

BATTERED WOMAN SYNDROME: UNDERSTANDING WOMEN'S RESPONSES TO DOMESTIC VIOLENCE CASES

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INTRODUCTION

Battered Woman Syndrome (BWS) came up as a theory in the 1970's when a prominent Psychologist, Dr. Lenore Walker, tried to explain the psycho-social condition of a woman suffering from domestic violence in her book "The Battered Woman." It is a series of characteristics in women who are physically and psychologically abused by the dominant male in their lives which includes the theory of 'multiple victimization' and 'learned helplessness'.

Battered Woman Syndrome entered into the legal realm when Walker began giving expert testimony about BWS at trials of women accused of killing their abuser. She has clearly stated that the syndrome is not an illness, but a theory which explains why a woman would not escape the abuser but would rather kill him after being pushed to the wall. Therefore, the battered women's syndrome theory is best regarded as an offshoot of the theory of "learned helplessness" and not a mental illness that afflicts abused women. This syndrome may result in trauma due to the repeated acts of violence, for example depression or Post Traumatic Stress Disorder which leads to mental disorder in a particular case.

Battered woman syndrome presents pattern of psychological and symptoms found in women living in relationships. There are four characteristics of this syndrome:

1. The woman believes that the violence was her fault.
2. The woman has inability to place the responsibility for the violence elsewhere.
3. The woman fears for her life and or her children's lives.
4. The woman has an irrational belief that the abuser is omnipresent and omniscient.

In India, the battered woman syndrome does not have a legal status, per se, because there is no specific law dealing with the syndrome. None of the self-defenses and exceptions to murder as laid down in Section 300 of Indian Penal Code are applicable to the case of a battered woman who has committed a murder whereas the courts in Australia, Canada, New Zealand, United Kingdom, and United States have accepted the extensive and growing body of research showing that battered partners can use force to defend themselves and sometimes kill their abusers because of the abusive and sometimes life-threatening situation in which they find themselves, acting in the firm and honest belief that there is no other way than to kill for self-preservation. However, the syndrome is not per se a legal defense, but may legally constitute; 1) Self-defense; 2) Provocation; 3) Insanity (usually within the meaning of the McNaughten's Rules); and 4) Diminished responsibility, which has to be corroborated with the facts and circumstances of the each case.

This article attempts to provide an overview of BWS and it also reviews the relative victimization of husband and wives and clarifies some of the conceptual issues related to the self-defense. Alternatives to the existing approaches are also explored. Thus, the research question which this article examines is- Whether and in what circumstances, the "Battered Woman Syndrome" as a form of 'PTSD' sustains the claim of self-defense or it's just a retaliation of husband-abuse or mutual combat in the eyes of law?

LITERATURE REVIEW

1. Walker talks about the cycle of violence in which women suffer violence in three stages. Abusive relationships tend to follow a cyclical pattern (Matthews, 2004, Walker, 1979, Weiss, 2000). The changes between the various stages presented are subtle, and vary depending on the relationship and the nature of the abuse. In the beginning phase of the abusive relationship, some type of abuse occurs. This can be physical, sexual, or emotional, however, most often it is subtle and in the form of verbal insults or accusations (Walker, 1979; Weiss, 2000). After physical abuse, an abuser may not have to beat his partner to gain or maintain control.
2. The threat of violence may be enough, because his partner knows she is capable of following through on his threats (Salber and Taliaferro, 1995). Following this initial incident, there is a tension building phase (Walker, 1979; Matthews, 2004). The abuse

continues in this phase, and while it might be physical, it continues to be more subtle. Violent relationships tend to follow a cyclical pattern, containing "honeymoon," tension building, and serious battering phases, then repeating (Matthews, 2004).

3. In the later stages, theory of learned helplessness comes into picture and women remain to stay with her partner peacefully. Weiss (2000) describes a woman who was boiling a pot of soup when her husband walked by and knocked her forward with his elbow, causing her to fall forward, burning her hand severely in the boiling liquid. Later on, he denied being in the kitchen at all. In this second phase, the abused partner may feel the need to keep the abuser calm, and she may feel as if she is constantly "walking on eggshells" (Weiss, 2000, Walker, 1979). She may also feel that she is at fault for the abuse, and begin to believe that if she were only a "better partner" the abuse would stop. For example, the abused woman may start to imagine if she dressed differently, was a better cook, or was more agreeable her partner would treat her better (Weiss, 2000; Salber and Taliaferro, 1995; McCue, 2008).
4. The next stage is referred to as the explosion, and after the slow progression of the tension building stage it may not come as a shock (Turner, 2002; Matthews, 2004). In this stage; the abuse reaches a crescendo. Weiss (2000) reports stories from women whose partners have attempted to push them from moving cars, brutally raped them, broken their noses, deliberately twisted their legs after painful knee surgery, or otherwise hurt them severely.
5. Finally, comes the honeymoon stage (Matthews, 2004; Weiss, 2000; Walker, 1979). In this stage, the abused partner may begin to hope that her partner really meant it when he said it would never happen again. The abuser may give gifts to his partner, and treat her kindly for a period ranging anywhere from a few days to several months (Matthews, 2004; Weiss, 2000). Inevitably, the situation will again decline-into tension building, explosion, and so on.
6. In cases of spousal homicide, both the prosecution and the defense can present evidence of BWS in a variety of ways and raise the plea of self-defense or insanity before the court of law. Some reports suggest that severe violence in response to minor violence cannot be called self-defense (Strauss, 1980). Thus, retaliation (angrily trying to hurt the other) while one is being attacked may be almost indistinguishable from self-defense (Pagelow, 1984).

CONCEPT OF BATTERED WOMAN SYNDROME

The definition of BWS emphasized on "learned helplessness," a theory originally developed to explain why some animals fail to protect themselves in certain situations. The theory was reformulated in terms of human depression, and was eventually applied to victimization. By incorporating the theory of learned helplessness, expert testimony concerning battered women can better explain why some battered women do not perceive that they have certain options available to protect themselves, and may thus help to explain why they do not exercise those options.

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.

In the courtroom, expert testimony concerning domestic violence can be offered for various purposes: (1) to show that a defendant is a battered woman, (2) to explain a battered woman's state of mind, (3) to generally support a claim (e.g., when a battered victim is suing a batterer for damages) or the validity of a particular defense (i.e., when a battered victim is the defendant), (4) to explain a battered woman's conduct, (5) to explain a battered woman's recantation or resistance to prosecution (i.e., when a battered victim is witness in prosecution case), (6) to bolster a battered woman's credibility, or (7) to explain the existence of mitigating factors (i.e., for purposes of sentencing when a battered woman has been found guilty in a criminal trial) (Parish, 1996). Statutes and case law vary from state to state and across federal jurisdictions; in some, this testimony is referred to as "battered woman syndrome." The critique that follows derives from the view that syndrome language generally, and battered woman syndrome more specifically, is inadequate to the task of describing battered women's experience, whether for purposes of expert testimony, counseling, or advocacy.

BWS was operationalized as particular PTSD symptoms, with the addition of some domestic violence specific symptoms. PTSD is described in the *Diagnostic and Statistical Manual of Mental Disorders* (DSM-IV-TR; American Psychiatric Association, 2000). The symptoms that defined PTSD include: (1) intrusive symptoms (images, thoughts, perceptions, nightmares; distress at exposure to cues that symbolize or remind one of the traumatic event; physiological reactivity to exposure to internal or external cues that resemble the traumatic event), (2) emotional numbing (feeling detached or estranged, inability to recall important aspects of the trauma) and behavioral avoidance (efforts to avoid thoughts, feelings, conversations associated with the trauma and activities, places and people that arouse recollections of the trauma), and (3) hyperarousal (difficulty sleeping, anger and irritability, difficulty concentrating, hypervigilance, exaggerated startle response) (American Psychiatric Association, 2000). The criteria for PTSD were: re-experiencing the event, hyperarousal, and numbing of responsiveness. If the victim is found to suffer from BWS, in addition to PTSD, the following criteria must also be met: disrupted interpersonal relationships, difficulties with body image, and sexual and intimacy problems. A syndrome is a set of symptoms that tend to occur together in a recognizable pattern.¹ A symptom is a sign or manifestation of a pathological, mental, or physical condition.² In *McDonald v. United States*³, the court defined "mental disease" for the purpose of that jurisdiction's insanity test as "any abnormal condition of the mind which substantially affects mental or emotional processes and substantially impairs behavior control."⁴

Learned helplessness as described by the courts and commentators consists of the battered woman's impaired ability to accurately perceive, evaluate, and adaptively act upon her own situation, the batterer, the relationship between the two, and her options.⁵

¹American Psychiatric Association, *Diagnostic And Statistical Manual Of Mental Disorders* 405 (3d ed. rev. 1987).

²*Id.*

³ 312 F.2d 847, 851 (D.C. Cir. 1962).

⁴*McDonald v. United States*, 312 F.2d 847, 851 (D.C. Cir. 1962).

⁵Schopp, Robert F.; Sturgis, Barbara J.; and Sullivan, Megan, "Battered Woman Syndrome, Expert Testimony, And The Distinction Between Justification And Excuse" (1994). College of Law, Faculty Publications. Paper 103.

POSITION IN USA

a. Expert Testimony and Battered Woman Syndrome

Expert testimony is legally defined as the opinion evidence of someone who possesses special skill or knowledge in some science, profession, or business which is not common to the average person and is possessed by the expert by reason of special study or experience. In cases of spousal homicide where the defense asserts a claim of self-defense or insanity, the expert typically used is a psychologist or psychiatrist. The results produced by them used further in the sentencing policy as a relevant factor.

In case of spousal homicide or BWS, both the prosecution and defendant can produce the expert witness testimony for their respective claims. This expert testimony in such cases can be allowed by the courts for mitigating the sentence of the accused person by looking into the social and psychological conditions of the women who has suffered the abuse in her domestic relationship.

Caroline Forell and Donna Matthews explained,

“In many ways the law still equates husband-killing with treason: such killing is presumed unreasonable, and the woman is seen as morally responsible for the man’s violence against her. The law of self-defense is framed in terms of how men ‘reasonably’ respond to the violence of other men; women killing men isn’t part of the picture. The basic terms are skewed so that women who kill their batterers rarely fit the male-defined standard of a justifiable killing.”⁶

Historically, women who killed their partner were seen as a criminal or crazy because the notion of the crime was only associated with the male community and they were allowed to take defense and other pleas. However, with the introduction of BWS as a part of women movement in 1970, the position has been changed.

Professor Schneider explains:

“Expert testimony on battered woman syndrome was developed to explain the common experiences of and the impact of repeated abuse on, battered women. The goal was

⁶Caroline A. Forell & Donna M. Matthews, *A Law Of Her Own: The Reasonable Woman As A Measure Of Man* 197 (2000).

to assist the jury and the court in fairly evaluating the reasonableness of the battered women's action and to redress this historical imbalance, at least where the testimony was proffered as relevant to self-defense."⁷

The introduction of BWS was intended to "overcome sex-bias in the law of self-defense and to equalize treatment of women in the courts."⁸ It was recognized that self-defense law asks what a reasonable man would have done in a battered woman's situation, but it is not entirely helpful. Therefore, lawyers defending battered women who had killed needed a way "to explain to the jury that the woman's behavior, which seems to defy common sense, was entirely characteristic of women in her situation."⁹

The expert therefore is able to provide to the jury information about "otherwise puzzling aspects of defendant's behavior, especially her failure to leave or get help or tell anyone."¹⁰

This use of expert testimony to explain reasonableness, though logically baffling, is the only realistic option for introduction of evidence of battering under the current evidentiary laws.¹¹

Ibn-Tamas v. United States¹²: (DC Court of Appeals 1979) was the first court to hold that expert testimony about BWS was worthy of consideration in a case where a woman had killed her husband (Buda & Butler 1984- 85).

In some cases, courts may refuse to permit such opinion evidence. In these latter instances, jurors are left to infer, on the basis of other trial testimony, whether the defendant exhibits BWS and whether the implications that derive from it apply to her behavior.

Here, the expert is required to conduct a face-to-face interview with the alleged victim of domestic violence and then tie the facts of that case in with his generalized knowledge in the field.¹³

⁷Elizabeth M. Schneider, Describing and Changing: Women's Self-Defense Work and the Problem of Expert Testimony on Battering, 9 Women's Rights Law Reporter 198 (1986), in American Bar Association, *Defending Battered Women In Criminal Cases* (1992).

⁸*Id.*, at 197.

⁹Cynthia K. Gillespie, *Justifiable Homicide: Battered Woman, Self-Defense, And The Law* 158 (1989).

¹⁰*Id.*, at 159.

¹¹Myrna S. Raeder, *Proving the Case: Battered Woman and Batterer Syndrome: The Double-Edged Sword: Admissibility of Battered Woman Syndrome By and Against Batterers in Cases Implicating Domestic Violence*, 67 U. Colo. L. Rev. 790, 802 (1996).

¹² 407 A.2d 626 (1979).

Frye standard (*Frye v. United States*,¹⁴ 1923), which requires that the scientific validity of the evidence must be generally accepted by experts in the particular field of inquiry (see Giannelli, 1983) . In many states, however, a substantial erosion of the Frye test has occurred (Giannelli, 1983). Some courts have held that only the technique or methodology employed by the expert, as opposed to the principle itself, must be "generally accepted within the scientific community" (*Dyas v. United States*,¹⁵ 1977) However, in case of *Daubert v. Merrell Dow Pharmaceuticals*,¹⁶ Inc., 1993, the Supreme Court ruled that in federal courts the Frye test had been superseded by the adoption, in 1973, of **Rule 702 of the Federal Rules of Evidence**, which provides that a witness qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion if the scientific, technical, or other specialized knowledge would assist the jury to understand the evidence or to determine a fact in issue and thus, courts developed the Daubert standard.

According to Daubert, the four factors that courts should use to aid their decisions on whether to admit expert testimony are: 1. whether the scientific technique or theory has been tested, 2. whether the technique or theory has been peer reviewed or published, 3. what the known or potential rate of error is, and 4. whether the principle has gained general acceptance in the scientific community.

In case of *State vs. Allery*,¹⁷ Sherry Allery was found guilty of second degree murder by a trial court that did not allow BWS expert testimony to explain her fear of imminent danger and gave instructions to the jury that did not adequately explain self-defense law. Wife had been beaten with fists, pistol whipped and attacked with knives. The battering increased over time and culminated with Sherry starting divorce proceedings. The husband, Wayne was served with a restraining order. One night Sherry returned home fairly late and found Wayne in the house. He threatened her, 'I guess I'm just going to have to kill you son of a bitch. Did you hear me that time?'. Then, she killed Wayne whilst he was lying on the couch. Sherry received a new trial. Aside from the issues already mentioned, the Appeals

¹³ Dutton Ph.D., Mary Ann, "Impact of Evidence Concerning Battering and Its Effects in Criminal Trials Involving Battered Women." (1996).

¹⁴ 293 F. 1013 (D.C.. Cir 1923).

¹⁵ 376 A.2d 827.

¹⁶ 509 U.S. 579 (1993).

¹⁷ 101 Wn.2d 591 (1984)

Court held that the trial court had failed to indicate to the jury that Sherry had no duty to retreat from her home. It should be noted that this case dramatises another truism about woman battering and marital murder. For those who do not understand BWS and how difficult it becomes for the woman to leave the home, perhaps they can understand that even if the woman manages to leave, the violence does not often end. In fact, her departure has been found to often act as the precipitator of increased violence and murder (see, for example, Walker 1989).

Smith v. State,¹⁸ Where the psychologist is qualified to testify about the battered woman syndrome, and the defendant establishes her identity as a battered woman, expert testimony on the battered woman syndrome is admissible. This evidence may have a substantial bearing on the woman's perceptions and behavior at the time of the killing and is central to her claim of self-defense.

POSITION IN INDIA

The current law of self-defense is defined in a very narrow manner in the Indian criminal law justice system. The Indian Penal Code, 1860 which talks about the instances when one can exercise the self-defense and can be taken it as plea does not include the term 'battered woman syndrome'. Section 96 and 97 of the Indian Penal Code define self-defense and rights that a person has when acting in self-defense. It requires the use of reasonable force when person is in imminent danger of death or bodily injury and there was no other option. None of the self-defenses and exceptions to murder as laid down in Section 300 of Indian Penal Code are applicable to the case of a battered woman who has committed a murder. However, the psychological self-defense argument was partially accepted in some cases in India. Under Indian criminal justice system, law is more prone to justify those arguments which justify the immediate acts, however, the battered woman syndrome involves repeated acts of violence, which sometimes become difficult for the court to accept the fact that the act of killing justifies the doctrine of self-defense.

In case of *R. v. Ahluwalia*,¹⁹ which says that exposure to a certain emotion over a prolonged period of time, is acceptable as a reasonable defense using the Partial Doctrine of Provocation. This kind of defense cannot be disregarded, even though there had been a clear

¹⁸ [277 S.E.2d 678](#) (1981).

¹⁹ (1992) 4 All E.R. 889.

time-gap between the provocative acts of the husband and criminal act committed by his partner.

Many battered women, however, are reluctant to call police based on concerns about racial or ethnic discrimination against their male partners by police or court systems. Further, social norms maintaining that violence in the home is a private matter are also obstacles to calling the police. Thus, it is well accepted proposition that, most of the women are reluctant to report their case to police or any other authority rather they prefer to remain victims because of the prevalent social and cultural norms which see women as subordinate to men.

This has been problematic because there is no consensus in the medical profession that such abuse results in a mental condition severe enough to excuse alleged offenders. Thus, it becomes necessary for the courts to determine such cases in an ordinary manner like other cases, by taking into consideration the questions:

- a. Did a battered woman reasonably believe she was in danger of harm when she assaulted her abuser?
- b. Did a batterer threaten or coerce the battered woman into participating unwillingly in a crime?

SUGGESTIONS & CONCLUSION

Many cases involving battered women who kill their abusive partners raise significant challenges to the law of self-defense and admissibility. Expert testimony is one of the most controversial aspects in the field of battered woman syndrome. Evidence and testimony about battering and its effects provide information germane to fact finders' deliberations in criminal cases involving battered women. However, the plea of insanity, self-defense and clinical diagnosis are not always available for battered women. There has to be extensive body of scientific and specialized knowledge derived from the disciplines of the social, behavioral, and health sciences, that contributes to an understanding of domestic violence and traumatic stress reactions. The inadequacy of the term "battered woman syndrome" affects the admissibility of the issues concerning battered woman syndrome. A more accurate representation of battering and its effects includes a range of issues on the nature and dynamics of battering, the effects of violence, battered women's responses to violence, and the social and psychological context in which domestic violence occurs.

This research study shows that expert testimony and plea of self-defense are available for killing against the battering effects that woman had experienced in her past. But, it cannot be generally recognize due to inadequate definition of BWS, which shows the plea of defense has to be proved by some effective tool by identifying the specific questions relevant to the issues.

Legal standards of defense and admissibility concerning battered women have accepted in the USA, but the position in India is somewhat different. In India, the law of self-defense is narrowly defined, which need to be looked in.

This paper tries to serve the purpose that there exist some category of women who have battered throughout their life by their abusive partners and they are very reluctant to report such cases, hence, the grounds of provocation for defense must be broadened so as to include battered women. Amendment should be done in the Indian Criminal Laws for such change by incorporating the relevant and specific factors in any domestic set-up.

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