LAW MANTRA THINK BEYOND OTHERS
(International Monthly Journal, I.S.S.N 2321 6417)
Journal.lawmantra.co.in www.lawmantra.co.in

THE CASE OF BATTERED WOMEN: TOWARDS THE CORRECT UNDERSTANDING BY ISHA KABRA [1]

Introduction

"Husband killing has become a fad;

Wife abuse has become acceptable"

While neither of the above mentioned two statements can be considered as the truth, both of them represent the extreme side of a controversy which affects the laws and the legal profession.[2]

Domestic violence is an evil persisting in the society for a very long time now. Domestic violence can generally be said to be as physical, sexual and/ or psychological abuse inflicted by one partner on another partner both of whom are in an intimate relationship. Mostly, the victim of domestic violence is the woman and the abuser is the husband. This shows that even family is not a safe haven for women. Earlier, there was existence of laws in many parts of the world which condoned wife-beating and the reason which was considered behind such laws was that a man has the responsibility to protect his wife and children and this, thus, gives them the right to discipline them. It was later that it was understood that this area of criminal law needs reform and then several laws came in for the protection of women from domestic violence by their husband.[3] There came up cases where a battered woman killed her abuser in self-defence because that was the only option which she saw as a means of defending herself. When self-defence is claimed by such women, a lot of questions are raised such as why did she not leave such a relationship or why did she not inform the public authorities etc. To explain the the dynamics playing behind such situations and to curb the gender bias existing against women in the society, Dr. Lenore Walker developed a concept known as the Battered Woman Syndrome.

The Original Concept of Battered Woman Syndrome

The concept of 'battered woman syndrome' was introduced and developed by Dr. Lenore Walker, a psychologist and a prominent feminist academician.[4] 'Battered woman', as used in the term, conceptualizes a woman who is a victim of violence at the hands of her partner yet chooses to stay in the relationship despite repeated incidents of abuse meted out to her by her partner. The concept of 'battered woman syndrome', as given by Dr. Walker, has two elements- the first is the cycle of violence which the abusive relationship follows and the second is the phenomenon termed as 'learned helplessness', the symptoms of which are

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[2] Jeffrey M. Cutler, *Criminal Law- Battered Woman Syndrome: The Killing of a Passive Victim- A Perfect Defense or a Perfect Crime?- State v Norman*, 11 CAMPBELL L. REV. 263 (1989)
[3] Lenore E. Walker, Rachel I. Duros, et.al., *The Battered Woman Syndrome*, 1
[4] Zoe Craven, *Battered Woman Syndrome*, ADFVC 2 (2003)

shown by the victim.[5] 'Battered woman syndrome' was defined by Walker in her 1979 book called *The Battered Woman* as a discernible pattern of psychological and behavioural symptoms which could be observed as being exhibited by women who live in abusive relationships.[6]

The Cycle of Violence

Dr. Walker claimed that a 'cycle of violence' existed in many cases of battered women who were subject of her study. The cycle of violence consists of three phases which include a period of tension building, an acute battering incident and lastly, a calm loving respite of honeymoon period. The first phase, which is the initial tension building phase, includes things like verbal abuse and minor incidents of battering such as slapping, pinching, and abusing verbally or psychologically etc. During this phase, the attempts of the woman are directed towards pacifying the abuser with the help of techniques which have worked in the past. The primary object during this phase is to prevent further escalation of violence. As the woman is primarily passive during this phase, there is no force over the batterer to bring his behaviour under control and this leads to the reinforcement of his abusiveness. When the violence and verbal abuse turn into an acute battering incident, this is what marks off the beginning of the second phase. This phase witnesses uncontrollable discharge of tension which was built up when phase one was going on.[7] The abuser inflicts most brutal kind of violence and the woman suffers most severe injuries during this phase. The time-duration for which phase two incidents might last is usually from two to twenty-four hours. The violence which takes place during this period is described as unpredictable, yet inevitable. There is constant fear and a sense of danger to which the woman is subjected. The batterer's violence is perceived as uncontrollable by the woman and she thinks that any attempt to reason would be a futile one. Thus, the only attempt by the woman is towards her own protection and mitigating the abuse which might take place further by not resisting the violence at all. The third phase is a tranquil period of loving contrition. In this phase, the batterer becomes apologetic and his behaviour becomes conciliatory and affectionate. A sense of relief is experienced by the woman and she tends to have faith in the promise made by the batterer that such an incident will not take place again.[8] By doing this, the batterer tries to fool both the outside world and the woman by inducing them to believe that he has really changed. It is in this phase of loving contrition that the most thorough victimisation of the battered woman takes place. Then again the intensification of the psychological violence takes place and the cycle of violence repeats. It has been further theorized by Dr. Walker that it is the cyclical nature of battering which may be the reason behind the battered woman not leaving her batterer.[9]

Learned Helplessness

The second component of battered woman syndrome is learned helplessness. This theory is used to explain the psychological paralysis that overpowers the battered woman and leads to her victimization. This theory was not something which Dr. Walker herself developed. Rather, the research findings of the experimental psychologist Martin Seligman were applied by her in the context of the battered women. The theory of learned helplessness was

[5] Melanie Frager Griffith, *Battered Woman Syndrome*, 64 FORDHAM L. REV. 165 (1995)
[6] Griffith, *supra* note 4, at 166
[7] Griffith, *supra* note 4, at 167
[8] Griffith, *supra* note 4, at 168
[9] Griffith, *supra* note 4, at 169

developed by Dr. Seligman by conducting experiments on caged dogs that were given repetitious and unavoidable electric shocks. When despite making all the attempts to escape the cage the dogs were unable to do so, their behaviour eventually became passive and they stopped making any kind of resistance.[10] According to Dr. Walker, learned helplessness applies in cases of domestic violence when a battered woman becomes unable to predict her own safety and has to face the random abusive behaviour of the batterer no matter what she does. It is learned helplessness which leads to woman to exhibit *"behavioral responses that will have the highest predictability of an effect within the known, or familiar, situation; they avoid responses-like escape, for instance that launch them into the unknown."*[11] It is the sporadic brutality leading to a sense of utter defenselessness coupled with some attempts of tenderness which ultimately lead to the prevention of the battered woman leaving the abuser.[12]

Problems with the Concept of Battered Woman Syndrome

Since the development of the original concept, a lot of reach has been undertaken with regard to the validity of battered woman syndrome and the findings of Dr. Walker which were used to develop the components of it. The cycle of violence theory has not been completely accepted and has received criticism from a lot of commentators. It has been noted by Faigman and Wright that unlike what Walker claimed, the battering relationships do not follow a single pattern of behavior. Walker's data is inadequate to support her claim. Other patterns of violence have been identified by researchers. This shows that while the cycle of violence might be one type of pattern which exists in battering relationships, it is not the only one.[13] There is also dispute over the acceptance of the theory of learned helplessness. The applicability of Seligman's experiment on caged dogs and the subsequent research findings over battered woman has been questioned by Faigman. It has been discovered in a number of researches, not excluding Walker's work, that battered women did take action in relation to their condition. The fact that human beings can develop learned helplessness as a response to the situations in which they where they have no control is not being denied over here. Rather, it is said that there isn't enough evidence to support the fact that battered women are typically necessarily subject to learned helplessness. Neither does it serve as an explanation to the passive behavior which is exhibited by battered women. Many compelling economic, social and psychological reasons exist which may explain why the woman does not leave her batterer or abuser.[14]

Battered woman syndrome has some serious limitations of itself, apart from the flaws existing in its components. An initial limitation that exists is that it may not be a central issue before the court to decide whether the woman suffered from battered woman syndrome or not. In order to help the case of the defendant, the expert witness should be aware of the relevant issues and questions for which the testimony is needed. The expert testimony should not be aimed at proving whether the defendant was suffering from battered woman syndrome. Rather, an expert can help the case of the defendant by helping the jury to understand the experiences of abuse which the defendant went through and how they become legally

[10] Griffith, *supra* note 4, at 171
[11] Griffith, *supra* note 4, at 172
[12] Griffith, *supra* note 4, at 173
[13] Law Commission Wellington, *Battered Defendants- Victims of Domestic Violence Who Offend*, NZLC PP41 5 (2000)
[14] *Supra* note 12, at 6-7

relevant to the case. The expert can help the court by offering an analysis of the facts which help in making a more informed decision about the ultimate issues which have to be dealt with. For these purposes, clearly battered woman syndrome is neither sufficient nor is it necessary. Reliance on it rather gives the formulation that the woman's perception of danger can only be reasonable when she has a clinical diagnosis of Post Traumatic Stress Disorder (PTSD).[15] Another serious limitation which the concept of battered woman syndrome suffers is that it does not have a standard definition. There are also no standard scientific evidences to support the purposes which battered woman syndrome seeks to serve. Very few researches have been conducted on this to validate this through empirical research. Even in various state laws where this term finds place, there is no standard definition. Since there is no validated standard to determine who meets the criteria of battered woman syndrome and who doesn't,[16] it does not meet the basic standards required for scientific reliability and thus, cannot be placed as expert testimony in the court. This shows that there is no clarity over the meaning of the term and no specified conditions for it and this further makes it difficult for the judges, lawyers, parties to the case and the general public to understand what is being referred to by battered woman syndrome.[17] The concept of battered woman syndrome was introduced in 1970s. Since then, a lot of research over battering has taken place and a lot of scientific knowledge has developed over time. In a legal matter which involves battering and its effects, in order for an expert witness to be able to testify, he should have a command over the current scientific literature to be able to give a sound testimony. Research has made it clear that the experiences of the battered women cannot be explained by means of one single profile. When battered woman syndrome is attempted to be used, it implies that the response and effects of battering on all victims are similar. There may be some common reactions to battering from an intimate partner but the individual responses, experiences and reactions vary with the psychological, social, cognitive and practical circumstances of the woman. This leads to a logical conclusion that describing the "profile of a battered woman" or the effects of battering as a "syndrome", battered woman syndrome does not adequately incorporate current research.[18] We do not have a clear answer regarding for whom we intend battered woman syndrome to explain experience and behavior. Sometimes, battered woman syndrome is used to describe the experience of all women. And sometimes, it reflects the characteristics of the stereotype of a "good" or a "sympathetic battered woman". Image of a woman who kills her abusing partner is evoked by battered woman syndrome. It leads to the creation of a stigmatizing image of pathology.[19] Keeping all of these in mind, we can see that battered woman syndrome does not do a satisfactory job of explaining and helping the court to understand the experiences of the women who are victims of domestic violence at the hands of their intimate partners.[20]

The use of battered woman syndrome inevitably leads to a syndrome analysis which leads to the pathologization of the woman and her history. It stresses on her victimization and the consequent inability to get out of the abusive relationship. It means that there are high chances that the syndrome analysis will be used as a help to explain the irrational behavior on

[15] Mary Ann Dutton, "Update of the "Battered Woman Syndrome" Critique", Harrisburg PA:VAWNet 5(August 2009)
[16] Dutton, *supra* note 14, at 6
[17] Dutton, *supra* note 14, at 7
[18] Dutton, *supra* note 14, at 7(August 2009)
[19] Dutton, *supra* note 14, at 8(August 2009)
[20] Dutton, *supra* note 14, at 9(August 2009)

the part of the woman. There is a risk that when a woman kills her partner in self-defence, her behavior will be described in terms of her incapacities or her personal defects.[21] Judges and jurors have also been of the opinion that preferably, the use of battered woman syndrome should be avoided. We should simply speak of the battering relationship because if the syndrome gets very closely defined, then the court will become very rigid in its application.[22]

The Self-Defence Argument

There does not exist a separate battered women defence. Battered woman syndrome is used by defense attorneys in criminal cases to explain the fighting back and killing by a woman of her abuser in a battering relationship. For this purpose, often the use of expert testimony is made.[23] But whenever battered woman syndrome is used in cases of self-defence for a victim of domestic violence, there is a problem of general reception. The judges, attorneys and opposite parties react with awe, skepticism and some level of discomfort when they find out that the defendant will make use of battered woman syndrome in order to strengthen her claim of self-defence. These kinds of reactions make it seem as if the lawyer of the woman is asking the court to place reliance on some legal principles which are highly technical and virtually incomprehensible. In many of the latest arguments made by academicians as well as practitioners, it has been erroneously assumed that battered woman's defence is a type of self-defence including psychiatric dimensions. They try to comprehend it by placing it somewhere between insanity and heat of passion. Judges also sometimes make the mistake of ordering psychiatric examinations of the battered woman under the belief that it is some kind of insanity defence which has been claimed. The only way to solve this problem is to understand battered woman defence not in the context of the battered woman syndrome as offered by Dr. Walker or as currently misunderstood by judges and the practitioners of law as self-defence having some psychiatric dimensions but to understand it as the application of self-defence in the circumstances of the battered woman's life.[24]

We have already seen that the use of the term battered woman syndrome leads to the stigmatisation of the battered woman. Also, the word "syndrome" causes imposition of abnormalities onto the victim. Rather, the major defects which are associated with the Battered Woman Syndrome should be placed on the battering relationship, the batterer and the society.[25] Instead of being used as trying to expose the gendered nature of the reasonableness criteria used in almost all the defences available in criminal law, battered woman syndrome has wrongly been used to explain why the women fail to meet these prescribed standards in law.[26] While fighting a case for a battered woman, the lawyer should support the case by using the expert testimony to assist the fact-finder have a better understanding of the state of mind of the battered woman when she killed the abusing intimate partner in her self-preservation i.e. while exercising the right of self-defence.[27] The basic underlying premise which the expert must aim to convey to the judges and jurors is that

[21] Battered Women's Defence Committee Update available at http://www.caefs.ca/wp-content/uploads/2013/04/Battered-Womens-Defence-Committee-Update.pdf (Last visited 17th December, 2014)
[22] *Supra* note 12, at 9
[23] Michael Dowd, *Dispelling The Myths About Battered Women's Defense: Towards a New Understanding*, 19 FORDHAM URBAN L. J. 574 (1991)
[24] Dowd, *supra* note 22, at 576
[25] Dowd, *supra* note 22, at 578
[26] Craven, *supra* note 2, at 10
[27] Dowd, *supra* note 22, at 578

the woman is a reasonable and a normal person who got caught up in irrational circumstances and that she responded in a way in which any reasonable person would have. This means that battered woman syndrome can be used by the lawyer to support the case of self-defence by the woman by claiming that what happened to that particular woman would have happened to any woman facing similar kind of circumstances.[28] The expert should make an effort towards dispelling the various myths and misconceptions about a battered woman and the testimony should be aimed at explaining why the battered woman was unable to escape from the battering relationship. It should seek to provide the judges with a better understanding of the circumstances which the battered woman faced and how her decision to kill the abuser was realistic.[29] While an attempt is made towards using self-defence, various difficulties come up such as giving explanation to the use of force which appears to be excessive in response to the violence by the abuser and the timeline of it to the threatended or actual violence. Mostly, the use of force in response to a threat by the abuser can be considered as timely only when the violence done by the abuser on the battered woman is imminent. It means that the response should be against violence which takes place due to an immediate threat or an attack which can possibly occur any time. As a result, it apparently looks as if the woman who kills a man while he is asleep or when his back is turned did not act under imminent danger. But when an appropriate case for a battered woman is made, the abuse she suffered over time and her belief that there was no other way to escape the batterer can be shown through her testimony and the expert testimony can be used to meet the criteria of imminence to effectively use self-defence.[30]

I. Scope For Further Research

While it has now become clear that the research further should be directed at helping in better usage of self-defence in cases of battered women, there is one more area in this field which requires attention. There is a need to do research on men who batter. Though there have been researches on this aspect yet they have not been very detailed and the only conclusion that has been arrived at is that the batterers do not come from one particular social or economic group. The experts who give testimony with regard to the state of mind of the batterer ought to have expertise on men who batter. However, there has been very little research conducted in this direction and as a result, it remains unclear as to how to put the information related to the batterer to use.[31] Though a universal profile of men who batter cannot be chalked out, yet some common personality traits have been identified such as insecurity, extreme jealously, poor verbal communication skills especially when it comes to expressing emotions, domineering nature, dual personality etc. only with more research can it be found out how this data can be used by litigators in the court and how it can be made to fit within the evidentiary restrictions. Additional research will also help in creating a core group of experts who will specialize in research on men who batter. The benefit of such research would be that it will keep the attention of the jury focused on the evidences related to the crime at issue and will result in preventing the batterer from basing his innocence on evidence related to the psychological characteristics of the victim.[32]

[28] Dowd, *supra* note 22, at 574
[29] Dowd, *supra* note 22, at 578
[30] Dowd, *supra* note 22, at 580
[31] Griffith, *supra* note 4, at 196
[32] Griffith, *supra* note 4, at 197

Conclusion

The purpose of this paper was to explain how the case of battered women should be taken up by their lawyers and how the use of self-defence should be made by them. Battered woman syndrome was a milestone in the women's movement but it had many flaws of its own which have put huge doubts on its validity. Battered woman syndrome has lately been wrongly used to argue that there is a need to introduce psychological self-defence, reinforcing gender bias and stereotypes, describing the battered women as abnormal and giving reasons as to why they fail to be reasonable. Instead of this, what actually has to be done is that the lawyers should use the expert testimony in order to better educate the judges about the life and circumstances of the battered women so that they understand that what was done by the battered woman was necessary for her self-preservation and it was the only way out. It should be shown that what she did was totally reasonable and that is how anybody caught up in such a situation would respond. There is a need for a greater understanding and acceptability of the realities and hardships that victims of domestic violence undergo and how they respond when they have no support system or means to escape. Further, more research should be conducted for a better understanding of the circumstances in a battering relationship such as more research should be conducted about men who batter. And instead of placing focus only on the woman, the society as a whole should take up the responsibility and understand what is going wrong that violence finds place even in the most intimate relationship that exists.

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