



BATTERED WOMAN SYNDROME AS A LEGAL DEFENCE IN CASES OF SPOUSAL HOMICIDE: AN INDIAN PERSPECTIVE

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This paper examines the definition of BWS, the critical appraisal of the existing defences under the Indian Penal Code, 1860, and the need to establish a new fair defence fit for battered women.

Keywords: Domestic Violence, Battered woman syndrome, Homicide, Defence, Indian Penal Code

ABSTRACT:

Since ages, women has been the victim of Domestic Violence and Cruelty by husband or his relatives and though with the amendments in the Laws of the same, it was the most reported crime against women in 2016. Nowadays, there are many discussions going on saying that Domestic Violence is not only a crime against women but even “man” are the victims of the same, and the people saying this may be true but it should be noted that the country has recorded more than two-fold rise in Violence against women in the first half of 2020 itself.

“Battered Woman Syndrome” (BWS) is a descriptive term that refers to a pattern of psychological and behavioral symptoms found in women living in abusive relationship. It is a psychological theory which explains that why the women who was compelled to kill the batterer, endured to live with their partners in the first place. In India, the only defence for battered women is self-defence, and sometimes that also doesn’t play as a good defence in the trial. Therefore, the Indian Judiciary needs to reconsider this point and Legislature should adapt a defence in Indian Penal Code for the battered women.

INTRODUCTION:

“Battered Spouse Syndrome” is a constellation of medical and psychological conditions of a person, as a result of repeated violence such as beatings, choking, sexual assault, verbal abuse, or a combination of different acts amounting to violence, at the hands of the spouse or partner.¹ Usually this is known as “Battered woman syndrome” (BWS), because most of the victims of this syndrome are women.

Battered woman syndrome is a criminal defence involving a pattern of psychological dependency among women caught in long-term relationships with abusive male partners. Over time, abuse produces an irrational mental state of "learned helplessness," limiting free choice and placing victims of abuse in a spiral of conflict that occasionally results in a violent and sometimes fatal response over which they have no rational control.²

This terminology is not that much used in Indian Judiciary as a defence of Spousal Homicide. While in other countries like

¹ Battered Spouse Syndrome Law and Legal Definition, Available on <https://definitions.uslegal.com/b/battered-spouse-syndrome/>, accessed on 6/7/2020

² Battered Woman Syndrome Law and Legal Definition <https://definitions.uslegal.com/b/battered-woman-syndrome/>, accessed on 6/7/2020



Australia, the United Kingdom, Canada, New Zealand and the United States have accepted the research showing that battered woman can use force to defend themselves and sometimes kill their abusers because of the abusive and sometimes life-threatening situation in which they find themselves, acting in the firm belief that there is no other way than to kill for self-preservation. The courts have recognized that this evidence may support a variety of defences to a charge of murder or to mitigate the sentence if convicted of lesser offenses.³

Psychotherapist Lenore Walker developed the concept of battered woman syndrome in the late 1970s. She wanted to describe the unique pattern of behavior and emotions that can develop when a person experiences abuse and as they try to find ways to survive the situation. Walker noted that the patterns of behavior that result from abuse often resemble those of post-traumatic stress disorder (PTSD). She described battered woman syndrome as a subtype of PTSD.⁴

DOMESTIC VIOLENCE:

Domestic violence refers to violent or abusive acts committed by one family or household member against another, such as child abuse or spousal abuse. Domestic violence can refer to physical harm, or behavior that is controlling, coercive, or threatening. It can occur in any kind of

intimate relationship -- married or unmarried, straight or gay, living together, or simply dating.⁵

It occurs within all age ranges, ethnic backgrounds, and economic levels. And while women are more often victimized, men also experience abuse—especially verbal and emotional. The bottom line is that abusive behavior is never acceptable, whether from a man, woman, teenager, or an older adult. One deserves to feel valued, respected, and safe. Domestic abuse often escalates from threats and verbal assault to violence. And while physical injury may pose the most obvious danger, the emotional and psychological consequences of domestic abuse are also severe. Emotionally abusive relationships can destroy your self-worth, lead to anxiety and depression, and make you feel helpless and alone.⁶

There are several types of Domestic Violence and those are:

1. Physical Violence
2. Sexual Violence
3. Economic Control
4. Psychological Assault
5. Emotional Abuse

Each of them are discussed below.⁷

- **Physical violence** involves the use of physical force against another. Examples include hitting, shoving, grabbing, biting, restraining, shaking, choking, burning, forcing drug/alcohol use, and assault with a

³ “Battered woman syndrome”, available on the Web, URL:

https://en.wikipedia.org/wiki/Battered_woman_syndrome, accessed on 6/7/2020

⁴Battered woman syndrome and intimate partner violence, Available on <https://www.medicalnewstoday.com/articles/320747#symptoms>, accessed on 6/7/2020

⁵Domestic Violence, Available on <https://criminal.findlaw.com/criminal-charges/domestic-violence.html>, accessed on 6/7/2020

⁶ <https://www.helpguide.org/articles/abuse/domestic-violence-and-abuse.html>, accessed on 7/7/2020

⁷ Forms of Domestic Violence, Available on http://www.stopvaw.org/forms_of_domestic_violence, accessed on 7/7/2020



weapon, etc. Physical violence may or may not result in an injury that requires medical attention.

- **Sexual violence** involves the violation of an individual's bodily integrity (sexual assault), including coercing sexual contact, rape, and prostitution, as well as any unwelcome sexual behavior (sexual harassment), and including treating someone in a sexually demeaning manner or any other conduct of a sexual nature, whether physical, verbal, or non-verbal. Sexual abuse also includes behavior which limits reproductive rights, such as preventing use of contraceptive methods and forcing abortion.
- **Economic abuse** involves making or attempting to make the victim financially dependent on the abuser. Examples of economic abuse include preventing or forbidding an intimate partner from working or gaining and education, controlling the financial resources, and withholding access to economic resources.
- **Psychological abuse** is often characterized as intimidation, threats of harm, and isolation. Examples include instilling fear in an intimate partner through threatening behavior, such as damaging property or abusing pets, constant supervision, or controlling what the victim does and who they talk to. Spiritual abuse may be included as a type of psychological abuse. It involves the misuse of spiritual or religious beliefs to manipulate or exert power and control over an intimate partner (i.e., using scripture to justify abuse or rearing the children in a faith or religious practice the partner has not agreed to).
- **Emotional abuse** involves undermining an individual's sense of self-worth. Examples of emotional abuse include constant criticism, name-calling, embarrassing, mocking, humiliating, and treating like a servant.

Indian Laws relating to Domestic Violence

✓ Section in Indian Penal Code, 1860:

498A. Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Explanation.—For the purpose of this section, "cruelty" means—

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

✓ The Protection of Women from Domestic Violence Act, 2005

The Protection of Women from Domestic Violence Act 2005 is an Act of the Parliament of India enacted to protect women from domestic violence. It was brought into force by the Indian government from 26 October 2006. The Act provides for the first time in Indian law a definition of "domestic violence", with this definition being broad and including not only physical violence, but also other forms of violence such as emotional/verbal, sexual, and economic abuse. It is a civil law meant



primarily for protection orders and not for meant to be enforced criminally.⁸

Battered woman syndrome (BWS) is a psychological condition and describes a pattern of behavior that develops in victims of domestic violence as a result of serious, long-term abuse. BWS is dangerous primarily because it can lead to what some scholars say is "learned helplessness" -- or psychological paralysis -- where the victim becomes so depressed, defeated, and passive that she believes she is incapable of leaving her abuser. This gripping fear feels absolutely real to the victim. Feeling weak, and possibly holding out hope that her abuser will stop hurting her, the victim remains in the abusive situation. This continues the cycle of domestic violence and strengthens the BWS grip. BWS has been recognized by many state courts and there are support systems available to domestic violence and BWS victims. Some states also take BWS into account when addressing violent outbursts by victims of domestic violence.⁹

In 2011, a total of 8,618 women were estimated to have been killed due to dowry issues. This is likely an underestimate of the true numbers because many murders of women are falsely labeled "suicides or accidents". A large number of DV-related

cases (for example fatal burns, poisonings, suicides, etc.) are under-reported due to stigma and sociocultural factors or are misclassified in police records.¹⁰

BATTERED WOMAN SYNDROME:

After Walker published her research, some empirical data emerged that cast doubt on her explanation of why women kill their batterers. More specifically, some research indicated that victims of abuse often contact other family members and seek the assistance of the legal system for help as the violence from their batterers escalates. This research also indicated that when battered women sought outside help, they were confronted with insufficient help sources, a legal system that did not address their issues, and societal indifference. The lack of practical options, combined with victims' lack of financial resources, made it likely that battered women would stay in abusive relationships. In contrast to this research demonstrating battered women's active help-seeking behavior, Walker's theory of BWS emphasized women as becoming passive and helpless in the face of repeated abuse.¹¹

There are three major symptom clusters that are measured to determine whether or not a

⁸Protection of Women from Domestic Violence Act, 2005
https://en.wikipedia.org/wiki/Protection_of_Women_from_Domestic_Violence_Act,_2005,
 accessed on 7/7/2020

⁹Battered Woman Syndrome Created by FindLaw's team of legal writers and editors, Available on <https://family.findlaw.com/domestic-violence/battered-women-s-syndrome.html>, accessed on 7/7/2020

¹⁰Bushra Sabri, Maria V. Sanchez & Jacquelyn C. Campbell (2014): Motives and Characteristics of

Domestic Violence Homicides and Suicides Among Women in India, Health Care for Women International, DOI: 10.1080/07399332.2014.971954, Available on <https://www.researchgate.net/deref/http%3A%2F%2Fdx.doi.org%2F10.1080%2F07399332.2014.971954>, accessed on 7/7/2020

¹¹Battered Woman Syndrome as a Legal Defence, Available on <http://criminal-justice.iresearchnet.com/crime/domestic-violence/battered-woman-syndrome-legal-defence/>, accessed on 7/7/2020



person who has been exposed to trauma has developed a PTSD. They are cognitive disturbances, high arousal symptoms, and high avoidance symptoms.¹²

There are four psychological stages of the Battered Woman Syndrome.¹³ The foremost is the “denial” stage where the woman declines to admit even to herself that she has been beaten or that there are "crisis" involved in her marriage. She may entitle each incident an "accident". She proffers excuses for her husband's violence and each time steadfastly believes it will never ensue again.¹⁴

The second is the “*guilt*” stage in which she now concedes that there is a dilemma, but deems herself accountable for it. She is of the conviction that she "deserves" to be beaten, because she has shortcomings in her character and is not living up to her husband's expectations.¹⁵

The third is the “*enlightenment*” stage where the woman no longer assumes responsibility, for her husband's abusive treatment, recognizing that no one "deserves" to be beaten. She is still dedicated to her marriage, though, and continues with her spouse, on tenterhooks that they can work out with the things.¹⁶

The fourth is the “responsibility” stage in which the woman accepts the fact that her husband will not, or cannot cease his brutal behavior, the battered woman resolute that she will no longer surrender to it and initiates life anew.¹⁷

As the abusive cycle continues, the victim starts to feel helpless. In many cases, especially where the victim's family is not supportive enough, she begins to blame herself for the abuse. Often times, the abuse may not physically harm the victim, in many cases the abuser uses emotional manipulation by attempting to hurt himself. This sort of abuse is usually even more successful in causing self-doubt and inflicting blame on the victim. This begins a toxic process known as “gas lighting” – a targeted approach to make the victim doubt their own sanity and inflict self-blame. This state of mind of the victim, clinically known as “learned helplessness” or “psychological paralysis”, is the cause of the entrapment in the relationship. Thus, BWS is recognized as a mental disorder, a form of Post-Traumatic Stress Disorder (PTSD) that is common in women who are victims of serious, long-term abuse of the kind described above.¹⁸

MARITICIDE:

¹²Battered Women Syndrome and Self-Defence by Lenore E. A. Walker Available on <https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=1476&context=ndjlepp>, accessed on 7/7/2020

¹³Battered Woman Syndrome: Its Repercussions and Implication on Women of the Present Era by Disha Khanna & Ankush Sachdeva, Available on https://www.researchgate.net/publication/282733088_Battered_Woman_Syndrome_Its_Repercussions_and_Implications_on_Women_of_the_Present_Era, accessed on 8/7/2020

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸Battered Woman Syndrome: The Legal Quagmire by Nisha Gupta, Available on <https://www.polemicsnpedantics.com/single-post/2018/09/14/Battered-Woman-Syndrome-The-Legal-Quagmire>, accessed on 7/7/2020



Mariticide (from Latin *maritus* "husband" + *-cide*, from *caedere* "to cut, to kill") literally means killing of one's husband or boyfriend. It can refer to the act itself or the person who carries it out. Used in current common law terminology as gender-neutral for either spouse or significant other of either sex. The killing of a wife is called uxoricide.¹⁹

Xhemali et al. (2015) deliberate that mariticide is the extreme form of family violence which means the killing of one's husband by the wife rather than a general term for killing a spouse.²⁰

According to Centers for Disease Control and Prevention, mariticide made up 30% of the total spouse murders in the United States. Data not including proxy-murders conducted on behalf of the wife.[1] FBI data from the mid-1970s to mid-1980s found that for every 100 husbands who killed their wives in the United States, about 75 women killed their husbands indicating a 3:4 ratio of mariticide to uxoricide.²¹

According to many authors, mariticide would therefore only be the final option the woman believes would end the abuse, especially after continuous attempts to seek help. These

observations originated the spread, in the United States, of battered woman self-defence, a legitimate legal defence identified in cases where a woman suffers violence at the hands of the victim, even in the absence of legal conditions necessary to constitute lawful self-defence.²²

DEFENCES AVAILABLE FOR BATTERED WOMEN:

The legal defences available in India are incapable of dealing with cases of BWS, thus making it critical to discuss the legal defences available to battered women who are compelled to kill their partners.²³

In India, Battered woman syndrome is not a legal defence in and out. It does not accommodate the defence under Indian Penal Code, 1860 the situations faced by a battered women.

But it constitutes partial or full defence in:

1. Self-defence
2. Grave and Sudden Provocation
3. Legal Insanity

¹⁹

https://en.wikipedia.org/wiki/Mariticide#English_common_law, accessed on 7/6/2020

²⁰ A Reason To Kill: Case Study On Mariticide by MARY GRACE C. LACANARIA & JUAN JOSE T. DAVID, Available on <https://search.proquest.com/openview/3cb9af64bec76d2b2e485a63f29a031f/1?pq-origsite=gscholar&cbl=2030615>, accessed on 8/6/2020

²¹

https://en.wikipedia.org/wiki/Mariticide#English_common_law, accessed on 8/6/2020

²²https://www.researchgate.net/publication/336226248_Mariticide_in_Milan_between_1990_and_2017_A_criminological_and_medico-legal_analysis, accessed on 8/6/2020

²³BATTERED WOMEN: THE GENDERED NOTION OF DEFENCES AVAILABLE by Keerthana Medarametla Available on <http://docs.manupatra.in/newslines/articles/Upload/F1D66902-8FAE-4580-BDB1-479D1768B695.pdf> accessed on 8/6/2020



❖ SELF-DEFENCE AS A DEFENCE FOR BATTERED WOMEN:

Even though the Indian Courts have not yet accommodated the cases of battered women within the realm of self-defence, many scholars, as has been discussed above, have mooted for expansion of the self-defence structure. In such a scenario, it will be pertinent to examine the possibility of extending the right of private defence to battered women who commit homicide as against the partial defence of provocation. Criminal law in India authorises a person who is under a reasonable apprehension that his life is in danger to inflict death upon the aggressor, provided the harm inflicted should not be more than what is actually necessary for the purpose of self-defence. This is based upon the basic norm of self-preservation as duly recognised by the criminal legislations of majority of the countries.²⁴

Domestic Violence Homicides and Suicides in India 3

“suicides or accidents” (United Nations Office on Drugs and Crime, 2011).

A large number of DV-related cases (for example, fatal burns, poisonings, suicides) are under-reported due to stigma and sociocultural factors or are misclassified in police records (Kavita, Girish, & Gururaj, 2011)

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REINFORCEMENT
[C] The narrow doctrine of self-defence and its application to the cases where a woman is battered, results in the acquittal of only those women, who have killed the husband in an act where the husband was actively engaged in inflicting an injury. The doctrine does interfere or try to protect those women, who kill so as to protect themselves, not from an imminent physical attack on them, but from an extremely serious psychological injury. The idea here is that these women, who actually do this, do so to protect themselves not from an attack that may eventually kill them, but from an injury that can strictly be defined in psychological terms. The women in essence, are unable to escape the vicious cycle of repeated torture inflicted on them. The threats may not be physically imminent, however, there is a threat of such a nature so as to cause a psychological paralysis within the accused battered woman.²⁵

²⁴ Deb, Aishwarya, Battered Woman Syndrome: Prospect of Situating It within Criminal Law in India (May 30, 2018), accessed on 8/6/2020.

²⁵The Right to Kill: The case of the Battered Women by Shreyas Gupta, Available on, <http://docs.manupatra.in/newslines/articles/Upload/2F47138C-F7DE-4EB2-88CD-16BED1221921.pdf>, accessed on 8/6/2020.



According to the traditional common law doctrine of self-defence, on which the right to private defence in India is based, for a plea of self-defence to be successful the following conditions need to be satisfied:

- a. The defendant has defended herself in a situation in which she reasonably believed that unlawful bodily harm was imminent;
- b. The amount of force used by her in order to protect herself was proportionate to the impeding danger or the intimidating force;
- c. It was a necessity and not a choice, to use force in order to prevent the threatened harm;
- d. The defendant reasonably believed that the aggressor's threatened use of force was imminent.²⁶

Thus, it is evident from the above pre-requisites that self-defence predominantly relies on the components of imminence, necessity and proportionality.²⁷

There are several case laws in which Indian Judiciary has given acquittal to those women, who had committed Homicide and opt for Self-defence in their trial and some of them are:

In *Champa Rani Mondal v. State of West Bengal*,²⁸ the accused woman had challenged her conviction for committing the murder of her brother-in law. According to the facts of the case, the brother in law had tried to rape her and for the purpose of the same dragged her to the bed by putting cloth in her mouth.

It was at that very moment when she inflicted two blows of katari upon him as a result of which he succumbed to death. The Court acquitted her as she had exercised her right of private defence.

In *Malliga v. State*²⁹, the deceased brother of the accused had physically assaulted and tried to rape her. The question before the Court was whether a helpless woman at an advanced stage of pregnancy under frequent and imminent threat of rape is entitled to a right of private defence. The Court held that accused having a reasonable belief or apprehension of the continuing danger to her body of being raped as well as harm to the child in her womb was entitled to exercise the right of private defence in terms of Section 100 and 102 of IPC. The Court also held that even though the initial burden of setting up a plea of self-defence lies on the accused, the burden immediately shifts to the prosecution to establish that the accused had exceeded the right of private defence.

❖ GRAVE AND SUDDEN
PROVOCATION AS A
DEFENCE FOR
BATTERED WOMEN

The offence committed amounts to culpable homicide not amounting to murder in India if the offender loses his or her power over self-control due to a grave and sudden provocation.³⁰

²⁶ By Deb, Aishwarya, Battered Woman Syndrome: Prospect of Situating It within Criminal Law in India (May 30, 2018), accessed on 9/6/2020

²⁷ *Ibid*

²⁸ *Champa Rani Mondal v. State of West Bengal*, (2000) 10 SCC 608.

²⁹ *Malliga v. State*, 1997 SCC OnLine Mad 787.

³⁰ BATTERED WOMEN: THE GENDERED NOTION OF DEFENCES AVAILABLE, by Keerthana Medarametla, Available on <http://docs.manupatra.in/newslines/articles/Upload/F1D66902-8FAE-4580-BDB1-479D1768B695.pdf>, accessed on 8/6/2020.



This is the defence usually pleaded by female offenders with a history of abuse, but it is not available if time lapses between provocation and the criminal act.

The traditional definition of provocation comes from *R. v. Duffy*, in which it was held that “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 [or her] mind.”³¹

In the case of *K.M. Nanavati v. State of Maharashtra*³², the Supreme Court laid down guidelines for what constitutes ‘grave and sudden’ provocation, which are as follows:

1. Whether a reasonable man from the same class of society would lose his self-control in a similarly placed situation;
2. Words and gestures may also, under certain circumstances, cause ‘grave and sudden’ provocation;
3. The mental state of the accused due to a previous act of the victim may be considered to determine whether the antecedent act provoked the accused to commit the offence;
4. The offence committed should be rooted back to an act of passion and not occur after a lapse of time.

More recent studies are consistent with Wolfgang's finding that wives who kill their husbands have been strongly provoked.

These studies confirm that wives often kill in self-defence and that they have frequently been abused. University of Florida researchers found that most of the women studied who had killed their husbands did so “only after being subjected to prolonged physical or verbal abuse.” These studies and others with similar findings demonstrate that wife abuse jeopardizes the lives of husbands as well as wives.³³

The Madras High Court in *Amutha v. State*³⁴ granted anticipatory bail to a woman, victim of domestic violence in the hands of her husband, who had pushed her daughters into the well and jumped herself too but unfortunately survived. The Hon’ble Court, while explaining the consequences of battering relationship with the concept of BWS, held that the continuous provocative conduct of the husband for years and the triggering action on the night of the incident, made her lose self-control and take a decision to kill herself and her daughters in order to put an end to the violence.

In an another case of Delhi High Court, *State v. Hari Prashad*³⁵ convicted the accused-husband for the suicide of his battered wife and held that the provocation by the husband became her compulsion to end the domestic relationship by taking her own life.

The defence of provocation is not an acceptable option for the battered women who kill her husband, as this defence is not justified. This defence solely reduces the charge of murder to a lighter offence, so that

³¹ *R. v. Duffy*, (1949) 1 All ER 932.

³² *K.M. Nanavati v. State of Maharashtra*, AIR 1962 SC 605; 1962 Supp (1) SCR 567.

³³ HUSBAND-WIFE HOMICIDE: AN ESSAY FROM A FAMILY LAW PERSPECTIVE by

Margaret Howard, Available on <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=3825&context=lcp>, accessed on 8/6/2020

³⁴ *Amutha v. State*, 2014 (2) MWN (Cr) 605.

³⁵ *State v. Hari Prashad*, (2016) 228 DLT 1(DB).



the punishment of the battered women would be reduced.

❖ LEGAL INSANITY AS A DEFENCE FOR BATTERED WOMEN

In some cases, battered women who kill their abusers will claim the defence of insanity. Battered women who claim an insanity defence allege that their mental capacity was impaired at the time of the criminal act, in contrast to a defence of self-defence, in which battered women claim that they acted in response to a reasonable perception of danger. This insanity defence is referred to legally as “defence of excuse” rather than a defence of justification. An excuse defence refers to situations in which the defendant doesn’t deny that she committed the crime, but rather states that she is not responsible for it, typically on grounds of lacking volition over her free will, as in the case of a claim of insanity. The defence of insanity requires that a defendant have a serious mental illness at the time of the criminal act.³⁶

Furthermore, in most states, the legal standard for insanity is a narrow one, requiring that the defendant’s mental condition impaired her mental capacity to such an extent that she did not understand the nature and consequences of what she was doing or did not understand that what she was doing was wrong. This defence is used much less frequently in cases of spousal homicide

than is the claim of self-defence, but when the condition of legal insanity is offered as a defence, testimony by experts can be offered to explain how BWS and its associated symptoms may have precluded the victim from knowing right from wrong or appreciating the consequences of her actions at the time of the criminal act.³⁷

The Indian Courts follow the M’Naghten Rules, formulated in the English *M’Naghten case*,³⁸ while deliberating upon cases where defendants plead insanity as a defence. The M’Naghten Rules, which are the continuing measure of insanity, incorporate a classical thought which is more than a century old. Although, attempts at modernization have led to some modification in the rules of criminal responsibility, the statute and significance of the M’Naghten Rules has impeded efforts at creative reconstruction.³⁹

The High Court of Karnataka has criticized the limitations of the defence of insanity in *Sunil Sandeep v. State of Karnataka*.⁴⁰ It held that the rigidity of the M’Naghten rules falls short of the modern knowledge of psychiatry and that there may be cases where the accused knows the ‘nature and quality of the act’ and yet commits the act due to an ‘irresistible impulse’ by reason of mental defect or deficiency. However, the Supreme Court of India does not recognize the test of ‘irresistible impulse’ and restricts insanity to M’Naghten rules. Further, while certain High Courts in India have acknowledged the

³⁶Battered Woman Syndrome as a Legal Defence, Available on <http://criminal-justice.iresearchnet.com/crime/domestic-violence/battered-woman-syndrome-legal-defence/>, accessed on 8/6/2020

³⁷ *Ibid.*

³⁸ *R v. M’Naghten*, [1843] UKHL J16.

³⁹ Deb, Aishwarya, Battered Woman Syndrome: Prospect of Situating It within Criminal Law in India (May 30, 2018).

⁴⁰ *Sunil Sandeep v. State of Karnataka*, 1993 SCC OnLine Kar 63; 1993 Cri LJ 2554.



principle of diminished responsibility as applicable in English Law in cases of mercy killing,⁴¹ or battered women killing their abusive partners,⁴² none have gone so far as to apply the principle of diminished responsibility explicitly in the Indian context.

In any case, the use of defence of insanity for battered women is highly vexed. It would indicate that battered women are not able to realize the actual nature of crime. The use of insanity as a defence is not at all viable because the battered women is very much capable of knowing the gravity of the crime she committed because she was forced to do so for her own protection.

USE BATTERED WOMAN SYNDROME AS A LEGAL DEFENCE:

Currently in India, as the law exists, the only defence that appears to be available to battered women who retaliate is self defence. Thus adapting the BWS as a legal defence for those badgered and battered would help them live their life.

Further, Indian jurisprudence on BWS has not progressed beyond the 'Nallathangal syndrome'. Thus there is a need to contemplate upon the progress made in other jurisdictions relating to BWS and accordingly instigate a comprehensive parley on battered women who counterattack and their interaction with the law in India.

COMPARATIVE STUDY:

⁴¹ *Siddheswari Bora v. State of Assam*, 1981 SCC OnLine Gau 39.

⁴² *Manju Lakra v. State of Assam*, 2013 SCC OnLine Gau 207: (2013) 4 GLT 333.

In the English case of *R v Charlton* [(2003) EWCA Crim 415], the victim and her daughter consistently received violent and sexual threats at the behest of the abuser. During their regular sexual activity when the abuser was cuffed, gagged and blindfolded, the victim killed him. It must be noted that there was no sudden provocation, apprehension of harm here; there certainly was preparation for the crime. Nevertheless, taking into account the threats of the abuser, the mental state of the victim and the concern for the safety for her daughter and herself, the Court mitigated her sentence from 5 years to 3.5 years. Among other jurisdictions, while Australia accepts evidence of abuse as part of defence, Canada has accepted set precedent for the use of battered women's syndrome as complete defence since 1990. New Zealand goes further to recognize abuse of men at the hands of women and abuse in same-sex relationships as well.⁴³

▪ UNITED STATES OF AMERICA:

One in four women in the United States has experienced domestic violence during her lifetime, according to The Centers for Disease Control and Prevention and The National Institute of Justice, report *Extent, Nature, and Consequences of Intimate Partner Violence* released in July 2000. Such violence can be fatal. Every day in the United States, more than three women and one man are murdered by their intimate partners on average. In 2000, 1,247 women and 440 men were killed by an intimate partner. Thirty percent of all murders of

⁴³Battered Woman Syndrome: The Legal Quagmire by Nisha Gupta, Available on <https://www.polemicsnpedantics.com/single-post/2018/09/14/Battered-Woman-Syndrome-The-Legal-Quagmire>, accessed on 9/9/2020.



women and 5% of all murders of men were intimate partner homicides. *See* Bureau of Justice Statistics Crime Data Brief, Intimate Partner Violence, 1993-2001, February 2003; Bureau of Justice Statistics, Intimate Partner Violence in the U.S. 1993-2004, 2006.⁴⁴

Battered Woman Syndrome, a theory developed in the 1970's that is now associated with Post Traumatic Stress Disorder (PTSD), is sometimes used in court cases as mitigation in homicide cases where a battered woman kills her abuser. Early on, the evidence was not admitted, but it is increasingly admissible despite questions about Battered Woman Syndrome's validity as a psychological disorder. It is currently admissible in seventy-six percent of states (39 states as of 2000).⁴⁵

▪ CANADA:

As a result of a 1990 Supreme Court of Canada decision, battered woman syndrome defence is now accepted as a legitimate extension of self-defence in Canadian courts.) This defence hinges on the expert testimony that a battered woman who is accused of murder or aggravated assault suffers from the psychological sequelae of abuse and that this psychological distress contributes to her apprehension of danger and ultimately her apprehension of death during a particular battering episode.⁴⁶

⁴⁴Battered Woman Syndrome Compiled by Michelle Strucke and Kate Hajjar Available on, https://courses2.cit.cornell.edu/sociallaw/student_projects/BatteredWomanSyndrome.htm#:~:text=One%20in%20four%20women%20in,Violence%20released%20in%20July%202000., accessed on 9/6/2020.

⁴⁵*Ibid*

⁴⁶ Regehr C, Glancy G. Battered woman syndrome defence in Canadian courts. Canadian Journal of psychiatry. Revue Canadienne de Psychiatrie. 1995

▪ INDIA:

The law in India needs to recognize and assimilate this psychological aspect of domestic violence which has been excluded and silence has been maintained around the same prior to this case. The recognition of 'Battered woman syndrome' also implies that the law will take into consideration not only battered women's physical but also psychological conditions into account while deciding the matter while protecting her human integrity and dignity thus in a way, to also extend the provisions of the Right to Life as provide under Article 21 of the Constitution. Besides, focusing on the psychological situation of victim there is also a need to look into social, economic, cultural and political circumstances in which violence takes place. Avoiding gender stereotypes and labeling a woman as 'mad or bad' is not the purpose of the shift in approach, the need is to consider the situation of the battered woman in a patriarchal society that needs to be reformed.⁴⁷

CONCLUSION:

The law in India needs to acknowledge and assimilate the psychological aspect of Domestic Violence as it has been excluded till now. If once this syndrome will be implied in our law, the battered women's

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10.1177/070674379504000304. accessed on 9/6/2020

⁴⁷ Battered Women Syndrome: Applying This Legal Doctrine In The Indian Context by Adv Dr Shalu Nigam. Available on <https://countercurrents.org/2016/08/battered-women-syndrome-applying-this-legal-doctrine-in-the-indian-context/>, accessed on 10/6/2020



condition would be a lot better. It would also protect her human integrity and dignity, as promised under Article 21 of the Constitution. Commencing such sensitive sympathetic principles and laws is like disentangling the laws.

The use of Battered Woman Syndrome and diminished responsibility as a defence to murder by battered women has been strongly criticized by certain feminist scholars. The gravity of the consequences of using this defence is evident in that the women who plead successfully to this defence could be designated 'mentally ill' and be detained in an institution or be put on probation. This is cruelly ironic because battered women "may" show no signs of post-traumatic stress disorder and live their life without the fear of violence.⁴⁸

In summary, battered women who kill are not different from those who do not kill. All of the differences have been found in the frequency and severity of violence, committed by the batterer. Over fifty percent of all women who are killed in the United States are murdered by previously violent husbands, usually when they attempt to terminate the relationship. It is important for legal and mental health professionals to understand the dynamics of violent relationships to avoid inadvertently escalating their already high lethality potential.⁴⁹

⁴⁸ BATTERED WOMEN: THE GENDERED NOTION OF DEFENCES AVAILABLE by Keerthana Medarametla Available on <http://docs.manupatra.in/newslines/articles/Upload/F1D66902-8FAE-4580-BDB1-479D1768B695.pdf>, accessed on 11/6/2020

⁴⁹Battered Women Syndrome and Self-Defence by Lenore E. A. Walker Available on <https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=1476&context=ndjlepp>, accessed on 11/6/2020