

BATTERED WOMAN SYNDROME IN CRIMINAL JUSTICE SYSTEM OF INDIA: AN ANALYSIS

***GARIMA SIDAR AND **SHREYAS DHAMAPURKAR**

ABSTRACT

In the present paper, the researchers have made an effort to study “battered woman syndrome” and its applicability to the criminal justice system of India. The researchers have discussed the historical evolution of theories namely ‘Walker theory of violence’, ‘Learned Helplessness’, and various phases of psychological transition that a woman passes through, in a continuous violent relationship. In the paper, the researchers have undertaken a cross-sectional study across jurisdictions and have attempted to understand the role of an expert witness in such circumstances.

The researchers have analyzed the provision of the Indian Penal Code to check whether and how the said code satisfy the needs of battered women. There have been few cases decided by Indian Courts where the court acknowledged the experience of woman suffering long term intimate partner violence and its impact on the mental health of such woman. Cases like R v. Kiranjit Ahluwalia (1992) and Manju Lakra v. State of Assam (2013) have been studied to reflect upon the situation prevailing in India.

The researchers have found it essentially important to cover the critical side of the theory. The paper is concluded by observing the current functioning of the criminal system with the recommendation to address the grievance of battered women and further to accommodate social change taking place around the world.

Keywords: *Battered Woman Syndrome, Gender, Expert witness, Theory of Violence, Criminal justice system.*

* Garima Sidar, LL.M., National law Institute University, Bhopal, garimasidar975@gmail.com.

** Shreyas Dhamapurkar, LL.M., National law Institute University, Bhopal, advocate.shreyas24@gmail.com.

INTRODUCTION

The legal discourse on the concept of “Battered Woman Syndrome” started during 1970s. It started with a series of cases where women facing murder charges had a history of violence associated with their domestic life. In numerous cases, a pattern could be traced where women murdered their partner when the violence got escalated to the point when they had no other option to save their life other than to kill their abusers. It was a situation of “*kill-or-be-killed*.”

There was a common question posed before the battered woman when faced the criminal charges- why didn't she leave the abusive partner? The answer to the question can only be answered through the gender corrective lens, which will reflect upon the socio-economic position of the women in the society.

It was then American Clinical Psychologist “*Dr. Lenore E.A. Walker*” introduced the term “Battered Woman Syndrome” to explain the ill-effects of a battered relationship and the psychological transition phase that a woman goes through. The term BWS was coined after the introduction of sociological theory based upon the mental status of an aggrieved woman who had to withstand a prolonged period of violence in an abusive intimate relationship.¹ Battered woman can be defined as “a woman who is repeatedly subjected to any forceful physical or psychological behavior by a man to coerce her to do something he wants her to do without any concern for her rights.”²

It is analogous to the “*Cycle Theory of Violence*”. The definition of “battered woman” suggests that “*a woman who manifested certain symptoms and her behaviour characterizes a woman caught in the cycle of violence*”.³

The cases were decided under the rigid defence mechanism majorly revolving around the male-centric system. The traditional structure of the criminal justice system hardly considered the disadvantaged position of women and the need to modify the legal provisions focusing on gender-sensitive society. With the development of this new concept, defence plea was made reasoning the syndrome to divert from the charges of murder faced by abused woman.

BWS is taken cognizance in foreign jurisdictions including countries like the United Kingdom, United States, Canada and Australia. It is recognized as a defence plea considering the mental

¹ Lenore E Walker, *A Handbook for Woman in Abusive Relationships*, 9 (2) Psychology of Women Quarterly 291, 292 (1985), <http://journals.sagepub.com/doi/abs/10.1111/j.1471-6402.1985.tb00881.x>.

² Lenore E Walker, *A Handbook for Woman in Abusive Relationships*, 9 (2) Psychology of Women Quarterly 291, 292 (1985), <https://journals.sagepub.com/doi/abs/10.1111/j.1471-6402.1985.tb00881.x>.

³ Larry D. Beall, ‘*Battered Woman Syndrome Research with Citations*’ (*Trauma Awareness and Treatment Centre*), <http://www.traumaawareness.net/battered-woman-syndrome>.

stress of a battered woman charged with homicide for murdering her violent partner. With time, it got transformed into criminal laws in foreign countries to grant it the express recognition.

In India, it is still in its budding stage. The courts did not recognize the theory until very recently in a limited number of cases. Given the status of violence culminated against women in India, the non-recognition of BWS points the lack of gender sensitivity within the contours of the Indian legal system. The court did recognize the battered relationship and its impact upon woman murdering her partners in a violent relationship but lack of any concrete step in the direction through legislative reforms makes us understand the resistance our system has towards the social change around the gendered notion.

RESEARCH OBJECTIVES

- To trace the history of two known theories on 'Battered Woman Syndrome' namely; "*Walker's Theory of Violence*" and "*Learned Helplessness*".
- To study cross-jurisdictional cases on BWS which have incorporated it as a valid defence.
- To analyze various defences provided under the Indian Penal Code, 1860.
- To critically analyse Walker's theory of violence through intersectional lens.
- To propose a set of changes in the law that will help address the need of a battered woman.

RESEARCH QUESTIONS

- What is the historical background of "*Walker's theory of violence*" and "*Learned Helplessness*"?
- How BWS is pursued as a valid defence under different legal system?
- What are the various defences available under the Indian Penal Code, 1860?
- Whether Walker's theory of violence be critically analyzed through intersectional lens?
- What are the changes required in the present criminal justice system to incorporate the need of battered woman?

RESEARCH METHODOLOGY

For this research study, the researchers have planned to adopt the qualitative socio-legal approach for the purpose of the study. The researchers have employed analytical, socio-legal and case study method to complete the work. The materials published till October 2021 has been referred to, for the purpose of the research. The researchers have used the twenty first edition of Bluebook as a uniform citation method for footnotes.

“BATTERED WOMAN SYNDROME”: REVISITING THE SYNDROME THROUGH FEMINIST LENS

The discourse around “battered women syndrome” was started with the launch of Larger “Violence against Women’s Movement (VAWM)” in the United States of America.⁴ During 1960, it was advocated by leading feminist that “the personal is political”⁵ thereby it led the formation of framework and introduction of strategy which could view violence as a political issue and address the grievances of victim women. As a result, BWS was coined to discuss about the problems of women who are trapped in an abusive relationship. Earlier, domestic violence was perceived as a matter of private affairs but with the coinage of BWS, it developed a new approach to view domestic violence as a criminal offence. The theory is given by American Psychologist ‘Lenore E.A Walker’ as she has given proper recognition and definition to Battered woman. To trace the shifting trend as a result of the evolution of BWS, it is desirable to refer early feminist approach, which became the origin point of BWS.

Recognition of Violence within the Institution of Marriage

Till 1970, BWS was restricted to power dynamics between gendered relationships and was a matter of private space. “The ideology that viewed wives as subordinate to husbands, a criminal justice system that ignored the violence and blamed the woman and the cultural denial of power relations in the family were identified as roots of the violence by the BWS.”⁶ Earlier feminist theories or writings on intimate partner violence blamed patriarchy and power dynamics for existing gender imbalances. It can be understood through the writings of Del Martin, Rebecca and Russell Dobash. The authors have somehow reached the same conclusion but adopted a different approach while arriving at conclusions.

Del Martin in her work *Battered Wives*⁷, propagated staunch radical feminist view and blame the institution of marriage in addition to sexual inequality. She proposed that the husband commits

⁴ Diane Mitsch Bush, *Women’s Movements and State Policy Reform Aimed at Domestic Violence against Women: A Comparison of the Consequences of Movement Mobilization in the U.S. and India*, GENDER AND SOCIETY 587,608 (2013), <https://thesocliterati.wordpress.com/2013/03/20/womens-movements-and-state-policy-reform-aimed-at-domestic-violence-against-women-a-comparison-of-the-u-s-and-india/>.

⁵ Diane Mitsch Bush, *Women’s Movements and State Policy Reform Aimed at Domestic Violence against Women: A Comparison of the Consequences of Movement Mobilization in the U.S. and India*, Gender and Society 593 (2013), <https://thesocliterati.wordpress.com/2013/03/20/womens-movements-and-state-policy-reform-aimed-at-domestic-violence-against-women-a-comparison-of-the-u-s-and-india/>.

⁶ Del Martin, *Battered Wives* (1976).

⁷ Del Martin, *Battered Wives* (1976).

violence against the wife because of perceived sex role in society and gender role itself is a product of marriage.⁸

There is a major drawback in the feminist theories developed during this period as it restricts the discussion to violence against wives leaving other relationships that women may have with the aggressor.

THREE PHASES OF THE THEORY OF VIOLENCE

“Walker Cycle Theory of Violence”

This signifies “*tension-reduction theory*” that provides three phases of the battering cycle associated with it.

- Start of strained relationship followed by apprehension of danger.
- The short intervals violent phases.
- Loving-contrition⁹

The cycle starts with the dating period where the batterer shows interest in a woman’s life and often shows his loving attitude. Some women face the transition from the loving phase to stalking and surveillance. Usually, this phase is conceived as a loving phase and woman enjoys man’s attention. Break-up is never seen as an option at this phase and woman tends to form the opinion that once they marry the man, he will feel secure and it will put an end to his insecurities. Contrary to what she believes, “the first two phases of the cycle of violence begins with the third phase of loving behaviour in the relationship similar to the good parts of the courtship period.”

Phase II

There is upheaval in tension and it escalates to the point that it leaves a deep impression on the mind of a woman. She apprehends danger every now and then.

“Exhausted from the constant stress, she usually withdraws from the batterer, fearing she will inadvertently set off an explosion”. “He begins to move more oppressively toward her as he observes her withdrawal.... Tension between the two becomes unbearable”¹⁰

⁸ Del Martin, *Battered Wives* (1976) 42-43.

⁹ David L. Faigman, *The Battered Woman Syndrome and Self-Defence: A Legal and Empirical Dissent* 72 (3) VIRGINIA LAW REVIEW 619, 647, (1986), https://www.jstor.org/stable/pdf/1072974.pdf?refreqid=excelsior%3A0c1533d169c45be408a335b0ac0ddf75&ab_segments=&origin=&acceptTC=1.

¹⁰ Lenore E.A. Walker, *The Battered Woman Syndrome* (1979).

This phase becomes so inevitable that a woman can predict the time of recurrence of the next violent event. When this point reaches, there is no way to going back unless the abuser allows himself.

“Phase two is characterized by the uncontrollable discharge of the tensions that have built up during phase one.”¹¹

The battered woman suffers from physical aggression and frequent verbal abuse at the hand of the abuser. She does her best to defend herself. It is researched that most injuries occur during this particular phase. *“The acute battering phase is concluded when the batterer stops, usually bringing with its cessation a sharp physiological reduction in tension.”¹²*

Phase III

This phase signifies a remorse period when things get back to normal. A batterer makes battered woman believes that he will not become violent again.

Research predicts that phase three marks the absence of violence. But in certain exceptional cases, the level of tension remains all-time high and doesn't get normal. There is a high chance of lethal incident.

According to Walker, battered woman tends to believe that the prevailing situation is her ultimate fate. Despite the possibility of escaping the threat, she prefers to suffer the violence.¹³

BWS makes the environment unfavourable for the abused woman, she faces continuous vulnerability and helplessness. “Hopelessness” and “learned helplessness” may compel woman to take drastic step of killing her abuser and put an end to all her sufferings.¹⁴

JUDICIAL ACCEPTANCE OF BATTERED WOMAN SYNDROME UNDER DIFFERENT JURISDICTIONS: A COMPARATIVE STUDY

To successfully put a claim of self-defense, any defendant must prove some elements before the court of law. Firstly, in the case of battered woman, during the act “she must have believed that she was in imminent danger of unlawful bodily harm.”¹⁵ Secondly, it is required that she must use proportionate force to escape the danger she is threatened with.¹⁶ Thirdly, she cannot be the

¹¹ Lenore E.A. Walker, *The Battered Woman Syndrome* (1979) 59.

¹² *R. v. Lavallee*, (1990) 1 S.C.R. 852.

¹³ Lenore E.A. Walker, *The Battered Woman Syndrome* (1979).

¹⁴ Lenore E.A. Walker, *Battered Women Syndrome and Self-Defence*, 6 (2) NOTRE DAME JOURNAL OF LAW ETHICS & PUBLIC POLICY 321, (1992), <https://scholarship.law.nd.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1476&context=ndjlepp>.

¹⁵ W. La Fave & A. Scott, *Handbook on Criminal Law*, (1972).

¹⁶ W. La Fave & A. Scott, *Handbook on Criminal Law*, (1972).

one to initiate the violence and hold the position of the aggressor in the crime taken place. Fourthly, there must be a circumstance where she didn't have any other option to escape the injury inflicted upon her.

The admissibility of an expert witness in such matters largely formed its basis from the decision of *Frye v United States*.¹⁷ Frye's general acceptance test required the judge to assess whether scientific technicality can be brought into the realm of law.

BWS was introduced in the legal system when Dr Walker started giving her expert testimony on the psychological condition of a battered woman.¹⁸ It got more acceptance when the sociological theory was used as a basic framework to understand the rationale of the victim's action since juries were unable to comprehend the situation and the complexity involved.¹⁹ There was a need for admissibility of expert testimony because the battered woman version was solely relying on her experiences and neither it was considered legitimate as it did not qualify three parameters of 'self defence' as prescribed under the legal code— namely, "*the use of proportionate force, immediate provocation and imminent danger.*"²⁰ Earlier, the defences available were viewed on different context and people had limited understanding of it. Provocation was given an understanding of killing wife's paramour in the moment of rage or of self-defence, which gives "*the impression of a man fending off his attacker of roughly equal strength*".²¹ The traditional understanding never included the outburst of a battered woman at her husband after going through the cycle of violence. Women have always been seen as most patient of all and rage and violent outbursts as reasons of provocation was sole prerogative of men. Judicial officers recognized men's reaction to violent acts but did not extend same benefit to female counterparts.²² Women causing death of their batterer in fear and claiming defence on the same ground was not envisaged as a valid justification within the realm of law.²³ Therefore, reasonable man standards should be flexible enough to incorporate the need of a battered woman.

¹⁷ *Frye v. United States*, 293 F. 1013 (D.C. Cir. Dec. 3, 1923).

¹⁸ Donald Alexander Downs, More than victims: Battered Women, The Syndrome Society and the Law, 180-181 (1996).

¹⁹ John W. Roberts, *Between the Heat of Passion and Cold Blood: Battered Woman's Syndrome as an Excuse for Self-Defence in Non-Confrontational Homicides*, 27 LAW AND PSYCHOLOGY REVIEW 135, (2003), <https://www.law.ua.edu/lawpsychology/past-issues/volume-27/>.

²⁰ Elizabeth A. Sheehy, *Defending Battered Women on Trial: The Battered Woman Syndrome and Its Limitations* (1992).

²¹ Katelyn E. Keegan, *The True Man & the Battered Woman: Prospects for Gender-Neutral Narratives in Self-Defence Doctrines*, 65(1) HASTINGS LAW JOURNAL 259,283 (2013), https://repository.uchastings.edu/cgi/viewcontent.cgi?article=1151&context=hastings_law_journal.

²² Lenore E.A. Walker, *The Battered Woman Syndrome* (1979).

²³ Lenore E.A. Walker, *The Battered Woman Syndrome* 3, (1979).

United States of America

When BWS came to public discourse and people started acknowledging the existence of the syndrome, there was a reflection of it in criminal trials too. In the matter of *Buhrle v. State*,²⁴ the accused woman facing charges for the murder of her husband pleaded BWS along with the expert opinion. She relied upon the plea that she had been physically and mentally tortured for more than 18 years and hence she is liable to be given the benefit of the syndrome. The court did not find it sufficient and held it inadmissible. On the other hand, in the case of *State v. Koss*,²⁵ it was the very first time, the court allowed the expert testimony, that is, to “*assist the trier of fact to determine whether the defendant acted out of an honest belief that she was in imminent danger of death or great bodily harm and that the use of such force was her only means of escape.*”

Australia

Australian system has recognized Battered women defence and stretched its limit to including “sustained provocation as a valid defence” if proved. In the matter of *My Chhay*²⁶, In this case, the defendant was a Vietnamese national who killed her husband with a meat cleaver. It was revealed that she had suffered long years of physical and mental abuse at the hands of her husband.²⁷ The bench headed by Gleeson, C.J., ruled that “*the loss of self-control can occur in the case of a lengthy period of abuse even in the absence of a specific triggering incident*”.²⁸ The court also went on to consider cultural factors for determining the reasonability of the defendant’s actions.²⁹

From the cross-jurisdictional analysis of the cases, several conclusions may be drawn. In most of the cases, the lower court convicted the woman and later on, the higher court on the admittance of expert testimony reversed the conviction or reduced the term of sentence. The use of syndrome defence in all countries have been used to transform from traditional mechanism of defence to a more accommodative one. The tendency of courts to uphold the conviction of battered woman and the emerging domain of understanding the psychological pattern of battered person to make her case fit for the option of exception encourages India to make such favorable changes.

²⁴Buhrle v. State, 627 P.2d 1374 (Wyo. May. 29, 1981).

²⁵ State v. Koss, 49 Ohio St. 3d 213.

²⁶ R v. Chhay, 72 A Crim. R 1, (1994).

²⁷ R v. Chhay, 72 A Crim. R 2, (1994).

²⁸ R v. Chhay, 72 A Crim. R 13, (1994).

²⁹ R v. Chhay, 72 A Crim. R 13, (1994).

“BATTERED WOMAN SYNDROME” AND THE INDIAN LAW

Before analyzing the prospective placing of the syndrome into the criminal justice system of India, the social conditioning of women in Indian society must be taken into consideration. They are conditioned to become docile, submissive, timid and inherently patient creatures. In a deep-rooted patriarchal society, women are controlled by their male counterparts in every sphere of life. When judicial officer strives to access the reasonableness of a female defendant's action, this points seeps in and influence the conclusion.³⁰

Within the ambit of IPC, there are two sets of general exceptions provided under chapter IV. Firstly, those outlined u/s 76 to 106 that include justifications of necessity and private defence. General exceptions serve as an explanation for the crime and culminate in the perpetrator's absolute recantation. Secondly, the set of precise grounds outlined u/s 300 that defines murder. These grounds, which also include grave and abrupt aggravation, only reduce liability from murder to culpable homicide not equivalent to murder, which would be penalized under Section 304.³¹

There is no separate place allocated to BWS under the Indian penal code. The grounds provided u/s 300 are not prima facie applicable to a battered woman who has committed the offence. Right to private defence and exception covered under murder must be extended to women suffering from the ill-effects of battered syndrome.

Grave and Sudden Provocation

The first exception provided under section 300 of the code can only be availed when the battered woman kills the abusive partner in the moment of the “grave and sudden provocation”. The standard is similar to the “sudden and temporary loss of self-control” test as envisaged by Lord Devlin in Duffy case.³²

In most of the instances, objective test of a reasonable man is taken into consideration. How a reasonable man will react to a similar set of circumstances becomes the starting point of judicial enquiry. This approach fails to analyze the situation through a subjective lens. The experience that a woman goes through in an abusive relationship is not considered. The cooling-down period after the sudden provocation surge as discussed in “*K.M Nanavati v. the State of Maharashtra*”

³⁰ Elizabeth M. Schneider, *Equal Rights to Trial for Women: Sex Bias in the Law of Self-Defence*, 15 HARVARD CIVIL RIGHTS-LIBERTIES LAW REVIEW 630, (1980), <https://core.ac.uk/download/pdf/228598901.pdf>.

³¹ Elizabeth M. Schneider, *Equal Rights to Trial for Women: Sex Bias in the Law of Self-Defence*, 15 HARVARD CIVIL RIGHTS-LIBERTIES LAW REVIEW 545, (1980), <https://core.ac.uk/download/pdf/228598901.pdf>.

³² R v. Duffy, 1 All ER 932,935, (1949).

makes it clear that there should be no time lapse after the provocation moment.³³ It is assumed that the accused regained self-control but the same cannot be made applicable to the case of battered women. To address the concern of battered woman, it becomes important to apply BWS as an exception to the grave and sudden provocation. General rule says “the provocation must be sudden and immediate.”³⁴ There must be an immediate causal link between the death of the person and the moment of loss of control. If considerable time lapses between the provocation and the murder, the benefit of exception cannot be extended.³⁵

In the present context, the battered woman suffers from a continuous cycle of violence and the related psychological changes impede the woman to react normally like any other person. Therefore, the specific trigger point is not needed to counter with a surge of emotion in such cases. Therefore, it must be judged from different parlance. “*The provocation is thus sustained over a considerable period*”.³⁶ Sustained provocation must be made applicable in the defence of battered woman.

Right of Private Defence

The traumatized woman should be allowed to assert the common exemption of private defence under sections 96 to 106 of the IPC, for it to succeed, BWS theory must be applied. Whilst section 100 addresses scenarios where a woman’s right to self-defence can be extend to killing her batterer, but at present this poses a challenge to use this right of self-defence. This is owing to the limitation set forward by the paragraphs that follow it, which states that the privilege only lasts as long as legitimate apprehension exists. As previously said, usually women kill their batterers when they have no physical fear of death, serious damage, rape, or wrongful confinement, therefore one such defence would be impossible to succeed inspection in the court of law until it is supported by the adoption of BWS.

The Indian judiciary still follow the logic followed by common law in the area of self-defence. It says defensive rights can come to the rescue, only when there is no option left to seek help from public authorities.³⁷ In *Yogendra Morarji’s case*,³⁸ “*It was held that self-defence could be used only when there was no safe or reasonable mode of escape by a retreat for the person*

³³ K.M. Nanavati v. the State of Maharashtra, AIR 1962 SC 605.

³⁴ B.D. Khunte v. Union of India, 1 SCC 286, 296 (2015).

³⁵ B.D. Khunte v. Union of India, 1 SCC 286, 296 (2015).

³⁶ Katherine O’ Donovan, *Defence for Battered Women who Kill*, (18) (2) Journal of Law and Society, 219-240, 224 (1991), https://www.jstor.org/stable/1410138?refreqid=excelsior%3A174ae5cfd11fef930527498f4d1f29cc&ab_segmen ts=&origin=&acceptTC=1.

³⁷ Prabhati v. State of Punjab, SCD 293, 296 (1968).

³⁸ Yogendra Morarji v. State of Gujarat, 2 SCC 218, 226 (1980).

confronted with an impending peril to life or grave bodily harm except by inflicting death on the assailant". "The right of private defence extends only so long as the reasonable apprehension of danger persists".³⁹

As a result of the foregoing explanation, there seem to be two significant factors that must be met when abused women seek this exception: realistic fear of death or grave harm and symmetry of the response.

Legitimate fear of harm makes her anxious to believe that she may lose her rights away due to constant assault by the batterer. This need ignores the woman's constant state of psychological vulnerability. The traumatized lady keeps reliving the ordeal as though it were happening all over again. Additionally, recurrent and sporadic periods of peaceful activity in domestic life does not mean that the woman's world is no longer in danger. The defendant may assassinate her abusive partner predicated on a fear of violence based on previous, including such distinct moments of the day when the abuse escalates. However, this may not follow the standard need for urgent risk. Other than that, many women, at the face of upcoming physical and psychological harm, attack their batterers due to vulnerable state of mind. It may happen when the woman attacks the partner, it is a relatively calm period but the burden of emotional exhaustion is at an all-time high.⁴⁰ For instance, in *Ahluwalia's case*,⁴¹ the murder took place when the husband was asleep, or in *Sarah Thornton's case*,⁴² when he was tied up. It is crucial to understand that the feeling of danger in such circumstances is as imminent even though it fell short of the legal standard of "reasonable apprehension". A periodic view of violence suggests that the woman finds herself caught in a continuous state of fear despite the intermittent state of calming period.⁴³ This helps us to understand the amount of fear battered woman holds as long as the aggressor is around.⁴⁴

The second element of private defence lacks to assist battered women because it assesses the reasonableness of twitch reflexes on elements that do not disclose a battered woman's psychological condition. Several abused offenders physically and aggressively assault their companions with lethal weapons such as knives.⁴⁵

In one of the cases in India, the accused smashed the face of her partner by stone when he was asleep.⁴⁶ To assess the proportionality of the act, the mind frame of an offender must be taken into consideration. The battered woman experiences helplessness due to prolonged violence in

³⁹ Vishwanath v. State of Uttar Pradesh, SCR (1) 646, 649 (1960).

⁴⁰ Mallinga v. State by Inspector of Police, 2 Appeal (Cri.) No. 141 (1995).

⁴¹ R v. Ahluwalia 96 Cr App R 133,134 (1993).

⁴² Regina v. Thornton 1 WLR 1174 (1996).

⁴³ LENORE E.A WALKER, THE BATTERED WOMAN SYNDROME (4th ed., 2016).

⁴⁴ C.K., Gillespie, *Justifiable Homicide, Battered Women, Self-Defence and the Law*, U.S DEPARTMENT OF JUSTICE, <https://www.ojp.gov/ncjrs/virtual-library/abstracts/justifiable-homicide-battered-women-self-defense-and-law>.

⁴⁵ R v. Thornton, 96 Cr.A.R 112 (1993).

⁴⁶ Mallinga v. State by Inspector of Police, 2 Appeal (Cri.) No. 141 (1995).

intimate partner relationships. *“Most often, the woman will have endured brutal bouts of punching, kicking or choking”*.⁴⁷ She is compelled to use such weapons as it is found appealing to inflict harm upon the aggressor to protect oneself.

Necessity

The defence of necessity incorporated in section 81 of IPC, deals with the act which is committed without any criminal intent just to protect body and property of self and others. *“The essence of this defence is choosing the lesser harm in good faith when faced with an impending choice in a situation of endangerment”*.⁴⁸ It is expected in this form of defence that there must be a causal link between act and harm sought.⁴⁹

In *State v Allery*, the battered wife separated from her abusive partner. One evening, when she came back home, she saw her sitting on the couch. He threatened her that he will kill her and to protect herself she fired him with a loaded gun.⁵⁰ The Appeals Court did not accept the self-defence claim, since she had an option to run away from the home.⁵¹ The judicial reasoning has failed to take account of the fact that any woman suffering from prolonged terms of violence remains in a perpetual state of fear and outburst of such threats cannot be calculative in every case.

Walker’s study proposed that many women use violence against their husbands as the ultimate option to protect their lives.⁵² Long-held frustration comes out in the form of outbursts thus making battered woman act violent.⁵³

It has always been the central question of inquiry - Why doesn't a battered woman leave her partner? There are multiple reasons including two prominent of them. The batterer fear creates a hostile environment of woman as well as for children.⁵⁴ One is a constant state of fear and the second is the social conditioning of women. Most often women don't have an independent source of income or any other place to live. So, they compromise their safety and continue to live in a vulnerable environment.⁵⁵ *“The problem is compounded in the Indian context by the social*

⁴⁷ What is Domestic Violence? ABUSE COUNSELING & TREATMENT, INC.

⁴⁸ Diodati Sannibabu v. Varadarpureddi Sannibabu, AIR 1959 AP 102.

⁴⁹ United State v. Cassidy, 616 F.2d 101 (4th Cir.1979),102 (Nov. 1, 1979).

⁵⁰ State v. Allery, 101 Wn. 2d 591, 101 Wash. 2d 591, 682 P.2d 312 (Wash. May. 17, 1984).

⁵¹ State v. Allery, 101 Wn. 2d 591, 101 Wash. 2d 591, 682 P.2d 312 (Wash. May. 17, 1984).

⁵² Lenore E.A Walker, The Battered Woman Syndrome (4th ed, 2016).

⁵³ Nicky Ali Jackson, Encyclopedia of Domestic Violence, (2007).

⁵⁴ Lundy Bancroft & Jay G. Silverman, The Batterer As Parent: Addressing the Impact of Domestic Violence on Family Dynamics 95 (2nd Ed, 2001).

⁵⁵ Robert F. Bornstein, *The Complex relationship between Dependency and Domestic Violence*, 61 (6) American Psychologist, 595-606, 597, (2006), <https://pubmed.ncbi.nlm.nih.gov/16953747/>.

*expectation of marriage from a woman which leads to ineffective community responses when a woman seeks intervention”.*⁵⁶

In the Indian context, the old traditional beliefs maintain a stand once a married woman should always remain in the same marriage.

Courts in India

“There could be occurrences which do not cause the perpetrator to abruptly produce an explosion by his act or omission.” “Nevertheless, this could stay in his mind for a long time, tormenting him repeatedly and erupting at one moment, causing him to lose his consciousness, his thoughts to wander, the mind being out of his control/command, and the perpetrator to execute the crime. The perpetrator's prolonged provocation/frustration crossed a threshold, and the defendant commits the deceased's murder.”

The court accepting 'sustained provocation' reverts to the founding principle of taking into consideration the person's prior state of mind and then adjudging the case cumulatively.⁵⁷ “The court went beyond this principle, borrowed from the English common law, by extending the time interval between the acts and the provocation”.⁵⁸

However, India has not explicitly incorporated BWS and amended the existing laws like other countries. This is evident from the decision of Madras High Court in *Rajendran v. Tamil Nadu*⁵⁹ where, “the Court allowed the defence of sustained provocation because the trigger for a provocation and consequent loss of self-control cannot be viewed in isolation from other acts and circumstances that have led up to it”.⁶⁰

The Nallathangal's syndrome has understood as aligning concept to BWS in the Indian jurisdiction. The landmark judgment of *Manju Lakra v. the State of Assam*,⁶¹ a significant Indian case that addressed the said issue and cleared the road for its adoption in defence cases for battered women, was handed down in 2013. In this case, the accused wife violently struck her intoxicated and aggressive spouse one night while he was abusing her. The court looked at the BWS information and decided that the perpetrator's experience of abuse should be inquired when determining whether her behavior was incitement under 300.

⁵⁶ Shelly Makleff, Rebecca Wilkins, Hadassah Waschmann, Deepesh Gupta, Muthoni Wachira, Wilson Bunde, Usha Radhakrishnan, Beniamino Cislighi & Sarah E Baum, Exploring Stigma and social norms in women's abortion experiences and their expectation of care, sexual and reproductive health matters, 27:3, 50-64, (2019), <https://www.tandfonline.com/doi/full/10.1080/26410397.2019.1661753>.

⁵⁷ *Boya Munigadu v. The Queen*, ILR 3 MAD 33, 34 (1957).

⁵⁸ *Boya Munigadu v. The Queen*, ILR 3 MAD 33, 34 (1957).

⁵⁹ *Rajendran v. State of Tamil Nadu*, 2 MWN (Cri) 237, 246 (1997).

⁶⁰ *Rajendran v. State of Tamil Nadu*, 2 MWN (Cri) 237, 246 (1997).

⁶¹ *Manju Lakra v State of Assam*, 6 Gau LR 222, 251 (2013).

INTERSECTIONALITY IN BATTERED WOMEN SYNDROME: A CRITIQUE OF WALKER'S THEORY

In the article titled “*rethinking battered woman syndrome: a black feminist perspective*”⁶² the author presented the reality of stereotypical image of normal woman and the historical reality of black woman experiences. Mainstream society tends to build an image of black woman which is manifested as a deviance from the image of a docile white woman. As far as the theory of Lenore D. Walker is concerned, it emphasizes that to present a successful defence against the murder of batterer, the woman must not appear angry⁶³ as it deviates from the preconceived image of woman who is seen as submissive and weak. The theory recognizes the concerns of women who have killed their batterers out of fear but does not discuss about the plights of those who have killed them out of anger. The cultural stereotype followed in USA portrays all black women as angry and view their concerns in different parlance. There is fair chance that jury is likely to give black woman a harsher punishment when compared to a situation of a similarly placed white woman.⁶⁴ It clearly shows that walker's theory has fails to accommodate the needs of black women who are more vulnerable and less visible to the justice delivery system.

Similarly, an analogy can be drawn with respect to Indian society. It has been observed by the author that in cases registered under the protection of woman against domestic violence act⁶⁵ it is a common element where cases are similar to the cases of battered woman syndrome. While working on one such case, a house help who was victim of domestic violence and was undergoing immense physical and mental abuse at the hand of her husband who was a habitual drunk man, the agony of the woman piled up to such an extent where she made up her mind to either commit suicide or kill her batterer. The victim here belonged to dalit community which made her situation worst on several fronts as she was already suffering on the margins of gender, caste and class cumulatively. It was observed by the “National Human Rights Commission observed that the human rights abuses in India are entrenched in deep schisms based not only on

⁶² Allard & Sharon Angella, *Rethinking battered woman syndrome: a black feminist perspective*, 1 UCLA WOMAN'S LAW JOURNAL, (1991), <https://escholarship.org/content/qt62z1s13j/qt62z1s13j.pdf?t=mlqnc0>.

⁶³ Allard & Sharon Angella, *Rethinking battered woman syndrome: a black feminist perspective*, 1 UCLA WOMAN'S LAW JOURNAL, 197 (1991), <https://escholarship.org/content/qt62z1s13j/qt62z1s13j.pdf?t=mlqnc0>.

⁶⁴ Allard & Sharon Angella, *Rethinking battered woman syndrome: a black feminist perspective*, 1, UCLA WOMAN'S LAW JOURNAL, 204 (1991), <https://escholarship.org/content/qt62z1s13j/qt62z1s13j.pdf?t=mlqnc0>.

⁶⁵ The Protection of Woman against Domestic Violence Act, 2005, Act of Parliament, 43 of 2005 (India).

acute economic inequality, but also caste, creed, faith, gender, social standing and other characteristics”.⁶⁶

Since India is already at its nascent stage in developing battered woman syndrome theory it can very well take insight from the experience of black woman in United States of America. Intersectional approach could be adopted in policy making and legal framework can be designed accordingly.

CONCLUSION

The present research was an attempt to understand the theoretical basis of battered woman syndrome and its applicability to reduce the culpability of traumatized defendants who themselves have been a victim of violence for a very long period. It is concluded that reforms can be made in the present structure of penal codes when psychological state of battered women are decoded with the help of expert witness. The BWS theory, as stated through expert witness, is an interpretive approach to understand why women who have been exposed to long-term abuse kill their abusers. Few countries including United States of America, Australia and Canada have started recognizing the mental agony of battered woman and its repercussions that she suffers by becoming violent to violent partner. Still countries like India are running behind to extend legal remedies to battered woman more explicitly.

There is a critique of walker’s theory too. It lacks intersectionality in its approach and does not benefit the black women as they defer from the ‘ideal victim image’ of white woman and judges and jurors don’t adjudge their cases from same viewpoint which deprive them of remedies available to battered woman. It is suggested through the present study, if India strives for gender corrective changes, it must adopt intersectional approach while making changes in the present criminal justice system to equally benefit the woman from marginalized communities.

SUGGESTIONS

- It would be beneficial to examine the “UK Coroners and Justice Act, 2009,” which includes several components linked to a BWS exception, while drafting statutory modifications. Everything said or acted that formed extremely traumatic circumstances and caused the

⁶⁶ Utkarsh Jha, *The under enforcement an intersectionality of Domestic Violence laws in India*, INDIAN REVIEW OF ADVANCE LEGAL RESEARCH, (2021), <https://www.iralr.in/post/the-under-enforcement-and-intersectionality-of-domestic-violence-laws-in-india>.

defendant a legitimate perception of being seriously wronged are "qualifying triggers" under section 55 of this Act.⁶⁷

- The terminology of “grave and sudden provocation” as described under section 300 IPC, must amended to include “sustained provocation” within its scope. When the accused is proved to have suffer continuous physical and psychological abuse, the entire phase of violence should be viewed as period of provocation and case must be adjudged keeping such recurrent phase of violence in mind.
- The use of proportional force and immediate nature of the act as prescribed under section 100 IPC, must call for expert witness in addition to another legal requirement from the standpoint of battered woman. It is possible to call for such expert witness testimony under section 45 of the Evidence Act, 1872 as a matter of expert opinion on the matter of psychology.
- The court must examine such cases using intersectional lens. It is important to take into account other forms inequities other than gender, i.e., race, caste, creed, sexual and religious orientation. The intersections of such identities tend to make some women more vulnerable as compare to other.

⁶⁷ Joshua Rozenberg’s, <https://www.theguardian.com/law/2010/sep/30/murder-law-reform> (last visited March, 27, 2021).