

**BATTERED WIFE AND HER “BLACK AND BLUE” LIFE: HOW SLOW BURN  
PROVOCATION CAN SUPPORT THE DEFENSE OF “BATTERED WOMEN  
SYNDROME”.**

CHANDRIKA VISHWAKARMA<sup>1</sup>

*“What kind of world is this where a woman has to lose her marbles to get justice and a man just has to lose his temper?”<sup>2</sup>*

**ABSTRACT**

Women in India don't have rights they have ethics despite of the constitutional validity of right to equality. The legal doctrine called as “the battered woman syndrome” to be called as a defense by various developed countries is a great way of showing how the citizens of their country matters more to their country's law rather than the “sanctity of marriage” or gaining supremacy of a particular gender. Battered Woman Syndrome is a mental disorder that develops in victims of domestic violence as a result of serious and long term abuse. It has been identified as a sub category of Post Traumatic Stress Disorder (PTSD). Wives with such disorder are tortured on regular basis, and with continuous battering develop a state of mind where she believes that the only way by which her husband can be stopped is by killing him or else he'll kill her. Hence she kills him. These women cannot be and should not be judged under ‘Sudden Provocation’ rather should be judged under ‘Slow Burn Provocation’. In Slow Burn Provocation the person gets anger and rage slowly against his batterer. In this the person slowly starts developing hatred against his/her abuser. The paper will explain as to a) why the battered women should be judged under slow burn provocation. b) Why Indian criminal system needs to develop an area for Slow burn provocation when it comes to cases where the battered woman kills her own husband. c) Difference between a ‘reasonable man’ and a ‘reasonable woman’. d) The patriarchal system and how it's protecting every kind of domestic violence and crime. e) Why

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<sup>1</sup> Student, BcomIIB 3<sup>rd</sup> Year from University of Petroleum and Energy Studies, Dehradun. 9756322740  
[chandrikavishwakarma72@gmail.com](mailto:chandrikavishwakarma72@gmail.com)

<sup>2</sup> Mundhra, Jag, dir. Provoked. Perf. Aishwarya Rai and Naveen Andrews. 2006. Private Moments Ltd. 2013. DVD.

she stays. f) The Baula Concept: How a student from a University in Zimbabwe explained The Slow Burn Provocation etc.

**KEYWORDS:** Battered Woman Syndrome, Patriarchal system, slow burn provocation.

## **1.INTRODUCTION**

When the law gives a female the right to cut the genitals of a man if she senses the fear of rape by him and the same female if married in future and is raped by her husband has no right given by the law to even speak about her husband's filth yes we are in India. The way the Indian society tries to draw a married woman's picture is very poor, the Indian law shows that once you are married in India you have to be submissive. First of all if you think that a woman's respect and pride is in her vagina that can be stolen and shredded by men then it shows how dumb the society is. Pride is being a woman despite of the fact whether she has been raped or not. Indians have a very lame phrase when a girl is raped "that her pride has been taken away". It's not her self-respect or pride that has been vandalized by the man it's her body that has been abused by the man and the ignorance of the word 'no' which is usually done by him and by the law too in some cases. Whether it's marital rape existence and thrives for getting validity for the same. As 'if the law supports marital rape the sanctity of marriage will die'. Or whether giving her the right to abort the fetus which is growing in her own body. When we are hurt we need a place to escape. A place where we humans escape when we are sad disheartened, abused, torn apart, alone or cold. This place is not a beautiful park or casino. This place is a safe and warm environment where a person goes when he or she is suffering from these problems. Home, the safest place on earth when we are dealing with such problems. We all just say I want to go home. But what if that safe escape zone of yours is the place where you were abused? Then what? What would be your mental state then? In the case of battered woman, she is abused in her own home by her own lover the one whom she trusted the most. When a person is suffering mentally then he/she needs a supportive and positive nature where they can recover and get a positive vibes. A positive mind is the main result of a positive environment if you don't have a positive environment then it's difficult to attain a positive mind and those some unfortunate people who are unable to get a positive environment result into killing their own abusers because they believe that there is no escape from their miserable lives. In India a battered wife does not have

a defense for this because there is no specific law dealing with that issue. Most of the cases are settled in home surrounding. Also unfortunately the Indian criminal system is based on Victorian ideology and gender stereotypes where from the Biblical times the society has a thought that women have to be beaten into submission and considered to be “property” by their men as women is born to be submissive to men. Unfortunately, many women have chosen to accept this “right of discipline” is due to the physical and economic strength of the men who abuse them. The marital violence as well as wife battery is directed by the husband against the wife. Normally eighty percent of the cases are not reported to the police or other authorities. Out of remaining twenty percent, ten percent or more cases are disposed of by the police without registering the case. Thus only ten percent of the cases of the domestic violence cases are reported to the police. Hundreds of women are battered or even tortured and killed in their homes, but they go on living in traumatic situations because they have no other place to go. By and large neighbors’ do not interfere, even if they here scream for help.

## **2.CHARACTERISTICS OF BATTERED WOMEN**

- 1) A battered woman commonly experiences feelings of low self-esteem. In fact, she often blames herself for the batterer's behavior.
- 2) It is also common for a battered woman to experience severe stress reactions such as anxiety, depression, fear, and general suspiciousness. She often believes that no one, including even herself, will be able to resolve her predicament.
- 3) This feeling of helplessness stems from, among other things, society's reluctance to involve itself in marital affairs and the batterer's constant reinforcement of the notions that he is the dominant figure in the relationship and that she is totally dependent upon him and him alone.
- 4) Psychologists have applied the social learning theory of "learned helplessness" as a rationale for behavioral patterns such as those common among battered women." As applied to wife beating, the theory of learned helplessness predicts that a woman who is repeatedly beaten by her male companion will eventually accept the battering behavior as unavoidable and thus will develop a feeling of helplessness.

- 5) Once this feeling of helplessness takes root, the battered woman frequently generalizes her inability to control the beatings into a feeling of helplessness with regard to all aspects of her relationship with the batterer.
- 6) The process of victimization experienced by a battered woman may be perpetuated to the point of psychological paralysis: even where options of escape or avoidance exist, the woman may be unable to act on or even perceive the existence of such options.

### **3.WHAT CANADA SAYS ABOUT PROVOCATION.**

In Canada the partial defense of provocation is to be found at Article 232 of the Criminal Code of 1985, which provides that:

- 1) Culpable homicide amounting to murder may be reduced to manslaughter if occasioned by sudden provocation.<sup>3</sup>
- 2) A wrongful act or insult amounts to provocation if it is sufficient to deprive an ordinary person of the power of self-control, and if such person to whom the act or insult is done reacts suddenly within the short moment of passion.<sup>4</sup>
- 3) Questions relating to the provocative act and whether the accused was deprived of the ability of self-control are questions of fact.<sup>5</sup>
- 4) A legal act is not a basis for provocation.<sup>6</sup>
- 5) An act by a third person on the accused that arises from the conduct of another person induced by the accused to incite the said third person to do the act on the accused, is not an excuse for provocation where the accused causes grievous bodily harm or death.<sup>7</sup>
- 6) Where an illegal arrest on the accused results in the death of a person, prior knowledge by the accused of the illegality of the arrest may be used to support a claim of provocation.<sup>8</sup>

Prior to the current provisions, the law was governed by the common law doctrine of provocation developed in the seventeenth century.<sup>9</sup> Under the current law, provocation is a partial defense,

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<sup>3</sup> Criminal Code of 1985 at art 232(1).

<sup>4</sup> Ibid 232(2).

<sup>5</sup> Ibid 232(3) (a)-(b).

<sup>6</sup> Ibid 232(3).

<sup>7</sup> Ibid 232(3).

<sup>8</sup> Ibid 232(4).

<sup>9</sup> M Da Silva 'Quantifying desert prior to the rightful condition: Towards a theoretical understanding of the provocation defence' (2013) 26 CAJLJ 49 at 51.

and a successful claim has the effect of attracting a conviction of the lesser charge of manslaughter as opposed to murder. Despite the fact that the code is fairly recent, at a glance, the provisions of the article appear remarkably similar to those of s 207-208 of the Kenyan Penal Code 81 of 1948. In both jurisdictions, the purpose of provocation is to reduce a conviction of murder to manslaughter.<sup>10</sup> Additionally, the structure of the provisions is similar<sup>11</sup> and the ingredients<sup>12</sup> and the exceptions<sup>13</sup> of the defense are more or less the same. However, in Canada unlike in Kenya, judicial intervention has attempted to place the law in line with modern judicial thinking.

#### **4.WHY SHE STAYS: THE BRAINWASHING PROCESS**

Battered women often remain in abusive relationships because brainwashing has led to acceptance of the situation and even an idealization of the abuser. The primary perpetrator of the brainwashing is the abused person's partner. Morgan, comparing the abuser's tactics to those of the political terrorist, referred to the process as "conjugal terrorism." Conjugal terrorists use or threaten to use violence to break down the resistance of their partners and control them. Tolman, in a survey of 407 men and 207 women in a domestic violence program, found dominance-isolation and emotional- verbal abuse elements in their relationships. In the "Chronic Battered Syndrome," Steinmetz described how brainwashing produces fear, isolation, guilt, and emotional dependency in victims, and Browne pointed out that abused women develop survival skills rather than escape strategies, similar to the situation with POWs.<sup>14</sup>

#### **5.THE MEDIA AND THE BWS – WHAT'S PORTRAYED AND IT IS PERCEIVED?**

The controversy surrounding the BWS has been recent fair game in our national media. The public's perceptions surrounding this Syndrome are vitally important, as prosecutors have the power to refuse to prosecute a battered woman in any given case. Should a prosecutor feel that the public would be best served by not prosecuting, or that the woman in question truly was

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<sup>10</sup> S 207 of Penal Code (n 162 above), art 232(1) of the Criminal Code (n 272 above).

<sup>11</sup> For example, the expression of the accused is gender-specific through the use of the gender-specific pronouns such as 'his', 'he' and 'him' to the exclusion of the other gender.

<sup>12</sup> For example, in both jurisdictions there is a requirement of suddenness at s 207 of Penal Code (n 162 above) and Art 232(1) of the Criminal Code (n 272 above).

<sup>13</sup> Art 232(3) of the Criminal Code (n 272 above) and s 208(3)-(4) of the Penal Code (n 162 above).

<sup>14</sup> Lesly Tamarin Mega, Jessica Lee Mega, Benjamin Tamarin Mega, and Beverly Moore Harris Brainwashing and Battering Fatigue Psychological Abuse in Domestic Violence NCMJ, Volume 61 Number 5(2000).

insane or acted in self-defense, the battered woman would go free? If the BWS enjoyed a separate and distinct level of public acceptance, as does traditional self-defense and, to a lesser extent, insanity, then more battered woman would be likely to evade a tortuous prosecution. Are society's goals truly served by forcing a battered woman, who has killed her lover, through a second prolonged agony, namely her own trial? If the media, our courts and prosecutors endeavored to educate the public and fully accept the BWS as its own separate homicidal defense, apart from traditional self-defense and insanity, fewer women would be unjustifiably and unnecessarily prosecuted and imprisoned.<sup>15</sup>

## **6.SLOW BURN PROVOCATION AND WHY THIS TERM SHOULD BE INTRODUCED IN OUR CRIMINAL JUSTICE LEGAL SYSTEM**

The unfortunate reality for battered women is that the homicide which they commit does not result from immediate apprehension of bodily harm or death. Thus, the traditional defense of self-preservation is not available to many of these women. Perhaps the greatest stumbling block to battered women is that the prosecution can rebut the insanity defense by entering evidence which proves legal sanity of the accused at the time of the killing.<sup>16</sup> The insanity defense in BWS cases is particularly troublesome, since experts generally wish to testify that the accused acted as a "reasonable battered woman" would have, not that the woman was mentally ill. Thus, the entire focus of the Syndrome is really inapplicable to the insanity defense and does not fit squarely within its borders.

### **6.1 THE 'BAULA' (SLOW ANGER) REACTION THEORY<sup>17</sup>**

Slow Anger and in some places called as Slow Burn Provocation was beautifully explained by Mr.Charles M. MBITA who developed the 'battered woman syndrome' (BWS) coined by Walker, (1984) to denote slow burn anger in an abused woman due to psychological and

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<sup>15</sup> David Winthrop Hanson, Battered Women: Society's Obligation to the Abused, 20 Akron L. Rev. 35,36,37 (1993-1994).

<sup>16</sup> People v. Wolff, 394 P.2d 959 (Cal. 1964).

<sup>17</sup> Charles M. MBITA, Women's Violent Crime Against Abusive Partners in Zambia: A Critique of the Defence of Provocation, A Dissertation Submitted to University of Zimbabwe, 1, 7 (2012).

behavioral symptoms into the 'baula' theory to denote the fact that an abused woman develops a slow anger reaction resulting in her killing an abusive partner at a time she is not necessarily provoked. He derived the 'baula' theory from the heating up (to the color of red hot) of a charcoal brazier which in his language means 'baula'. When charcoal is put on a brazier, it does not heat up immediately; it takes time for it to become burning, red hot. From the findings, that is how an abused woman reacts to the provocative acts of an abusive partner. Like the BWS, 'baula' (Slow anger reaction) refers to a situation where an abused woman, as a result of being subjected to prolonged physical and psychological abuse, develops cumulative anger, which explodes at a time she is not necessarily provoked by her abusive partner. Her response makes it difficult for her to invoke the defense of provocation, which under sections 205 and 206 of Zambia's Penal Code has to be committed in the heat of the moment same as is demanded in the Indian Penal Code. Courts do not take into consideration the 'baula' (slow anger) reaction in construing the defense of provocation in respect of abused women who have killed their abusive partners; instead, as in the case of Mwiimbe, the courts normally state: 'Why didn't she just leave him instead of killing him?' With reference to the 'baula' theory, Mr. Mbita explained that an abused woman does not normally react in the heat of the moment, but this does not mean that she is not in a state of being provoked as alluded to by a psychologist interviewed at the University of Zambia, who stated that: "Women kill abusive partners at a time they are not necessarily provoked due to triggers which are either internal or external. Suppression of feelings can result into someone reacting at a time he/she is not actually provoked." What this means is that an abused woman after being subjected to continuous abuse by her spouse develops a 'baula' reaction (slow anger reaction), and since she can no longer contain her suppressed feelings of anger against her abuser (husband), she reacts at a time when she is not necessarily provoked by him. As the killing of her abusive partner does not technically/legally fall within the ambit of 'in the heat of the moment', the abused woman usually fails to succeed in proving a defense of provocation as her actions do not meet the criteria required in terms of sections 205 and 206 of the Zambia's Penal Code.

## 6.2 CULTURAL THEORY<sup>18</sup>

On the basis of Mr. Mbita's experiential data, in the highly patriarchal Zambian society, he explained that wife beating is justified based on the argument that a loving man beats his wife and, therefore, that if a man does not beat his wife, then he does not love her under the patriarchal society. Therefore, a battered woman who is often beaten up by her abusive husband may not react in the heat of the moment as she is socialized to accept the fact that wife beating is normal in a marriage. Such a woman may react at a time when she is not necessarily provoked by her abusive partner due to a 'baula' reaction (slow anger reaction). Under these circumstances, she will usually fail to prove a defense of provocation in a court of law. This study relied on 'cultural theory' to explain why women are expected to be passive towards abusive partners. Violence perpetuated against women by men to a large extent stems from cultural practices.

## 6.3 THE 'REASONABLE MAN' TEST<sup>19</sup>

The 'reasonable man' test is an objective requirement taking into account the fact that section 206 (1) of the Penal Code<sup>20</sup> requires that the provocative act or insult must be such as might cause an 'ordinary person'<sup>21</sup> to lose his/ her self control and do as the accused person did. In elucidating the dilemmas faced by lawyers who attempt to educate judges about male battering and female provocation, the emphasis on the unique characteristics of battered women's experiences may penalize women's different experiences and women's departures from a stereotypical norm. This test provided a standard by which the act or insult of the victim and the response of the accused person might be judged. The 'ordinary person'<sup>22</sup> mentioned in section 206 (1) is none other than the 'reasonable man' who on occasions loses his/her temper and

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<sup>18</sup> Charles M. MBITA, Women's Violent Crime Against Abusive Partners in Zambia: A Critique of the Defence of Provocation, A Dissertation Submitted to University of Zimbabwe, 1, 7 (2012).

<sup>19</sup> *Id.*

<sup>20</sup> R v. Stewart (1995) 4 ALL ER 999 (CA).

<sup>21</sup> R v. Morhall (1995) 3 ALL ER 659 (HL).

behaves like a beast.<sup>23</sup> A reasonable man has some characteristics which courts may take into account in determining the reaction of a person to a provocative act or insult. But courts seem to insist that for a characteristic to be relevant for the purpose of the defense of provocation, it should 'affect the gravity of the provocation' of the accused person. Mr. Mbita explained that Going by the English case of the Director of Public Prosecutions v Camplin<sup>24</sup>, there is evidence that English courts recognize attributes like the age of the offender. Similarly, courts in Zambia should take into account the fact that women are socialized not to react to provocative acts done by their partners in determining the reasonableness of a provocative act (Kulusika, 2006).

#### **6.4 THE WOMEN'S LAW APPROACH<sup>25</sup>**

The study employed the 'Women's Law Approach' which is an inter-disciplinary methodology integrating the law based on women's lived experiences and realities observes that: 'the methodology of women's law is cross disciplinary and pluralist and calls for a rather free use of available material wherever it can be found.' The aim was to capture women's voices in relation to their lived realities. Mr. Mbita therefore examined the circumstances leading to the women's involvement in their homicides against abusive partners and their experience with the criminal justice system from the time they committed their crimes to their current status in prison. He wrote that he choose this approach as it provided a holistic analysis of the lived realities of the women who had killed their abusive partners. At both Lusaka central and Kabwe female maximum prisons<sup>26</sup>, by interviewing 11 female inmates, Mr. Mbita stated that he was able to understand their lived realities and circumstances which ultimately lead to their committing spousal homicide and to analyze whether the defense of provocation was applicable to them or not. One of the female inmates stated:

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<sup>23</sup> Charles M. MBITA, Women's Violent Crime Against Abusive Partners in Zambia: A Critique of the Defence of Provocation, A Dissertation Submitted to University of Zimbabwe, 1, 7 (2012).

<sup>24</sup> [1978] UKHL 2

<sup>25</sup> Charles M. MBITA, Women's Violent Crime Against Abusive Partners in Zambia: A Critique of the Defence of Provocation, A Dissertation Submitted to University of Zimbabwe, 1, 7 (2012).

<sup>26</sup> The biggest prisons in Zambia.

*“For well over ten years that I was married to my deceased husband, he always beat up me without reasonable cause. On the fateful day, he came back home drunk and asked me why I had refused to abort the baby I was carrying, as he was not interested in the pregnancy.*

*Thereafter he started to beat me up, and pulling me all over the kitchen with my long hair. Later, after 30 minutes when he was off guard, in order to teach him a lesson, I stabbed him to death. The High Court sentenced me to life imprisonment, as the court did not expect me as a woman to react to provocative acts of my deceased husband.”*

In sentencing her to life imprisonment, Mr, Mbita wrote that it is quite clear that the court did not take into account her past abuse at the hands of her abusive deceased husband, but invoked the case to ascertain whether she reacted ‘in the heat of the moment’ upon being provoked by her deceased husband. This position was also the case with other female inmates interviewed, who also did not react ‘in the heat of the moment’ at the time they killed their abusive partners, but as a result of the ‘baula’ reaction (slow anger reaction). Therefore, using the women’s law approach, Mr, Mbita explained that when courts deal with women who had killed their abusive partners they do not take into account their lived realities including the ‘baula’ reaction (slow burn anger reaction) under which they suffered. Rather than causing them to react against their abusers ‘in the heat of the moment’, the ‘baula’ reaction (slow burn anger reaction) built up in them over a period of time and causes them to kill their abusive partners some time after the final act of provocation<sup>27</sup>.

Mr. Mbita emphasized on a thought that ‘sudden provocation’ must include<sup>28</sup>:

- (a) Psychological or violent conduct by the victim towards the accused and, in the case of an intimate relationship, this must refer to cumulative provocation due to a prolonged abusive relationship resulting in the ‘baula’ (slow anger) reaction of the accused; and/or
- (b) Must also include things said or done over a period of time which amounted to an exceptional happening and caused the accused to have a justifiable sense of being seriously provoked.

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<sup>27</sup> Charles M. MBITA, Women’s Violent Crime Against Abusive Partners in Zambia: A Critique of the Defence of Provocation, A Dissertation Submitted to University of Zimbabwe, 1, 7 (2012).

<sup>28</sup> Charles M. MBITA, Women’s Violent Crime Against Abusive Partners in Zambia: A Critique of the Defence of Provocation, A Dissertation Submitted to University of Zimbabwe, 1, 7 (2012).

Now if we scan the position of a woman from Zambia and compare it with the position of a woman from India we can clearly see that both of these women stories are same. :

- a) Both of these countries follow the patriarchal structure where the women is expected and believed to be submissive to men.
- b) Both of these countries society believe that women are not made to be aggressive and do not response to threats made by their husbands. Rather they take it as a love from them. And in India there is a unique example to show this thought processing. Young unmarried couples in love have abusive relationship where the boyfriend hits his girlfriend and when asked why he hit her he says that he loves her and he has the full authority to that to her that's why he hits her. The excuse is that it's a way of showing his love to his beloved. How can someone hit a person whom he loves? Is the woman a child who needs to be taught a lesson for something that the man believes is wrong in her? She is a self independent person.
- c) Both of these countries law not in any way supports a battered woman who has killed her own batterer. This shows that deep within even the law believes that a man needs to tame a woman to prove that he loves her and in some cases to get authority over her.
- d) Both of these countries do not have any law relating to a battered woman who has killed her abusive husband. These countries do have laws relating to domestic violence but no law relating to women who kill their abusive husbands. This shows that even the law a supreme does not want accept the fact that women also get angry, they also feel bad and if hurt for too long can also beat a man unto his death.

The main purpose of quoting this research of Mr. Mbita was to explain that the Indian society is dealing with the same problem as the Zambia's society and how much important it is to introduce "Slow Burn Provocation" in the case of Battered Women who killed their batterers.

## **6.5 THE PATRIARCHAL STRUCTURE AND HOW IT'S PROTECTING EVERY KIND DOMESTIC ABUSE.**

The patriarchal structure of our Indian society always believes that the women are subordinate to men. And once a woman married and is a wife herself is pushed down even further. The society

doesn't care what the Vedas believed and said. The Vedas always explained wife as an 'Ardhangini' of her husband which means half body which says that husband and wife are equally important under the concept of marriage. But the society takes wives to be subordinate to husbands. And that can even be seen in our Indian law system and especially under the laws relating to marriage. Whether it's a Marital Rape or whether it's an abusive husband the wives are told by the society, the law and the police department to suffer in silence. They don't want to accept the fact that the wives also have rights whether it's having sex with her husband or leaving an abusive husband. Just because of this patriarchal structure the Indian women and in Zambia the Zambian women are expected to be submissive to men.

### **7. BATTERED WOMEN SYNDROME IN INDIA.**

India as governed by the Victorian ideology and gender stereotypes where from the Biblical times the society has a thought that women have to be beaten into submission and considered to be "property" by their men as women is born to be submissive to men. And also following the patriarchal structure where even the law teaches the woman to compromise and try again. Indian societies have varied cultures and religions. Marriage is common in every religion. In Indian culture, the girls enter into marital relationship. She is expected to shift her loyalties from parents and siblings to in her husband and in-laws. She has no independent social or economical status. Her social status is dependent on her husband's status in the family. Husband uses violence against wife to reinforce his dominant position. The use of continues methods by husbands against wives have societal approval. In a recent case of **Mrs. Savita Bhanot v. Lt. Col. V. D. Bhanot**<sup>29</sup>, apex court is already felt that it is historical reality that the women in our society have been subjected to discrimination, misbehavior and ill-treatment, not only outside but also inside their houses." Even working women, whether she is a construction worker who works side by side with her husband or a well-educated and a suitably employed professional is not always accorded the dignity and respect, which ought to be given to her on home front. In India the domestic violence is prevalent because husband has been vested with superior status in society. Indian Penal Code, 1860 has declared a number of acts of violence against human body to be an

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<sup>29</sup> CrI.M.C. No.3959/2009 & CrI.M.A.13476/2009

offence, for example sections 313(causing miscarriage without woman's consent), 314(death caused by act done with intent to cause miscarriage), 322(voluntarily causing grievous hurt), 340(wrongful confinement), 354(assault or criminal force to woman with intent to outrage her modesty), 375(rape) etc. These violent acts may be towards a person in public or domestically within the four walls of a house i.e. wife and children. Thus the law prohibits a husband/man in any social community to commit an offence with his women. These laws says that if a wife is beaten up by her husband then she can file a case under these section but the question is what if she killed her batterer? Then there is no Indian law to support these women they are straight away sent under the category of murderers and only if the act was done in sudden provocation then the woman can get a plea of self defense or manslaughter. Whether it's a slum in India or a metropolitan city women are abused their on regular basis. The men believe that if they have to gain power over their wives they should tame them. The position of wives in India is even worse as more than half of the female population in India is illiterate and is fully dependent on their husbands. Hence the biggest reason why these women stay and suffer these abuses is that she does not have a back up support. Even the court-appointed mediators often tell women that a little compromise is good. You should learn a little adjustment, they say, you should learn to ignore. How come a man is never given such advice?" Instead of asking the wife that why you stayed silent for so long the society should try to understand that what kind of a man beats his own wife for small reasons. India introduced a new law in 2005 to protect women from domestic violence, but it has failed to stem the tide of violence because it's a civil remedy and cases registered under it are not treated as criminal. Due to lack of safe shelters homes the battered women don't have any other choice but to stay with her abuser as she has nowhere else to take refuge. It is one of our country's biggest failing. And as there is lack of every important thing in India she chooses to stay in that pit of hell and decides to suffer that evil man. But till when? Even a spring if pressured too long hits back why wouldn't she hit back for her abuser. For every action there is an equal and opposite reaction hence the wife sees:

- 1) That her parents won't help her.
- 2) That the society will encourage the man to keep command over her and the same society will teach her to suffer in silence.

- 3) That the police will try to settle the matter and teach her to be a good wife instead of arresting her husband.
- 4) And that as she is economically weak she can't file a case for herself and if she does file a case somehow then the law has an all new story ready for her. That as to why she does not have protection from law and that our patriarchal society does not support much of woman's will as it will ruin the sanctity of the marriage.

Hence by seeing this face of the society she tries to protect herself and in some cases even her children by killing her batterer as this is the only way she feels she can stay alive. Now it does not relate to self defense as self defense is valid only if done in sudden provocation. It is related to that woman's battered mind, personality and thoughts. Do you ever think that what happens to the mind of people or kids who kill their own abusive family members? It's just that they develop a kind of hatred for that particular person slowly by his/her act. The family member abuses the killer every day for small reasons and beats them severely. This behavior of the abuser starts developing a hatred a rage an anger in the mind of the killer against his/her abuser which unfortunately is more than the love they once had for that particular member.

#### **8. SIMILARITIES BETWEEN THE PTSD AND BATTERED WOMAN SYNDROME PATIENT.**

More recently, the term "battered woman syndrome" has been used to refer to a particular subset of psychological reactions to violence: Post-Traumatic Stress Disorder ("PTSD"). A battered woman's psychological reactions to domestic violence may meet most or all of the diagnostic criteria for PTSD: she may have flashbacks or other intrusive imagery or memories that may be experienced as highly distressful; she may experience anger, an inability to concentrate, and sleep disturbances; she may engage in conscious and unconscious efforts to avoid anything that may remind her of the prior violence, and these efforts may include dissociation from her affective experience or emotional feelings related to the abuse. However, several problems arise in the legal context when battered woman syndrome is defined exclusively as PTSD.

- 1) PTSD may or may not be the aspect of the battered woman's psychological reactions to violence that is most relevant to the immediate legal context.

- 2) Second, defining battered woman syndrome as PTSD frames the issue before the finder of fact as solely a "clinical" phenomenon. Even though the traumatic stressor that leads to PTSD is one which is "usually experienced with intense fear, terror, and helplessness" by "almost anyone,"<sup>3</sup> and thus the psychological reaction to trauma is somewhat normalized, this may not always be clearly understood.
- 3) Third even when PTSD is part of the psychological aftermath of violence, its relevance to the key legal issues may be minimal. The cognitive, affective, behavioral, and physiological changes which result when one is exposed to trauma include reactions which are defined both as "clinical" phenomena, as well as those which are not. Unless it is the most relevant link to the legal question at hand, focusing the attention of the finder of fact primarily toward a clinical "syndrome" may be unnecessarily confusing, and even misleading.
- 4) Fourth a diagnosis of PTSD requires the battered woman to meet a specific set of criteria in each of three symptom categories.<sup>30</sup> This is usually accomplished through standardized clinical assessment procedures, typically consisting of structured interview and questionnaire methods. When a battered woman fails to meet these criteria, a diagnosis of PTSD is not warranted, and thus, a diagnosis of battered woman syndrome defined as PTSD cannot be supported. However, where the battered woman falls to meet full criteria for PTSD (and thus battered woman syndrome defined as PTSD), the expert would have to testify that a case of PTSD is not substantiated, even when the partial criteria met by the battered woman are directly relevant to key legal issues. Even when an expert witness is permitted to testify about partial criteria, testimony that the battered woman did not meet full criteria for battered woman syndrome may create a misleading impression for the fact finder.
- 5) Finally, PTSD, as currently defined in the DSM-III-R, describes only a subset of the possible range of reactions that result from exposure to traumatic experiences, and that range includes those reactions that are not defined as "clinical" phenomena as well as those that are so defined." Moreover, where the violence and abuse has been chronic and

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<sup>30</sup> Mary Ann Dulton, Understanding Women's Responses to Domestic Violence: Redefinition of Battered women Syndrome, 21 Hofstra L. Rev. 1193, 1194.(1992-1993).

continual, the victim's psychological reactions may be even more complex than those described by PTSD as it is currently defined."<sup>31</sup>

Men, compared to women, use severe acts of violence more often, engage in more violent behaviors within a single incident, and injure their partners more seriously.<sup>32</sup> When women are physically and sexually abused by their partners, their children are also at risk. The risk to the children ranges from the risk of psychological injury as the result of witnessing the violence between adults," to the risk of accidental physical injury as the result of being present during the violence between adults or as the result of intervening with the batterer in an attempt to stop the violence."

In recent years, domestic South Asian women in Canada especially from the immigrant Punjabi community have witnessed a rise in number of domestic violence victims. One woman in every four South-Asian Woman is abused physically, emotionally, financially and psychologically, says Baldev Mutta, Community development officer at the Peel Health Department, Toronto.

Dr Kanupriya in her essay titled *Feminism and the Emerging Woman in Anand's The Old Woman and the Cow*, observes:

Marriage is said to be deepest as well as most problematic of all human relations. Religiously, marriage is supposed to be the holy union of two souls and bodies. Amongst Hindus, the wife is known as 'Ardhangini' or 'sahadharmini', terms which emphasize her equality and 'oneness' with husband. Despite the idealized concept of marriage, woman in reality is essentially a subservient partner in marriage.<sup>33</sup>

Manu was the first man to lay-down the status of women in society. He averred that a mother is more reverend than a thousand fathers. But the place of the women in a society is of very lower status. According to Manu the place of women should be in level with the lowest of all groups in Aryan society. He believed that Women are required to believe from that they are inferior to men. Thus a woman has to face gender discrimination from birth to death. The permissive gender discrimination is deeply rooted in the notion of patriarchy. Violence against women is a

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<sup>31</sup> *Id.*

<sup>32</sup> See Angela Browne & Kirk R. Williams, Exploring the Effect of Resource Availability and the Likelihood of Female-Perpetrated Homicides, 23 LAW & SOC'Y REV. 75, 78(1989).

<sup>33</sup> Kanupriya. "Feminism and the Emerging Woman in Anand's *The Old Woman and the Cow*". *Feminism in Indian Writing in English*. Ed by Amar Nath Prasad & SK Paul, Sarup & Sons. New Delhi .2006.

manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men. Violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men. The code of Manu directed that wife should be considered of no more importance than a chattel of her husband. Whether a drunkard, leper, sadist or wife beater, husband is to be worshipped as a god. "If only Manu was a woman then the patriarchal society would have been a female dominating society rather than a male dominating and in present it would have been the men who would have been fighting for their mere existence". Wife-battery almost found in every society. In Europe, it is said that "a man had the right to beat his wife with a stick not thicker than his thumb." In our culture we found a quotation of Tulsidas such as "Drums, donkeys and women need to be beaten." It shows that problem of wife-battery is traditionally accepted in the society. Meaning of wife-battery is not given in Indian law. 'Battery' means higher degree of assault. According to Black's Law Dictionary, 'Battery' is: "an intentional and offensive touching of another without lawful jurisdiction". In other words, the meaning of battery is use of force against another, resulting in harmful or offensive contact. It also termed as criminal battery.

**9. WHY DON'T WE JUST LET THE BATTERED WOMAN PLEAD SELF-DEFENSE UNDER THE REVISED PENAL CODE? WHY PROVIDE FOR BWS AS A JUSTIFYING CIRCUMSTANCE.**

If you apply the self-defense rule in the battered woman's situation, she will not get acquitted. The rule on self-defense is male-gendered, and because of this gender bias, the woman with BWS may not get justice. The usual plea is for insanity or impaired mental capacity or crime committed at the heat of passion to reduce the penalty to manslaughter. This has been severely criticized because of the inherent sexual bias of thinking that a woman is only killing her husband because she is insane, and on top of that, this will only lead to her confinement in a mental institution. It is because these defenses do not capture or cover the nuances and reality of battered women, and because of this they might not be accorded justice. Furthermore, these defenses are also mostly likely going to be applied by judges using a male-gendered view, or they might judge a woman's behavior using a male standard.

In the United States, the law of provocation stands at a crossroads. No theory has ever convinced a majority of scholars<sup>34</sup> and recently there have been substantial cries that the law reflects a biased order.<sup>35</sup> The doctrine is in extraordinary disarray: Indeed, a case classified as manslaughter in one jurisdiction is just as easily defined as murder in another, even though the resulting penalties may differ substantially.<sup>36</sup> A woman who kills her batterer in a reform jurisdiction should, under current doctrine, easily reach the jury on a theory that she was provoked.<sup>37</sup> Here, the court's opening of the "time frame" encompasses not only responses to immediate attacks, those most likely to yield a classic self-defense claim, but also cases in which there is a greater time lag. In traditional jurisdictions, however, a provocation defense may be precluded if serious physical violence did not immediately precede the killing on the theory that there was no "sudden" passion or "mutual combat."<sup>38</sup>

Finally, it is important to note that in battered women's cases a heat of passion theory may be asserted against the defendant's wishes, to counter claims of perfect self-defense.<sup>39</sup> All crimes may be acts of impulse, but crimes of manslaughter are crimes of emotional extremity.<sup>40</sup> Although intuitively appealing, this approach leaves a good deal unanswered. It provides no way to measure the degree or severity of particular mental states. Perhaps more importantly, it does not explain the defense we have. *It is the law of no state that a loss of self-control, alone, is sufficient to sustain a manslaughter verdict.*

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<sup>34</sup> Glanville Williams, Provocation and the Reasonable Man, 1954 CRIM. L. REV. 740, 741-42 (raising fundamental questions about theory of provocation).

<sup>35</sup> Robert B. Mison, Comment, Homophobia in Manslaughter: The Homosexual Advance as Insufficient Provocation, 80 CAL. L. REV. 133, 135-36 (1992) (arguing that provocation defense is homophobic).

<sup>36</sup> The offense of "manslaughter" is specifically defined by the MPC as something "other than" and "lesser than" murder.

<sup>37</sup> Commonwealth v. Stonehouse, 555 A.2d 772, 780 (Pa. 1989) (reporting that counsel was held ineffective for failing to seek instruction on cumulative provocation in case where woman was harassed and stalked over period of time and then killed her ex-boyfriend). Pennsylvania is not an MPC state, but it has adopted a cumulative provocation rule similar to the one the MPC commentary suggests.

<sup>38</sup> People v. Garcia, 651 N.E.2d 100, 110 (Ill. 1995) (finding no "mutual combat" as matter of law in case where victim allegedly struck female defendant); People v. Falconer, 522 N.E.2d 903, 906-07 (Ill. App. Ct. 1988) (holding victim's slap insufficient to constitute "mutual combat" despite history of past violence by victim against female defendant).

<sup>39</sup> People v. Ambrose, 553 N.Y.S.2d 896, 896 (App. Div. 1990) (defendant claims she killed because of abuse and threats to her child; prosecution claims she killed because her partner was going to "leave her").

<sup>40</sup> People v. Shelton, 385 N.Y.S.2d 708, 717 (Sup. Ct. 1976) (emphasizing exposure to "extremely unusual and overwhelming stress" and "extreme" reaction to that stress, resulting in "intense feelings" that overpower self-control and reason).

## 10. CONCLUSION

The BWS should be granted its own chapter within the book of defenses to a charge of homicide. The Syndrome should be uniformly applied and standards should be defined in order to properly inform battered women when they may act, and when they may not. Difficulties exist in attempting to squeeze the Syndrome into any of the current standing and accepted defenses to murder, thus the Syndrome must be allowed its own legal pillar upon which to stand.<sup>41</sup>

The defense lawyer should prove the following to defend a battered women who has killed her batterer:

- 1) History of violence against the battered woman,
- 2) Her efforts to protect herself in the past and the obstacles to these efforts,
- 3) The social and psychological impact of violence on her, and
- 4) The context in which the violence occurred.

In India, women are not socialized to respond to abuse by violence. Spousal killing is not prevalent in India though wife beating is a common phenomenon. The cultural, social, religious and structural factors all train and equip women to tolerate the cruelty silently. Women therefore end up internalizing culturally defined gendered roles and consider themselves in inferior positions as compared to that of a man. Traits like submissiveness, passivity, avoidance of confrontation, self blame, compliance and obedience are imbibed and cultivated through different means as explained above. Indian women refusal to rage is seen as “culturally instilled response and a symptom of internalized subordination, might also be a historically adopted strategy of surviving an aggressive patriarchy” 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 Women 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

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<sup>41</sup> David Winthrop Hanson, Battered Women: Society’s Obligation to the Abused, 20 Akron L. Rev. 22, 23,24 (1993-1994).

Right to Life as provide under Article 21 of the Constitution. 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. The relative psychological construction of a battered woman under the premises of law is also significant not only to recognize the aspect of her diminished emotional existence but also to protect her from physical torture, cruel, inhuman and degrading treatment. Introducing such insightful humane principles and laws is like deconstructing or 'decolonizing the law' to reframe it while instilling positivity and making it more benevolent and people sensitive besides gender responsive. Accompanied by social and structural changes to do away with patriarchy may help to create violent free homes as reforming law alone will be not sufficient enough to transform the power relationship in a deeply embedded oppressive patriarchal social order.