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## **BATTERED WOMEN SYNDROME AS A LEGAL REMEDY**

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### **ABSTRACT**

Domestic violence is undoubtedly an act of absolute heinous resulting in lifelong scars and trauma. It not only affects the individual physically but also breaks their psychological condition, their self confidence and in most cases even their will to live. According to a survey conducted by WHO on behalf of the United Nations found that worldwide, 30 percent of women, or roughly 1 in 3, have experienced physical or sexual abuse by a romantic relationship, a non-romantic partner, or both. The majority of intimate relationship and sexual violence against women is committed by men. A battered women often feel so trapped, isolated, and helpless that killing their abuser seems the only reasonable way out, as they are under the impression that its either him or her. Battered women syndrome is a very slow and time building process consisting of both mental as well as physical torture and often the women suffering from it feels that the abuse is her own fault. BWS has deep roots related to human psychology. Prior when battered women syndrome was first introduced the battered women were often told by their attorney that they don't have a defence and should therefore plead guilty. Even if they were given a defence, it was of insanity. But battered women syndrome is not about insanity. The paper talks about why battered women syndrome should be recognised as a legitimate self defence in criminal justice system. It aims to bust the misconceptions regarding the syndrome with an understanding of self-defence and psychology of battered women.

## Introduction

### What is battered women syndrome?

The battered women syndrome condition was first understood and researched extensively by Lenore E Walker (an American psychologist) in the late 1970's who used Martin Seligman's learned helplessness theory to explain why women stay in relationship with abusive men. A woman who has experienced ongoing intimate partner violence from her male partner—whether it was psychological, physical, or sexual—shows a pattern of symptoms known as "battered woman syndrome."<sup>1</sup> Despite not being included in the DSM-5, it is categorised as battered person syndrome in the ICD-9. It can be identified as a subtype of post-traumatic stress disorder (PTSD).<sup>2</sup> The battered women are often beaten up and except violence at very turn, most often resulting in such a woman developing a psychological condition that such violence is her own fault.

### How does Battered women syndrome develop?

Dr. Lenore E Walker describe three stages of BWS-

1<sup>st</sup> stage – Tension building- the abuser engages in behaviour that creates relationship tension

2<sup>nd</sup> stage – Active battery – the relationship tension explodes when the abuser commits some form of abuse- (i) Physical

(ii) Psychological

(iii) Emotional or sexual

3<sup>rd</sup> stage – Reconciliation – The abuser tries to fix his wrongdoing and apologies for his bad behaviour (it is also referred as the 'Honeymoon stage')

Only little beating, such as slapping or verbal abuse, takes place during the tension-building stage. The woman frequently tries to soothe her attacker down during this stage. As the cycle continues, the abuse eventually gets worse. During the second phase, also referred to as the acute phase, the verbal and physical abuse intensify. The acute phase of violence is violent and frequently leads to more serious injuries, and occasionally even death.<sup>3</sup> The battered woman

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<sup>1</sup> *Social Work and Family Violence, Second Edition: Theories, Assessment, and Intervention*. Springer. pp. 184–186. ISBN 978-0826133496

<sup>2</sup> *The SAGE Encyclopedia of Abnormal and Clinical Psychology*. Sage Publications. ISBN 978-1506353227.

<sup>3</sup> Walker LE (2016). *The Battered Woman Syndrome, Fourth Edition*. Springer. ISBN 978-0826170996

has no control during this stage, is unable to reason with her batterer, and it is likely that all efforts to defuse the situation will fail. The honeymoon phase starts once the acute phase is over. The abuser may experience regret once the violent incident is over and start acting kindly and lovingly toward his spouse. He frequently asks for her pardon and swears never to touch her again. The battered woman frequently looks forward to this time of peace and happiness. She tries to persuade herself that this time, her beloved would change because she wants to think that he can. In this stage, the woman frequently tells herself that she married or fell in love with this nice man.<sup>4</sup>

The degree of assault increases through time. E.g.- one day the spouse pushes you, the next day he might slap/punch or kick you. It is basically grooming up to see how much you can take & simultaneously the abuser is isolating you from the outside world and as a result you might take more and more abuse because of your loneliness. Feeling of depression, low self-worth is all common during this stage. The victim generally forgives, and the cycle starts again with an increase in degree of abuse and most often continues till the stage the victim feels that the abuser is going to kill her.

There are typically four characteristics of the condition.

1. The victim thinks she was to blame for the violence.
2. The victim is unable to assign blame for the assault to anybody else.
3. The sufferer worries about his or the children's safety.
4. The victim holds the erroneous assumption that the abuser is omniscient and omnipresent.<sup>5</sup>

## **History of Battered women syndrome**

### **Domestic Violence from a Historical Perspective**

In the early days of colonialism, a husband was considered to be the head of his home and was in charge of all of his possessions, including his wife. A husband may be held liable for his wife's mischievous actions because a wife's legal rights were united with her husband's. The husband had the right to correct his wife because he was the head of the household, as long as

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<sup>4</sup> Rivers-Schutte, Noel, "History of the Battered Woman Syndrome- a fallen attempt to redefine the reasonable person standard in domestic violence cases."pg-10 (2013). Law School Student Scholarship. 618. [https://scholarship.shu.edu/student\\_scholarship/618](https://scholarship.shu.edu/student_scholarship/618)

<sup>5</sup> <https://www.justfamilies.org/battered-woman-syndrome-defense-on-the-rise-in-criminal-trials/>

he did not permanently harm her. In accordance with this established custom, the Mississippi Supreme Court resolved *Bradley v. State* in 1824. The Bradley court ruled that husbands have the right to discipline their wives in moderation. Fortunately for women, *Harris v. State*, which took place seventy years later, overturned Bradley. where the Supreme Court of Mississippi struck down its earlier holding of *Bradley v. State*.<sup>6</sup>

### **1960's Women's rights movement**

The women's rights movement, sometimes known as the women's liberation movement, was a broad social movement that sought greater personal freedom and equality for women in the 1960s and 1970s. It was predominantly based in the United States. It was contemporaneous with and is seen as a component of the "second wave" of feminism. The women's rights movement's second wave of feminism addressed every aspect of women's experience, including politics, work, the family, and sexuality, in contrast to the first-wave feminism of the 19th and early 20th centuries, which concentrated on women's legal rights, particularly the right to vote (see women's suffrage).<sup>7</sup>

The 1960s women's rights movement brought domestic abuse and the unequal treatment of husbands and wives to the forefront. The under-enforcement of offences involving interpersonal abuse is the subject of feminist and activist movements. The abused women's movement grew as a result of this emphasis on domestic inequity. Early supporters of battered women understood the role the law would play in defending them from violence. The failure of police to shield battered women from attack was one of the first problems brought up by this movement<sup>8</sup>. Everywhere in America, entire police agencies were ignoring cases of abusive women and frequently declining to take action. In the early 1970s, class action lawsuits were brought against the police forces of Oakland, California, and New York City. In 1974, St. Paul, Minnesota, saw the opening of the nation's first refuge for battered women.<sup>9</sup>

### **Judicial Responses to the Women's Movement**

Courts have permitted expert witnesses to testify in criminal cases involving battered women since the 1970s. During this time, the testimony of the experts tended to focus on the experience

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<sup>6</sup> *Harris v. State*, 71 Miss. 462 (Miss. 1893)

<sup>7</sup> Burkett, Elinor. "women's rights movement". Encyclopedia Britannica, 6 Nov. 2020, <https://www.britannica.com/event/womens-movement>. Accessed 1 July 2022.

<sup>8</sup> *The Criminal Law of Misdemeanor Domestic Violence, 1970-1990* (1992)

<sup>9</sup> <http://www1.umn.edu/humanrts/svaw/domestic/link/policereform.htm>

of the battered woman, how the abuse harmed her, and how repeated abuse affected women. The general population frequently has preconceptions about domestic abuse victims and is unable to comprehend why some people decide to stay in abusive relationships. The use of an expert witness can help the factfinder dispel any misunderstandings and inform the jury of the destructive and long-lasting impact that beating has on a person. The Supreme Court of Washington declared in 1977 that a woman is entitled to request that the jury assess her acts in a self-defence case from her perspective.<sup>10</sup> This choice gave the victim of domestic abuse the chance to put the jury in her position and let them understand what it was like for her to be abused.

### **Lenore E Walker**

Lenore E. Walker, a psychologist, was the first to recognise the illness known as battered women syndrome. She did this by utilising Martin Seligman's learned helplessness theory to explain why women continue to stay with violent men. Lenore Walker, a psychologist, coined the phrase "battered woman syndrome" (BWS) for the first time in the 1970s.<sup>11</sup> The psychological reactions of a woman who has experienced repeated violence in an intimate relationship are described by the BWS subspecies of post-traumatic stress disorder. The body of clinical and scientific research that served as the foundation for expert testimony in domestic violence cases is summarised in WS. In a short period of time, advocates and attorneys for battered women devised a trial strategy that involved using expert witness to inform the trier of fact about the violence and its consequences.<sup>12</sup> In a study of 1600 cases of domestic violence, Dr. Walker discovered that there was a cycle of violence that repeated in two-thirds of the cases.

### **The case of Francine Hughes (The burning bed)**

James (Mickey) Hughes, Francine Hughes's husband, regularly beat her for thirteen years. He would become enraged at anything as minor as the way a word was pronounced, pinning her down in a chair and beating her. After their divorce in 1971, he returned to live with them later that year. Her son, James Hughes, recalls the incident in "The Burning Bed," a recent short documentary by Retro Report. "She did try to get away," he says. In 1977, Mickey gave Hughes

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<sup>10</sup>State v. Wanrow 88 Wash. 2d 221, 559 P. 2d 548 (1977)

<sup>11</sup> Lenore Walker (1979). *The Battered Woman*. New York, NY: Harper & Row

<sup>12</sup> Rivers-Schutte, Noel, "History of the Battered Woman Syndrome- a fallen attempt to redefine the reasonable person standard in domestic violence cases." (2013). *Law School Student Scholarship*. 618. [https://scholarship.shu.edu/student\\_scholarship/618](https://scholarship.shu.edu/student_scholarship/618)

a particularly humiliating beating one evening. Hughes described this behaviour in a televised appearance years later. "Smashing food in the kitchen, dumping out the garbage, putting it into my hair, striking me," he said. "I vowed never to go back, but I soon realised there would be nothing there for me to go back to. I made the decision to burn everything at that point. That night, after Mickey passed out from drinking, Hughes doused his bed in gasoline, set it ablaze, loaded her four kids into her car, and left as the home caught fire. After that, Hughes was accused of killing her ex-husband. She was declared not guilty of Hughes' murder due to insanity by a jury consisting of 10 women and 2 men. The case would be a turning point in the expanding anti-domestic violence movement. The TV movie of the same name was also produced, and it served as inspiration for the best-selling book "The Burning Bed.". This is a significant BWS case since Francine Hughes suffered physical violence from her husband James "Mickey" Hughes for more than 12 years. This case fits all the criteria for BWS because the physical abuse began with a small push and increased over time, the husband was hurt in a car accident and apologised, Francine accepted the apology and forgave him, and soon the cycle began again. It eventually reached a point where Francine feared for her life and the lives of her children, thinking that it was either me or him.<sup>13</sup>

### **The case of Angelina Napolitano**

On April 16, 1911, Sault Ste. Marie resident Angelina Napolitano killed her husband Pietro with an axe while he slept, establishing what is widely regarded as the first battered woman syndrome defence in Canada. According to the Dictionary of Canadian Biography Online, Napolitano's court-appointed attorney claimed during her trial that his client had endured continuous abuse from her husband and that he had stabbed her six months earlier. However, the judge judged the testimony to be inadmissible, and Napolitano was convicted. The judge sentenced her to death by hanging notwithstanding the jury's recommendation for mercy. Napolitano rose to fame at the time, and many people argued that her sentence should be commuted. Her sentence was changed to life in prison by the federal cabinet, and 11 years later she was given parole.<sup>14</sup>

### **Effects of Domestic violence on women**

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<sup>13</sup> <https://www.newyorker.com/culture/video-dept/the-burning-bed-recalls-the-case-that-changed-how-law-enforcement-treats-domestic-violence>

<sup>14</sup> Mark Gollam <https://www.cbc.ca/news/canada/5-cases-using-the-battered-woman-defence-1.1221150>

Physical and emotional health issues can develop over time as a result of violence against women. Children, families, and communities are also impacted by violence and abuse in addition to the women who are victims. These negative consequences include impairment to a person's health, long-term damage that may be done to children, and harm to communities like job loss and homelessness.

A victim of abuse never knows when the next assault will occur, therefore she constantly lives in fear. She can lose contact with her loved ones and grow more reliant on her abuser. Making sense of what is actually happening in these situations can be very challenging. Her self-esteem can erode over time, much like water dropping on a stone. She might begin to take her abuser's remarks seriously. She might take responsibility for the abuse or try to hide it. She might choose to overlook it in the hopes that her partner—the man she loves—will transform.

Conflicting feelings of fear, wrath, guilt, resentment, despair, and helplessness are frequently experienced by abused women. They are not helpless, passive victims; on the contrary, they are strong, resourceful individuals. It takes tremendous fortitude to coexist with an abusive partner. Women have to use a variety of coping mechanisms to get by every day.

PTSD is one of the long-term mental health consequences of violence against women (PTSD). This may follow from a traumatic event or a startling or unsettling encounter, such as a sexual assault or physical abuse.<sup>15</sup> You can be easily startled, feel tense or on edge, have trouble falling asleep, or lose your temper easily. Additionally, you can have problems remembering things or bad ideas about other people or yourself. Speak with a mental health expert if you believe you suffer from PTSD.

Depression. Despite being a serious illness, depression may be treated, and relief is possible. Speak with a mental health professional if you are experiencing depression.

Anxiety. This could be all-encompassing general worry or a quick, severe dread attack. Over time, anxiety might worsen and interfere with your daily life. You can get assistance from a mental health professional if you're feeling anxious.

Shutting people out, giving up activities you formerly enjoyed, losing your ability to trust people, and having low self-esteem are some additional impacts that might occur.

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<sup>15</sup> Jina, R., Thomas, L.S. (2013). Health consequences of sexual violence against women. *Best Practice and Research: Clinical Obstetrics and Gynaecology*; 27: 15-26.

Many women who have experienced violence turn to drugs, alcohol, smoking, or overeating as a coping mechanism. According to research, 90 percent of women with substance use disorders had been the victims of physical or sexual abuse.

In the short term, using drugs or alcohol may make you feel better, but in the long run, it just makes you feel worse. Drugs, alcohol, tobacco, or binge eating won't make the event go away or help you move past it. If you are contemplating or have used alcohol or drugs as a coping mechanism, seek help.<sup>16</sup>

### **Defence of self-defence**

Self-defence is a justification-based form of defence. Due to the fact that using force in self-defence is always involved, it can serve as a defence against assault, battery, and criminal homicide. Self-defence is a legal defence in the majority of states. On a case-by-case basis, however, courts may modify or enlarge it. Therefore, it is accurate to describe battered women syndrome as a more sophisticated type of self-defence. When the defendant employs lethal force in self-defence, the majority of states have additional criteria. Any force that has the potential to cause death is considered a deadly force. It is not necessary for someone to pass away in order for a force to be deemed lethal. When there is a size difference between two people, examples of deadly force include the use of a knife, pistol, vehicle, or even just bare hands.

Depending on the situation, self-defence might serve as a flawless or ineffective defence. Defendants who kill someone in self-defence may be exonerated, have a murder conviction lowered from first to second or third degree, or even have a charge of manslaughter added to their record.

The defendant must effectively establish four components in order to establish self-defence.

With few exclusions, the defendant must first establish that an unprovoked attack was made against them.

The defendant must also demonstrate that there was an impending risk of harm or death.

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<sup>16</sup> Beijer, U., Scheffel Birath, C., DeMartinis, V., Af Klinteberg, B. (2015). Facets of Male Violence Against Women With Substance Abuse Problems: Women With a Residence and Homeless Women. *Journal of Interpersonal Violence*; Dec 4. pii: 0886260515618211.

The third need is for the defendant to demonstrate that the level of force employed in self-defence was objectively justifiable in the given situation.

Fourth, the defendant must demonstrate that he or she had an objectively reasonable fear of being hurt or killed if self-defence was not utilised.

Is the defence of battered women syndrome and the defence of self-defence, the same thing?

No, if you look it in detail, you will observe that the self defence is firstly gender neutral, secondly its domain is very restricted, the threat should be immediate, and degree of defence must be proportionate to the threat. But in BWS the threat is not always immediate rather it occurs occasionally say once in every 3-4 days and with an increased degree over time. In the defence of self-defence, the defendant is under the impression that the other person is going to kill me right now. But in BWS the wife, due to constant beating and isolation and helplessness her psychological condition has made her believe that her partner is going to kill her. So battered women syndrome is a combination of physical and as well as mental element.

### **Defence of Insanity**

A well-known tenet is "Actus Non Facit Reum Nisi Mens Sit Rea," which, literally translated, implies that an act does not render a person accountable without a guilty mentality. When committing a crime, the offender's intention, or guilty mind (Mens Rea) plays a crucial role. A person who is unable to comprehend the nature of the conduct he has committed is protected by the legislation known as the defence of insanity. The level of insanity should be sufficient that the perpetrator is incapable of understanding the nature of the conduct.

A semi-structured interview method used to evaluate 5024 offenders for a 2011 forensic psychiatry study revealed that 4002 (79.6%) of the participants potentially have an illness diagnosis. usage of drugs or the mind. The section 84 of the Indian Criminal Code, which is based on Mc Naughten's 1843 Rule in England, shows the functional restriction of retributive and dissuasive theories of punishment as the philosophical justification for the exclusion of mad transgressors from criminal accountability. The fact that a person has a mental condition does not, by itself, establish that he is insane. According to Indian law, Section 84 of the Indian Penal Code, 1860, which is based on "McNaughton's Rule," justifies the use of insanity as a defence. It is always the defendant's responsibility to prove their case beyond a reasonable doubt. In its 42nd report, the Law Commission of India attempted to re-examine Section 84, but no changes were made.

R v. Arnold (1724), in which Edward Arnold was prosecuted for attempting to kill and even injure Lord Onslow, was the first case to deal with the law of insanity.

### **Test of insanity**

There have been other tests over the years, including the Wild Beast Test and the Insane Delusion Test, among others. The "Right and Wrong Test" developed in M'Naughten's case, however, is the most crucial.

The House of Lords discussed M'Naughten's hearing and discharge, and as a result, they summoned fifteen judges to rule on the issue of criminal culpability in situations where the accused is unable to understand the nature of the conduct and to respond to the questions put forth. The responses were the same for all 14 judges. Tindal C.J. expressed the opinion of the majority; these responses to the questions are referred to as M'Naughten's Rule. The referenced guidelines were as follows:

- The offender is penalised whether he was aware of what he was doing or merely partially deluded.
- It is presumed that every man is prudent or sane, that he is aware of what he is doing, and that he is accountable for it.
- In order to establish an insanity defence, it must be proven that the accused was insane at the time the conduct was committed and was unable to comprehend what he had done.
- Since the jury will determine and decide on the issues, no one with significant medical expertise or who is a medical professional and is familiar with the disease of insanity may be called for his or her opinion.

So, in the eyes of law every person is presumed to be sane, and the burden of proof of proving one's insanity lies on the defendant claiming the defence.

### **Insanity and battered woman syndrome**

A variety of actions, from self-defence and provocative behaviour to insanity and decreased capacity, have been justified by the battered woman syndrome as a defensive tactic.<sup>17</sup> If you

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<sup>17</sup> Renee Sorrentino, MD, Meghan Musselman, MD, Lauren Broderick, MD

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<https://www.psychiatrictimes.com/view/battered-woman-syndrome-it-enough-not-guilty-reason-insanity-plea>

look closely, you will notice that while the majority of battered women have psychiatric issues, these issues are more often indicative of "temporary insanity" than They are genuinely insane. She is simply threatening her abusive boyfriend, so it is not realistic for her to think about the legal ramifications of her conduct. Her mental state has temporarily deteriorated due to years of psychological stress. The fundamental tenet of such a defence [temporary insanity] would be that the defendant experienced extreme stress and an impaired mental condition as a result of the abusive relationship at the time of the killing, and that this damaged mental state led her to kill the batterer. Showing that the woman's perspective on her situation was psychologically distorted and prevented her from accurately perceiving her options, or by demonstrating that the woman was "driven to the breaking point by the circumstances of her situation and therefore was substantially unable" to conform her behaviour to legal requirements, can establish the causal link between the woman's impaired mental state and the killing.<sup>18</sup> Therefore, the argument that battered women syndrome is a type of momentary insanity is not a convincing one; rather, it varies or changes depending on the circumstances of each case, and this is where the testimony of specialists and psychiatrists is crucial.

### **Importance of expert testimony**

While claiming the defence of battered women syndrome the burden of proof lies entirely on the defence. So, the line between a reasonable person and reasonable battered women needs to be examined very carefully, in almost all the cases considered with a psychological condition the importance of expert's testimony plays a very crucial role in fixing the liability of the accused. All battered women are petrified but not all are helpless, so practical aspect and conditions shall also be considered.

The federal government published a report examining the scientific and psychological evidence for battered woman syndrome as part of the 1994 Violence Against Women Act. According to the paper, Dr. Walker's cycle of violence is not always reproducible in battering relationships and shouldn't be used to characterise the psychology of people involved. The research also claimed that the theory's assertion that all abused women are helpless, and passive is in conflict with the data that is currently available. Nonetheless, "a large corpus of scientific and clinical evidence on the dynamics of domestic violence and traumatic stress reactions can be based on and supported by expert testimony on battering and its ramifications. "According to the study. Because of this, the idea of "battered woman syndrome" was viewed as being too simplistic

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<sup>18</sup> Cipparone RC. The defense of battered women who kill. *U Penn Law Rev.* 1987;135:427-452

and limited, although the entirety of trauma research served as a valuable source of expert data.<sup>19</sup>

While Dr. Walker has referred to battered woman syndrome as a subtype of PTSD, it is critical to keep in mind that the American Psychiatric Association does not share this opinion, as seen by the fact that battered woman syndrome was not included in any of the DSM's following revisions. Although it is likely that a woman who has experienced intimate partner violence may fit the PTSD criteria, having experienced a traumatic incident is not enough to receive a diagnosis of PTSD. By including intrusion symptoms (reliving the trauma), high levels of anxiety and arousal, and high levels of avoidance behaviours, Dr. Walker's battered woman syndrome aligns with PTSD criteria. In contrast to PTSD, the condition progresses to encompass disturbed interpersonal connections as a result of the batterer's power and control, distorted body image, physical health problems, and sexual problems.<sup>20</sup>

### **The case of Lorena Bobbitt**

Lorena Bobbitt used a kitchen knife to cut off her husband's penis while he slept on June 23, 1993. She left the house holding the appendage, then drove up to a 7-Eleven, flung the penis out the window, and dialled 911. Later, Lorena reported to the police that John had abused her physically, mentally, and sexually. She said that her spouse had raped her soon before she left him. According to John's account of what happened, he had returned home after an evening of drinking with a companion and gone to bed. He claimed that although there was "some petting" and that Lorena tried to approach him sexually, they did not engage in sex. John was accused of marital sex assault, while Lorena was accused with malicious injuring. Lorena testified at her trial about the years of abuse she experienced in her marriage, including being coerced into having an abortion by her husband. She went into great detail about the rape that happened the night of the incident for which she was arrested. She testified that she went to the kitchen after the rape to fetch a glass of water and try to relax. She remembered the horrible experiences she had gone through at her husband's hands while she was there. Lorena claimed she couldn't recall slashing her husband. Psychiatric testimony was provided by both the defence and the prosecution. Although the two psychiatrists concurred that Lorena had a mental condition, they

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<sup>19</sup> FY 2017 HHS excerpts from the attorney general's annual report on U.S. government activities to combat trafficking. Office on Trafficking in Persons, US Department of Health & Human Services; 2017.

<sup>20</sup> Renee Sorrentino, MD, Meghan Musselman, MD, Lauren Broderick, MD

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had different views on her criminal guilt. The defence expert, Dr. Susan Fiester, identified MDD, PTSD, and panic disorder. She characterised Lorena as a model "battered wife," vulnerable from years of abuse and hesitant to leave her husband. According to her testimony, Lorena's attack by John on June 23 in the evening caused "an abrupt worsening of her mental state" and she "became insane." Furthermore, according to Dr. Fiester, Lorena did not have control over her behaviour when she attacked her husband. The prosecution's expert, while there was little doubt that Lorena had been sexually abused, Dr. Miller Ryan stated in court that he had not observed any signs that she was "out of touch with reality." or had any delusions" at the time of the attack on her husband. He came to the conclusion that Lorena's acts were "an impulse she did not resist," rather than an "irresistible impulse." The defence won, and Lorena was determined to be NGRI.<sup>21</sup>

The insanity defence is a legal theory that, under certain conditions, may permit a person to be deemed not legally accountable for their illegal behaviour because of mental illness. Each jurisdiction has its own criteria for determining insanity or criminal responsibility, and some states do not accept the insanity defence. Lorena Bobbitt was diagnosed with a mental condition at the time of the criminal offence, according to the professionals who evaluated her. The judge gave the jury instructions on irrepressible impulse at the request of Lorena's defence team, with the only requirement that they conclude that Lorena's mind was "so damaged by disease that she was unable to resist the temptation to commit the crime."<sup>22</sup> The jury determined that Lorena satisfied the requirements for the volitional prong because she severed her husband's penis out of an irresistible urge sparked by her painful experiences.

### **Admissibility of evidence**

Expert opinions on any scientific, technical, vocational, or similar issue should always be admitted in criminal proceedings, and such opinions may be based on the facts established by other witnesses. For the purposes of demonstrating (1) a reasonable fear of the wife in connection with a claim of self-defence, and (2) a general pattern of violence on the part of the husband, evidence of the battered woman syndrome is acceptable.

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<sup>21</sup> Bell, Rachael. "Crimes Below the Belt: Penile Removal and Castration (Chapter 2)". *Crime Library*. Archived from the original on October 5, 2007. Retrieved October 14, 2007

<sup>22</sup> Margolick D. Lorena Bobbitt acquitted in mutilation of husband. The New York Times. January 22, 1994. <https://www.nytimes.com/1994/01/22/us/lorena-bobbitt-acquitted-in-mutilation-of-husband.html>.

In *Smith v. State*, 247 Ga. 612 (1981), the decision not to allow testimony from a clinical psychologist about "battered woman syndrome" during the trial of a woman who claimed self-defence to defend her charge of killing her lover was overturned. In the case of *Clenney v. State*, 256 Ga. 123 (1986), the defendant was found guilty of killing her partner after an argument in which she claimed that he had badly beat her. She was given a life sentence by the trial court. On appeal, the court determined that a fair factfinder may have concluded that the defendant was guilty beyond a reasonable doubt by analysing the evidence in the light most favourable to the jury's verdict. The court found that it was appropriate to base any justification defence evidence only on the events that happened between the defendant and the victim, and that it was not error to exclude evidence of the defendant's 28 years of physical and psychological abuse by her two prior spouses.

The court upheld the removal of the battered woman/wife syndrome evidence as not being incorrect.<sup>23</sup>

### **The case of Kiranjit Singh Ahluwalia**

One of the famous cases of battered women syndrome is of Kiranjit an Indian origin woman living in the United Kingdom set fire to her husband Deepak in May 1989 after suffering abuse and brutality for 10 years. She was charged with murder and imprisoned for life. Her tariff was 12 years. This case is the best example to understand the admissibility of evidence in cases of battered women syndrome. In the initial hearing of the case Kiranjit's lawyer made the defence of provocation the base of the case, which was rejected by the court on the ground that it was not sudden as the husband had not done anything at that moment and was rather sleeping on his bed when Kiranjit burned him alive. So, this was referred to as rather cooling off period when the act was committed. She was sentenced to life imprisonment for murder of her husband. Later in the new appeal filed on her behalf in London, the concept of battered women syndrome was introduced by the defence council stating that Kiranjit was subject to domestic violence for a period of 10 years by her husband. Firstly, the degree of abuse was seen increasing through time, starting off with verbal abuse to a small push and increasing all the way to trying to choke to death and even burning her. The marks on her body were crucial evidence in determining the factor of psychological abuse. Also, the factor of her staying away from her native's place was also an important factor to understand her psychology as she was all

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<sup>23</sup> Jackson, Dana N., "Admissibility of Evidence of Battered Woman's Syndrome Evidence of Issue of Self-defense" (2010). Law Library Student-Authoring Works. 69. [https://readingroom.law.gsu.edu/lib\\_student/69](https://readingroom.law.gsu.edu/lib_student/69)

alone in an entire new country, the language barrier also existed, she was all alone, no one to talk to, she was not given any money, she was also pregnant and was under the fear of life her children as well. As this evidence were crucial to understand the psychological condition of kiranjit. Also, at the time of arrest, when she had burn down her husband, the officer making the person observed her behaviour as she was siting silently with her children, not even crying and on being asked about how she is feeling, she replied “Azad” meaning “free” this highlights her temporary insanity at the time of the offence. Considering all the factors into account in September 1992, the Crown accepted her plea of manslaughter on the basis of diminished responsibility, and she was sentenced to three years and four months imprisonment.

### **Battered women syndrome and Indian legal system**

Since there is no explicit law dealing with the theory or exempting acts performed as a result of the Battered Woman Syndrome from the penal code's statute of murder, the Battered Woman Syndrome does not have a legal status per se in India. In addition to the legislation, social, cultural, and religious elements are important in influencing a woman's mentality and influencing her to passively tolerate the cruelty of her oppressor without protest. This involves avoiding engaging in aggressive behaviour herself or even approaching the husband to cease the violent behaviour and ultimately committing suicide. The Protection of Women Against Domestic Abuse Act, 2005 (the "Domestic Violence Act") was the first law to address the problem of domestic violence, and it was passed by the legislature in January 2005. The Domestic Violence Act was passed to safeguard the rights of women who had experienced domestic abuse, shield them from other forms of violence that took place in the home, and deal with issues that were connected to it. It outlined offences as acts of domestic abuse, which included recurrent insults, name-calling, mockery, exhibits of obsessive possessiveness, and jealousy of a spouse.<sup>24</sup> However, the battered woman syndrome has not been accepted since courts typically reject it. The "generic exclusions" for the defence of murder under IPC section 300 do not mention battered women syndrome, and they do not fall under the definition of BWS either. The term "battered women syndrome" was used to convict the husband of the wife's suicide in the case of State v. Hari Prasad on February 10, 2016, even though the court's verdict is still pending. The battered women syndrome defence would be a ray of light for such women who were trapped and once managed to break their silence against years of exploitation

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<sup>24</sup> Rashna Jehani [https://www.youthkiawaaz.com/2021/02/necessitating-the-inclusion-of-battered-woman-syndrome-defense-in-india/#\\_ftn13](https://www.youthkiawaaz.com/2021/02/necessitating-the-inclusion-of-battered-woman-syndrome-defense-in-india/#_ftn13)

and oppression and in return they were labelled as murderers. In a patriarchal society like India where women related issues are still not resolved, in most rural areas where women are still subjected to domestic violence and even their biological parents refuse to help them. It makes the topic appropriate for a judicial ruling because Indian courts don't rely heavily on the Battered Woman Syndrome theory. In the current situation, the theory might be conceptualised as a basis for a legal defence within the parameters of the Indian Penal Code's available defences. A case could be made, too, for reducing the disproportionately harsh penalties the Indian Penal Code unfairly imposes on traumatised defendants who murder their husbands. Legislators must be made aware that there is a subset of women who have experienced lifetime abuse at the hands of their husbands and that every act of violence committed by these women should be viewed in the context of the events leading up to it as well as the circumstances under which it occurred. The use of the BWS theory will serve as a justification tool for the judiciary, helping it to comprehend the psychological state of battered women and the causes of their killing their abusers. The lower courts, in particular, have come to ignore taking the accused's mental state of mind into account and have imposed severe punishments on the defendants as a result of the literal construction of the statutes.

## **Conclusion**

In conclusion, battered women who commit murder are not any different from those who don't. The frequency and severity of the batterer's acts of violence have been determined to be the main variations. In the United States, more than half of all fatal shootings of women are committed by violent ex-husbands, usually as a result of an attempt to end the marriage. To prevent unintentionally increasing their already high lethality potential, it is crucial for legal and mental health professionals to have a thorough understanding of the dynamics of violent relationships. Records that have been properly compiled may be helpful if the matter goes to court. We need to understand that sometimes it is not as easy as it sounds to get out of a relationship where there is a fear of yours as well as that of your children is involved.

The battered women syndrome has deep psychological roots which needs to be clearly examined and presented before the court. There is no doubt that development regarding this syndrome has taken place across the world, but we still have a long way to go. In a country like India the law makers need to understand the need of BWS syndrome is of crucial importance and is one of the best ways to promote gender equality as well. I would also like to point out the fact that this case should also not be restricted to women only, as it is more of a

psychological + physical element, therefore it should also work in the case of battered men and children too. But the first step is to start with women who are more prone to domestic abuse and restriction by their partners.