abuse may become paralyzed and feel stuck in the relationship for all time.

When a woman is abused repeatedly in spite of her best efforts to stop it, she loses all hope of ever being able to flee because she believes that escape is not possible<sup>6</sup>. It gives her the impression that the batterer has unlimited power, limits her options for responding, and eventually the woman's spectrum of reactions to the battering becomes erratic as it escalates into violence. They stay with their abusers because they believe they are in a dejected state over which they have no control. According to Walker, battered women, having no control over their abusive situation, gradually become passive and believe that it is impossible to escape, even when escape is objectively a possibility. Thus, 'learned helplessness' coupled with socio-economic and cultural pressures, in India especially, causes a battered woman to stay in an abusive relationship,

### **Concept of Diminished Responsibility:**

Battered women sometimes use physical force to kill their batterers, this may not happen in every case but there have been cases in India as well as in foreign jurisdictions where women have killed their batterers. In the United Kingdom in **R v Duffy**<sup>7</sup> the development started with recognizing BWS within the category of provocation; labelling it as prolonged provocation. In

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<sup>4</sup> Lenore E. Walker, *The Battered Woman Syndrome* 45 (Harper, 1980)

<sup>5</sup> Explained by Lenore Walker in her book, *The battered Woman Syndrome*

<sup>6</sup> Zlatka Rakovec-Felser, *Domestic Violence and Abuse in Intimate Relationship from Public Health Perspective*, 2 *Health Psychol Res* 1821 (2014).

<sup>7</sup> (1949) 1 All ER 932, 935

this case, the defendant used a hatchet and a hammer to kill her husband, who had been abused her for a long time, while he was asleep. During the trial, Devlin J. used the following words, which the Court of Appeal believed might legitimately be interpreted as a classic instruction to a jury- "Provocation is some act, or series of acts, done by the dead man to the accused which would cause in any reasonable person, and actually causes in the accused, a sudden and temporary loss of self-control, rendering the accused so subject to passion as to make him or her for the moment not master of his mind."<sup>8</sup>

A few years later in the case of **R v Ahluwalia**<sup>9</sup>, a similar incident took place where a wife murdered the husband because of torture and suffering. The court recognized the concept of diminished responsibility and held that that rather than experiencing an instant loss of self-control, women who have been repeatedly exposed to violent treatment over time may respond to the last act or words with what he terms a "slow-burn" reaction. The delayed response in these situations does not, by itself, negate the subjective part of the provocation defense, so long as the alleged provocation induced a "sudden and temporary loss of self-control" at the time of the killing. So, the concept of diminished responsibility was applied in this case. Nonetheless, the likelihood of the prosecution claiming negative provocation increases with the length of the delay and the strength of the defendant's proof of deliberate actions. Therefore, if a defendant's mental condition significantly hampers their comprehension of their actions' nature or their capacity to exercise self-restraint, it could lessen their responsibility for the committed offense.

### **Indian scenario:**

These women may be charged with a criminal offense of murder<sup>10</sup>. When women kill their batterer, they frequently assert that they acted in self-defense rather than denying their involvement in the crime. In some cases, battered women may claim that they were insane at the time of the killing or they may take the defense of provocation. Evidence of BWS may be offered to substantiate the claims of self-defense, provocation and insanity. Consequently, there is no particular legal defense known as the "BWS defense"; rather, information regarding battering and its effects is presented to help the judge decide whether the defendant is guilty or innocent based on allegations of insanity or self-defense. It is difficult to fit the BWS in traditional defenses of

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<sup>8</sup> Findings of Justice Delin in R v Duffy

<sup>9</sup> (1992) 4 ALL ER 889

<sup>10</sup> Murder defined in Section 300 Indian Penal Code, 1860 and made punishable under section 302 of the code

self-defense, provocation and insanity. There is a high possibility that the case may not fit within the available defenses, when the woman was actually in an abusive relationship. The judgment of the court may vary in each case and justice may be denied in certain cases.

In the year 2013, in the **Manju Lakra v. State of Assam**<sup>11</sup> case, the Guwahati High Court dismissed murder charges against Manju Lakra, acknowledging that domestic violence sometimes forces battered women to kill their spouses. Instead, Manju Lakra was found guilty of culpable homicide<sup>12</sup> that did not qualify as murder. Manju Lakra was the victim of ongoing domestic abuse in this instance. One day, she became so tired of the abuse that she grabbed the piece of wood her husband was using to beat her and struck him. He passed away from his wounds. This ruling is historic because it represents the first instance in Indian history of a battered woman killing her partner using provocation as a defense<sup>13</sup>. But this might not be the finding in every case. Every time such an incident happens, the accused wife will have to fit her case in the available defenses<sup>14</sup> and if she is not able to do so, she can be given life imprisonment even when it is not her fault.

Let us examine if the current defense mechanism given under section 300 Indian Penal Code, 1860 is adequate for protecting the interested of a battered woman or not.

### **Defense of provocation:**

Prolonged provocation or a series of act that constitute provocation has been most commonly used as a defense by battered women. It is a defense that, in India, lowers the charge of murder to that of culpable homicide<sup>15</sup>. Feminist scholars have criticized the Penal Code for following a gendered approach that is in favor of men<sup>16</sup>. The claim is that the definitions of "imminent attack," "reasonable person," and "grave and sudden," which are related to the defenses of provocation and self-defense, were developed without taking into account the viewpoints and experiences of

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<sup>11</sup> Manju Lakra v. State of Assam 2013 SCC Online Gau 207

<sup>12</sup> Defined under section 299 of the Indian penal code and punishable under section 304

<sup>13</sup> For the first time court recognised that battered women syndrome can be taken as a defence in murder case

<sup>14</sup> There are 5 defences recognised in the Indian Penal Code under section 300

<sup>15</sup> Explanation 1 to section 300- "When culpable homicide is not murder: Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident."

<sup>16</sup> Keerthana Medarametla, *BATTERED WOMEN: THE GENDERED NOTION OF DEFENCES*

women.<sup>17</sup> They have in the past reduced the punishment for murder cases by recognizing the justifications of "sexual jealousy and injured vanity" and established exclusions for acts of violence committed by men<sup>18</sup>. Additionally, they have used "grave and sudden provocation" against males who kill in order to uphold patriarchal ideas of honor, such as adultery<sup>19</sup>. But its applicability to mistreated women who react differs dramatically. The use of severe and abrupt provocation ignores women's reactions, particularly when it comes to domestic abuse. The defense often leaves out battered women who take revenge after a cooling-off period because it does not take into account the BWS theory. It is not easy to fit a women's case in provocation but the contrary is true for men. This omission from the creation of laws raises concerns about the law's equality, legitimacy, and universality.

### **Defense of insanity:**

The test of insanity as laid down in M'Naghten case<sup>20</sup> is to demonstrate that the defendant has a serious mental disorder that prevents them from understanding the seriousness of the crime. The law distinguishes between "medical insanity" and "legal insanity," and only "legal insanity" is taken into account when determining insanity. Therefore, having a mental illness or having weak intellect and emotions as a result of medical or mental illnesses is insufficient justification to warrant defense<sup>21</sup>. The stringency of the M'Naghten criteria is out of sync with current psychiatric knowledge, as there may be situations in which the accused is aware of the "nature and quality of the act" but yet commits the act out of an "irresistible impulse" brought on or not by a mental illness. The Indian Supreme Court, however, limits insanity to the M'Naghten standards and rejects the "irresistible impulse" standard. It is a distortion of traumatized women who understand the nature of the crime and are forced to kill their traumatizers for their own protection to claim the defense of insanity or irresistible insanity. They think that because of the serious danger to their life, killing their partners is the only way to escape the violence. So, it is not possible for a battered women to claim the defense of Insanity.

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<sup>17</sup> Ved kumari, Gender Analysis of Indian Penal Code, in Engendering laws: essays in honour of Lokita Sarkar (Eastern Book Company 1999)

<sup>18</sup> Amruta v State of Maharashtra AIR 1983 SC 629

<sup>19</sup> Raghavan Achari v State of Kerela AIR 1993 SC 203; K.M. Nanavati v. State of Maharashtra AIR 1962 SC 605

<sup>20</sup> All ER Rep 229

<sup>21</sup> Bapu v State of Rajasthan (2007) 8 SCC 66

## **Act done in Self- defense:**

It is astonishing that, in spite of the fact that a battered woman is forced to kill her abusive partner out of self-preservation or necessity, no such woman has been able to successfully argue self-defense in an Indian court. In *Manju Lakra*<sup>22</sup>, self-defense is neither discussed nor debated.

The following four requirements must be met for a self-defense plea to be accepted<sup>23</sup>: i) The defendant must believe that they were in immediate risk of unlawful bodily injury; ii) they must use a reasonable level of force to avert the threatened harm. iii) The defendant cannot be the aggressor iv) There is no safe haven to withdraw to.

This defense is typically employed when a defendant feels that they are about to be threatened and reacts by using physical force to hurt the aggressor. Self-defense is not seen as practical since the reality of battered women killing their partners does not align with the conventional understanding of self-defense. For instance, an abused woman frequently murders her abuser when the violence has finished or when there doesn't seem to be a threat right away. Additionally, it is argued that killing her husband does not constitute the use of justifiable force, particularly after the attack has finished. Additionally, battered women are sometimes questioned about why they have not left such relationships or why did they not register a case against their husband.

## **Path ahead:**

It is ample clear that the current regime of legal defenses is unable to address the issue of Battered Women. She is hanging by a thread; she doesn't know if she'll be able to fit her case in the existing regime of legal defenses or not. So, it becomes necessary to create a particular defense that will take into account the situations of abused women. It would be extremely unjust to punish a woman for the State's inability to give her sufficient protection, even though there aren't many Indian women who kill because of abusive relationships. In this case, a brand-new comprehensive defense could be developed to handle the predicament of abused women who take the lives of their abusers. Such a defense would have to be justificatory in nature, reducing the liability of the assaulted lady. In addition, the language used in the provision should make it apparent that although it is primarily designed for women in violent situations, men can also take use of it. Maintaining this standard while providing a comprehensive defense is necessary to prevent

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<sup>22</sup> 2013 SCC Online Gau 207

<sup>23</sup> *Darshan Singh v State of Punjab* Criminal appeal 1057 of 2002

formal gender neutrality from erasing the reality of domestic abuse victims. Both men and women could be victims of domestic abuse, though largely in present times it is women. But law must be forward looking and cater to the needs that might arise in future. Battered syndrome should be incorporated as a defense in The Indian Penal Code providing protection to both the genders. Plus, there can be counselling sessions for the battered women or men in case if any to bring them out of the turmoil and help them start their life afresh.

### **Conclusion:**

The current defenses are inadequate when it comes to protecting women's rights. There is a need of reformulation in the current regime. The reformulation must focus on removing the male-oriented nature of defenses and taking into account the experiences of battered women who respond, as well as why they respond. It is completely irrational to assign blame of any kind to a woman who acts only to preserve her own life or the lives of her children in such a situation. But having such a defense does not imply that a woman has the right to kill. This is merely a preventive measure to ensure that abusive spouses are discouraged from realizing that women now have access to legal defense. Focusing on violence and protecting the rights of the battered women will contribute significantly to challenging the traditional stereotypes that delegitimize the experiences of women. This will help 'ungender' the Indian Penal Code and empower the voices of women who are systematically excluded. Also, a gender neutral defense in the Penal Provision will help cater to the needs to battered spouse, whether it is men or women. Providing them rehabilitation and counselling is equally important.

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