

A 'VICTIM' OR A 'PERPETRATOR'? – RELOOKING THE LAW OF HOMICIDE IN INDIA FROM THE EYES OF BATTERED WOMEN

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ABSTRACT

Battered Women Syndrome is an outcome of Intimate partner violence (physical and psychological), exhibited by woman, a sufferer of abuse on repeated basis. A Woman trapped in abusive relationships at her final stage of abuse either commits suicide or kills the abuser in rage. The research attempts to understand and explore the defence available to battered women, compelled to cause the death of their partners in self-preservation. It studies the essentials of self-defence, provocation and diminished responsibility/insanity in order to explain how battered women is excluded from criminal justice system. The research studies the interpretation of the corresponding '*Nallathangal Syndrome*' as applied in the Indian context. The Indian Penal Code, the general substantive penal law in India, fails to subjectively position the battered woman, and she turns out to the perpetrator rather than the victim in the transaction. The research attempts to position the battered woman substantively in the criminal justice system of India.

Keywords: *Nallathangal, Battered, Inequality, Homicide, Provocation, Domestic Violence, Psychology.*

- I. Introduction**
- II. Nallathangal Syndrome- A Judicial Creation**
- III. Intimate Partner Violence (IPV) and Battered Women Syndrome**
- IV. Legal Defenses to Battered Women Syndrome in India**
- V. Legal Recognition to Battered Women Syndrome Worldwide**
- VI. Domestic Violence in India *via-a-vis* “Nallathangal Syndrome” with special reference to COVID-19 Lockdown**
- VII. Conclusion and Recommendations**

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I. Introduction

BEFORE GETTING into the legal sophistications of Battered Women Syndrome (hereinafter referred as BWS) and its implications, it would be better to comprehensively understand it. Propounded by an American psychologist, Dr. Lenore Edna Walker, it came into light during 1970s. It is a psychological theory that explains the reason beyond the battered women's acceptance of being in exploitative and coercive marriages, and why they feel obligated to kill their husbands rather than actually leave them¹ or amid the fact that they ostensibly have other escape opportunities.²

Walker interviewed 435 female victims of domestic abuse in Colorado from July 1978 to June 1981 about two theories of battered women – one being cycle theory of battering commonly known as ‘Walker Cycle Theory’ developed by her and other one is Martin Seligman’s learned helplessness theory.³

The Walker Cycle Theory describes three distinct stages in a traditional battering relationship:

Tension Building Phase, during which tension builds gradually causing a low-level conflict. There might be verbal tussles between the couple which simultaneously leads to the fierce and savage second phase.

Battering Phase, during which tensions between couple vent in a completely violent form. The uncontrollable rage of the batterer finally triggers him into abusing the other partner and the abuse may be physical, emotional, psychological, or sexual and with time these episodes become more severe and pathetic.

Loving Contrition Phase or commonly referred as *Honeymoon Phase*, during which, a feeling of remorse develops in the batterer and they make attempt to replenish their partner's trust and affection. An assurance is given that the incident would not repeat in future, which operates as a ‘positive reinforcement to remain in the relationship’.⁴ But this is a critical phase as it does not

¹ Rebecca D. Cornia, “Current Use of Battered Woman Syndrome: Institutionalization of Negative Stereotypes About Women” 8 *UCLA Women’s Law Journal* 99, 101 (1997).

² Lenore E. Walker, *The Battered Woman Syndrome* 45 (Harper & Row, 1st edn., 1980).

³ Dr. Shalu Nigam, “Battered Women Syndrome: Applying This Legal Doctrine in the Indian Context in Patriarchy”, Counter Currents.org, available at: <https://countercurrents.org/2016/08/battered-women-syndrome-applying-this-legal-doctrine-in-the-indian-context> (last visited on June 8, 2021).

⁴ *Supra* note 2 at 65.

last for much long and tension builds up again which leads to the repeated cycle of violence i.e. the first phase. However, the noteworthy point here is that the violence inflicted escalates with every new cycle.

Walker goes on to say that this pattern of abuse inevitably leads to 'learned helplessness,' a psychological emotional state, first identified by psychologist Martin Seligman in which battered women stuck between the unbridled turmoil of the aforementioned phases passively embrace their condition and try no option to prevent it. Such women, continuously being a prey to their torturous life, ultimately end up killing their abusive counterpart.⁵ In *State v. Kelly*⁶, the Supreme Court of New Jersey recognized the mental condition of such women, stating that some of them become so mentally paralyzed that they lose control of their actions. A battered woman's socioeconomic and cultural expectations play a significant role in deciding if she has the ability to flee.⁷

As per Walker, such women, even when escape might be a possibility, continue with such harrowing relationships, hence gradually become passive about it.⁸ Plethora of factors such as social (fear of coming out about violence in society due to its narrow perspective), economic (financial dependence on batterer), etc. chain down the opinions of free will of such victims. They leave no other option with them than enduring sexual, emotional, economic and social harassment and undignification of every sort but maintaining a silence about every thorn inflicted upon them. Further, such syndrome creates a perception of helplessness which makes such women believe that legal remedies would also fail to solve their cause.⁹ Consequently, the victim is compelled to take some fatal decision.¹⁰

It is not always the case as stated above that the battered women kill their abusive partners. What forms the decisive factor behind aforesaid decision is grounded in behaviour of man towards his

⁵ *Supra* note 2.

⁶ 97 NJ 178: 478 A 2d 364 (1984).

⁷ Elizabeth Kenny, "Battered Women Who Kill: The Fight Against Patriarchy" 13 *U.C. London Jurist Review* 17-29 (2007).

⁸ *Supra* note 5.

⁹ Bess Rothenberg, "We don't have time for Social Change: Cultural Compromise and the Battered Women Syndrome" 17(5) *Gender and Society* 771-787 (2003).

¹⁰ Michael R. Slaughter, "The Battered Woman Syndrome and Self Defense" 1 *Women's Law Journal* 78 (1997).

spouse, which is frequency of violence and severity of battering inflicted upon the female sex,¹¹ hence it differs from case-to-case basis.

From the aforesaid description it is quite evident that if a woman victim of an abusive relationship kills her male counterpart, it is the need of the hour that the law is legitimately expected to deviate from the point of view of objectively seeing it as a crime and must try to probe deeper into the conditions that pushed her to take such a devastating step and act accordingly.

II. Nallathangal Syndrome – A Judicial Creation

Battered women syndrome has more of a western origin, although victims of it can be found all over the world. Talking about recognition of said principle as defence, it has been used as defence by women in Western countries, who, as a result of their mentally distressed condition, kill their batterers.¹² But in India, it is yet not legally recognized as a defence and is in its most rudimentary state. In India, another sort of syndrome, called as Nallathangal Syndrome has received recognition from High courts but still quite a bit of steps away from reaching the boundaries of Apex Court to be recognized as an authoritative law.

Discussing about origin of word ‘Nallathangal’, it is based on a ballad of Tamil literature. The legend throws light upon sufferings of a mother of seven daughters, named Nallathangal. Unable to tolerate terrible famine due to barren lands and disrespect from the society, she committed suicide alongwith her children. Since then, Nallathangal has become an element of Tamil folklore.¹³

Nallathangal Syndrome, for the very first time was discussed in High court of Madras in the landmark case of *Suyambukkani v. State of Tamil Nadu*¹⁴. In this case, the accused's living circumstances had been too difficult and adverse since her marriage, and when the situation became unbearable, she wanted to commit suicide with her children. She and her children went to the well and jumped in, due to a shortage of water in the well, she survived but her children did not. She confessed before the magistrate that her extremely irksome life left her no other

¹¹ Lenore E. Walker, “Who are Battered Women?” 2(1) *Frontiers: A Journal of Women’s Studies* 52-57 (1997).

¹² *Supra* note 3.

¹³ T. Saravanan, “Poignant portrayal”, *The Hindu*, January 16, 2013, available at: <https://www.thehindu.com/features/metroplus/poignant-portrayal/article4312584.ece> (last visited on June 8, 2021).

¹⁴ 1989 LW (Cri) 86.

option but to follow Nallathangal's way. Court in this case found that act, as of accused, in light of her surrounding circumstances, does not accommodate within meaning of murder, as contemplated under the IPC. As a result, her conviction for the murder under section 302 of the IPC was overturned, and she was found guilty of culpable homicide not amounting to murder under section 304 Part I of the IPC, accepting the syndrome.

Till date there is no precise definition of Nallathangal Syndrome, but way back in 1989, Dr. Justice David Annoussamy in *Suyambukkani's* case¹⁵ attempted to bind the same in following words:¹⁶

What Exception 1 contemplates is a grave and sudden provocation, whereas the ingredient of sustained provocation is a series of acts more or less grave spread over a certain period of time, the last of which acting as the last straw breaking the camel's back may even be a very trifling one. We are therefore far from grave and sudden provocation contemplated under exception 1 to section 300, I.P.C. Sustained provocation is undoubtedly an addition by Courts, as anticipated by the architects of the Indian Penal Code.

Nallathangal Syndrome thus became a masterpiece of judicial creativity which introduced for the very first time, Sustained Provocation in the Criminal Jurisprudence in India.

Thereafter plethora of cases came before High Courts of various states throughout India such as *Guruswami Pillai v. State*¹⁷, *Manju Lakra v. State of Assam*¹⁸, *Poovammal v. State*¹⁹, *Amutha v. State*²⁰, etc. where Nallathangal Syndrome and Sustained Provocation was recognized by courts and the accused were awarded reduced punishment on the basis of it.

One major dilemma associated with Nallathangal Syndrome is that in majority of the literatures, it has been misinterpreted and titled as 'The Battered Women Syndrome of India' or 'Indian

¹⁵ *Ibid.*

¹⁶ *Id.* at 21.

¹⁷ 1991 SCC OnLine Mad 164: (1991) 1 Mad WN (Crl) 153.

¹⁸ 2013 SCC OnLine Gau 207: (2013) 4 GLT 333.

¹⁹ MANU/TN/0189/2012.

²⁰ *Supra* note 15.

Counterpart of Battered Women Syndrome'²¹. But analyzing Nallathangal Syndrome & Battered Women Syndrome closely, they are quite different from each other. Under BWS, the female victim of abusive relationship, due to her helplessness and psychologically derailed state, causes death of her batterer, but under Nallathangal Syndrome, the female may, due to long term provocation (that might be due to the reason of poverty, battering, other sorts of stress, etc.), commits suicide and/or causes death of any other person. The only similarity between them is that in both cases, the cognitive faculty of the accused female is disturbed. Principle of Nallathangal Syndrome could be related to BWS. It reiterated a necessity of protection of the battered women and formulation of BWS as a legal defence in India.

III. Intimate Partner Violence (IPV) and Battered Women Syndrome

The World Health Organization defines Intimate Partner Violence (IPV) as:²²

any behaviour within an intimate relationship that causes physical, psychological or sexual harm to those in the relationship, including acts of physical aggression, sexual coercion, psychological abuse and controlling behaviors.

The most intense type of said violence may be characterized as violent battering, intimate terrorism, or aggressive controlling violence, in which one of the spouses is typically dominating and commanding, and which is commonly practiced by men against women²³ or *violence resistance*, which can be simply understood as retaliation of victims against the persons who have committed excessive intimate terrorism against them, perpetrated solely by women²⁴ (data reveals even 96%)²⁵. Violence tolerance may take the form of an instinctive attack in response to an initial attack or a defensive or protection mechanism in the wake of a series of violent

²¹ Keerthana Medarametla, "Battered Women: The Gendered Notion of Defences Available", available at: <http://docs.manupatra.in/newslines/articles/Upload/F1D66902-8FAE-4580-BDB1-479D1768B695.pdf> (last visited on June 8, 2021).

²² *World Health Organization*, available at: https://www.who.int/violence_injury_prevention/violence/world_report/en/full_en.pdf, (last visited on June 17, 2021).

²³ Robert E. Emery, *Cultural Sociology of Divorce: An Encyclopedia* 397 (Sage Publications, 1st edn., 2013).

²⁴ Paula Nicolson, *Domestic Violence and Psychology: A Critical Perspective* 40 (Taylor & Francis, 1st edn., 2010).

²⁵ Tasha R. Howe, *Marriages and Families in the 21st Century: A Bioecological Approach* 370 (John Wiley & Sons, 1st edn., 2011).

events.²⁶ This sort of resistance can be lethal if the survivor thinks there is only one solution to her dilemma, which is to end their partner's life.²⁷

Analysing the aforesaid offshoots of Intimate Partner Violence in light of Battered Women Syndrome, it is evident that violence resistance is what actually happens in case at hand. Female victim suffers and tries to endure everything but maintains peace as long as she could, but ultimately one day when battering comes to a point which is like last straw breaking the camel's back, she bursts out and does something which is devastating.

Another question which comes in between the aforesaid discussions is that the phenomenon of IPV is gender neutral unlike domestic violence, so why only the pitiful side of women is being discussed here. Victims as well as perpetrators of IPV could be both the sex, but women are the majority victims of such violence.²⁸ According to one report, women's use of violence is primarily driven by self-defense or terror, while men's use of violence is primarily motivated by power.²⁹ Another research conducted in the Journal of Trauma Violence Assault revealed that the most prevalent reasons for females to commit violence were rage and resentment, a need for recognition, and, most notably, a response or reaction to violence inflicted by their male counterpart.³⁰

IV. Legal Recognition to Battered Women Syndrome Worldwide

There is no scientifically precise data that answers the question – ‘When was, for the very first time, defence of battered women syndrome argued/ emerged victorious/ recognized in court of law?’. Different studies of the said subject claim different origin of it. But some of the prominent cases that set a precedent for the said syndrome, can be enlightened based on secondary data available.

²⁶ Michael P. Johnson, “Gender and types of intimate partner violence: A response to an anti-feminist literature review” 16(4) *Journal of Aggression and Violent Behavior* 289 (2011).

²⁷ *Ibid.*

²⁸ Michael Grodin et al., *Health and Human Rights in a Changing World* 780-781 (Routledge, 2013); Ronagh J.A. McQuigg, *International Human Rights Law and Domestic Violence: The Effectiveness of International Human Rights Law* 13 (Taylor & Francis, 2011).

²⁹ Swan, Suzanne C., “A review of research on women's use of violence with male intimate partners” 23(3) *Journal of Violence and Victims* 301–314 (2008).

³⁰ Megan H Bair-Merritt, “Why Do Women Use Intimate Partner Violence? A Systematic Review of Women’s Motivations” 11(4) *Journal of Trauma Violence Abuse* 178-189 (2010).

There were series of murder cases that were reported in England & Canada around 1990s in which women terminated their abusive male counterpart on the ground of what they claimed as reaction to continuous cycle of abuse. It was the time when a practical example of the said phenomenon was witnessed by the world, the only wait was to see the stand of court of law on it.

The much celebrated and landmark judgment of *Regina v. Kiranjit Ahluwalia*³¹ can be deemed to be the ‘ignition system’ of BWS – it set a spark to it and popularized the said syndrome greatly among the masses. Kiranjit Ahluwalia, a woman of Indian origin was married to Deepak who was a resident of England. But their married life took its worst shape day by day, as from the very first day of marriage, Kiranjit faced intense humiliation and brutal torture from her husband. He thrashed her head multiple times at several occasions, broke her finger in a heated argument and most gruesome part – she was pushed by her husband whilst she was pregnant. She was threatened to be killed by her husband plethora of times. On the day of incident, a heated discussion occurred between them and deceased threatened to beat Kiranjit next morning. She could not sleep with this thought in her mind and all of a sudden at 2:30am in the morning, she killed her husband by pouring petrol on him and setting him ablaze.

The deceased after few days deteriorated in the hospital. In the trial, she claimed the defence of provocation on the basis of diabolical acts of the deceased, but her defence could not sustain the reasonable man’s test for provocation and she was found guilty of murder. Her prosecution was brought to the attention of Southall Black Sisters, a non-profit organisation dedicated to women's rights, who requested a retrial in a campaign. To arrive at precise conclusions, it was argued in the appeal court that her case must be judged as a reasonable individual suffering from battered woman syndrome. On appeal, she won the partial defense of diminished liability under Section 2 of the 1957 Homicide Act, and her sentence was changed to voluntary manslaughter due to inadequate representation.

In the same year of 1989, another interesting case of Sara Thornton (*R v. Thornton (No. 2)*)³² shook the streets of England when a woman, a pitiful survivor of domestic abuse, murdered her abusive husband (which she pleaded to have been done accidentally) while on a heated argument, who use to beat her black and blue on several occasions and even threatened to kill her

³¹ MANU/UKCR/0001/1992: (1992) 4 All ER 889; (1992) EWCA Crim 1.

³² (1996) 2 All ER 1023; (1996) 1 WLR 1174.

when she would be asleep. But prosecution proved before the court that she did this killing for financial gain and trial court ruled against her and convicted her for murder and sentenced her to life imprisonment. But there were certain protests against this decision, following which court of appeal took up the case in December 1995, where her lawyers argued that she was an innocent victim of battered woman syndrome as a consequence of enduring her husband's cyclical violence, which had resulted in her losing her calm on the last incident of battering and finally killing him. Her conviction for murder was overturned, and a new trial was set for the next year, after which she was found guilty of a misdemeanor charge of manslaughter and released from prison.

*R v. Humphreys*³³ was another renowned case of BWS in which the accused, Emma Clare Humphreys caused the murder of her drug addict and violent boyfriend by stabbing him with knife. Her boyfriend treated her brutally, had forced sexual intercourse with her and also exploited her economically. The trial court convicted her for murder ignoring her medical reports and she was ordered to be detained till her Majesty's pleasure. One interesting turn that this case took was in 1992 when the detained woman read about the case of Kiranjit Ahluwalia in which she was released by appellate court on the ground of sustained provocation. This instilled hope in her and she wrote a letter to another similar organization working for women welfare, Justice for Women explaining her cause. The organization arranged a legal team and with their help the case of Humphreys reached appellate court where she pleaded defence of long-term provocation. The court accepted her plea opining that instead of reasonable man's test, in such cases, incident must be looked from the point of view of a victim suffering from permanent psychological illness which derails her of her mental stability and under the garb of which she commits a crime. Her conviction for murder was converted to manslaughter.

But much before Kiranjit Ahluwalia, outside the boundaries of United Kingdom, Supreme court of Canada in case of *Angelique Lyn Lavallee v. Her Majesty The Queen*³⁴ legally recognized Battered Women Syndrome as a valid defence in cases of murder. The accused in the instant case was living in an abusive relationship with her husband, Rust. One day, during a furious altercation, Rust slapped and pushed Lavallee several times and hit her twice on head. He handed over his gun to Lavallee saying "either you kill me or I will kill you". Lavallee firstly decided to

³³ (1995) 4 All ER 1008.

³⁴ 1990 SCC OnLine Can SC 39; (1990) 1 SCR 852.

shoot herself but shot her husband as he turned back. At the trial she pleaded self-defence as she said that she had no other alternative left with her at such delicate point of time as it was and explained her disturbed mental state at that time. She was acquitted by the jury but was convicted on appeal. Finally, the case went to The Supreme court and it restored her acquittal stating that mental condition.

In New Zealand too, BWS has achieved legal recognition. In *The Queen v. Epifania Suluape*³⁵, a wife who was victim of neglect, humiliation and intense domestic abuse pleaded the defence of provocation after she assassinated her husband with a sharp axe, as he decided to abandon her for other women after torturing her to a great degree. Her sentence for culpable homicide was shortened to five years by an Appeal Court.

Though the old legal system in Australia was problematic for victims of BWS as it was not adaptive to defence of sustained provocation, but after the *Defences to Homicide: Final Report, 2005*³⁶, The Victorian legislature made a variety of changes to the state's murder rules. Victims of family abuse may now be able to present proof of their exploitation in the court as evidence of their exploitation, and which plead self-defence even though there is no immediate danger and the act of killing used more force than the apprehended threat.³⁷

Thus, from the aforesaid case studies, it can be clearly inferred that in India, legal awareness of Battered Woman Syndrome is only in its infancy and most rudimentary type, with a long way to go before it becomes a legitimate legal protection and a mechanism for defending the rights of female victims of intimate partner abuse. But same is not the case with other nations, and it has been respected and recognized by the courts of several nations including England, Canada, Australia, New Zealand, *etc.* The one common thread that is evident in the legal regime of all nations where it has been legally recognized as a valid defence is that they had an urge to shift from the orthodox and literal interpretation of law and felt a need to have a humanitarian and psychological approach to it. Courts all around the world are gradually changing their vision from being static to dynamic and are becoming more adaptable as per the needs of the changing times. Judicial Activism and Judicial creativity have given birth to plethora of laws which were

³⁵ (2002) NZCA 6.

³⁶ Victorian Law Reform Commission, "Defences to Homicide: Final Report"129 (August, 2004).

³⁷ "End draws near for defence of provocation", *The Age*, October 5, 2005, available at: <https://www.theage.com.au/national/end-draws-near-for-defence-of-provocation-20051005-ge0zr2.html> (last visited on June 8, 2021) .

the requirement of the modern times and legal defence to BWS was one of them. The ancient narrow interpretation of provocation was redefined and a new birth to doctrine of sustained provocation was given out as a boon of judicial creativity by courts of various nations. Now its high time for India to make such changes into the existing legal regime to ensure that a female who is worshipped and revered as Goddess does not get punished twice, once by her batterer and further by judiciary.

V. Legal Defences to Battered Women Syndrome in India

A lot has been discussed aforesaid about giving legal recognition to Battered Women Syndrome – But the question which yet remains to be clearly answered in light of legal principles and provisions is that what does legal recognition to BWS implies. Since BWS can be simply understood as a disturbed psychological state of a woman due to recurring as well as escalating cycle of exploitation and violence tolerated by her which leads to her derailment from sane mental state and feeling deprived of any other alternative, one ominous day, she ends up the life of her batterer – an act of ‘psychological self-defence’. The attention of such female victims shifts away from eluding the abusive relationship and towards merely surviving. Women can be tempted to engage in violent acts as a result of their constant terror and danger of violence, as well as their confusion.³⁸ In countries such as India, the ambit for married life of a women is quite narrow – a female has negligible alternatives or support available with her, she often loses hope and may even contemplates ending her own life. Hence legal recognition means nothing more than accommodating such disturbed mental state within our law, it means to understand the psychology of such women by stepping into their shoes and adapting law accordingly to arrive at equity and justice in such cases. Technically, it can be also be said as incorporating it as a legal defence in criminal law.

Defences under criminal law can be broadly categorized as Complete Defence and Partial Best examples of Complete Defence (complete discharge from liability) is section 84 of Indian Penal Code, 1860 which deals with acts done under the garb of mental unsoundness or sections 96-104, which deal with actions carried out in the exercising of one's right to self-defense. Exceptions to murder, enshrined under section 300 of the Indian Penal Code, 1860, are an

³⁸ *Supra* note 3.

example of partial defense (reduction of punishment). The above examples are also applicable from another viewpoint, as the defense against BWS will be covered in the paper under them.

Revisiting Indian Penal Code with subjective positioning of battered women in the law of Homicide

In para 15 of *Suyambukkani v. State of Tamil Nadu*,³⁹ court emphasized on a very interesting legal loophole regarding Nallathangal Syndrome in particular and Offence of Murder and Culpable Homicide in general. Court said that the exceptions under section 300 are very limitative, but they are required to be understood “*at the way in which Code was framed, the intention with which it was drafted and time when it was made applicable.*”⁴⁰

Further in para 16 of the aforesaid judgment, court explained the flaw in detail. Indian Penal Code (IPC) was Lord Macaulay's prolific draftsmanship, first work of codification by the British Government of their case-laws. He had a difficult time putting the Code together from the vast amount of case laws. Except in the hands of a genius, such a huge undertaking cannot result in a flawless and detailed piece of legislation. Furthermore, the code was not dynamic since it was not written in the context of broad standards that could change and embrace new meanings as time passed. Furthermore, Macaulay was well aware that the Code would not be enforced by competent judges, but rather by natives and English officers of various grades. And due to this reason, he formulated a Code containing several internal aids of interpretation such as illustrations, explanations and exceptions. On the other side, Lord Macaulay at the time of drafting would not have been acquainted with Nallathangal's syndrome. But above all flaws, Code was drafted and passed in 1860 and is based majorly on the English laws as they prevailed at that time.

Therefore, court came to the conclusion in *Suyambukkani's* case that “*therefore, though technically the exceptions to section 300, I.P.C. appear to be limitative they can no longer be considered so, after the efflux of time*”⁴¹ and hence it needs to adapt and accommodate itself as per the needs of the time in order to arrive at just, fair & reasonable results.

³⁹ *Supra* note 14.

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

'Unsoundness of Mind' – Can section 84 of the Indian Penal Code, 1860 cover Battered Woman Syndrome victims?

Section 84 is included in the excusable general exemption division. It says that any crime performed by a person who is unaware of understanding the purpose of their act or that the act is false or against the law at the time of doing it due to insanity is not considered an offence. The definitions of “*actus non facit reum, nisi mens sit rea*” and “*amens ne sine mente*” are pertinent to note here, which imply that the physical act alone does not make a person guilty, the mental component in the form of evil intent (guilty mind) is equally important. The argument for proving insanity as a full defense is that a mentally ill person is unaware of forming criminal intent.⁴²

Several research, both doctrinal and non-doctrinal, have claimed a causal link between Intimate Partner Abuse (IPV) and Post Traumatic Stress Disorder (PTSD).⁴³ Even BWS has been identified as subcategory of PTSD.⁴⁴ PTSD is an illness that affects certain individuals who have been through a traumatic, frightening, or threatening incident, or a series of such incidents. And when they are not in danger, people with PTSD may feel anxious or scared. PTSD will strike someone at any age. This involves war veterans, teenagers, and victims of physical or sexual violence, crime, accidents, disasters, and a variety of other traumatic incidents.⁴⁵ Pseudo-hallucinations, Difficulty suppressing emotions, Inability to sustain healthy relationships, Dissociative symptoms, Depression, Rage, Nightmares, Difficulty experiencing emotions, paranoia, and other symptoms can occur as a result of PTSD.⁴⁶ It appears that PTSD has a direct proportional relationship with the probability of developing hypertension.⁴⁷ Under the garb of

⁴² Prof. (Dr.) K N Chandrashekhara Pillai, *Criminal Law* 107 (LexisNexis, 13th edn., 2017).

⁴³ Mindy B. Mechanic et al., “Mental Health Consequences of Intimate Partner Abuse: A Multidimensional Assessment of Four Different Forms of Abuse”, 14(6) *Violence Against Women*, 634–654 (2008); Pico-Alfonso MA, “Psychological intimate partner violence: the major predictor of posttraumatic stress disorder in abused women” 29(1) *Neuroscience Biobehavioral Review* 181-193 (2005); Prabha S. Chandra et al., “Women Reporting Intimate Partner Violence in India: Associations with PTSD and Depressive Symptom”, 12(4) *Arch. Women’s Mental Health* 203-209 (2009).

⁴⁴ Lenore E. Walker, *The Battered Woman Syndrome* 55 (Springer Publishing Company, 3rd edn., 2009).

⁴⁵ National Institute of Medical Health, “Post-Traumatic Stress Disorder” 2019, available at: <https://www.nimh.nih.gov/health/topics/post-traumatic-stress-disorder-ptsd/index.shtml> (last visited on June 8, 2021).

⁴⁶ *PTSD: Statistics, Causes, Signs, & Symptoms*, available at: <https://www.therefuge-ahealingplace.com/ptsd-treatment/effects-symptoms-signs/> (last visited on June 8, 2021).

⁴⁷ Alexander C. McFarlane, “The long-term costs of traumatic stress: intertwined physical and psychological consequences” 9(1) *World Psychiatry* 5, 3-10 (2010).

the aforesaid symptoms, a battered women may commit the act of destroying her batterer because the basic stability of her sanity is derailed. Re-experiencing or reliving of the dark traumatic memories is another major element of symptomatology of PTSD⁴⁸, due to which the pictures of the events when she was battered might come before her eyes and she would respond to them by ending the subject matter which caused that events to happen in her life.

To be eligible for the legal defense of insanity, the appellant will have to show that their cognitive abilities were so compromised at the time of the offence that they were unaware of the existence and repercussions of the act.⁴⁹ There must be a difference made between civil and medical insanity. Legal insanity, not psychiatric insanity, is the subject of a judge.⁵⁰ An abused woman who alleges insanity must prove without a reasonable doubt that she was oblivious of the existence and consequences of her acts at the time of the crime. On this case, the Apex Court issued a landmark decision in *Bapu @ Gajraj Singh v. State of Rajasthan*, in which the Hon'ble Supreme Court stated that:⁵¹

it is difficult to prove the precise state of the offender's mind at the time of the commission of the offence, but some indication thereof is often furnished by the conduct of the offender while committing it or immediately after the commission of the offence.

Proving her innocence as per the said benchmarks, a victim of BWS can aid legal system and herself too in preventing injustice to happen and arriving at an equitable result and it would be only possible by the understanding and cooperation of the Apex Court of India.

Shift from 'Sudden & Grave Provocation' to 'Sustained Provocation'

Exception 1 to section 300 of the Indian Penal Code 1860, includes immediate and extreme provocation. Under this, an attacker who has lost his or her capacity to regulate his or her conduct as a result of a grave and unexpected provocation kills the person who caused him or her

⁴⁸ *Ibid.*

⁴⁹ *Sudhakaran v. State of Kerala*, (2010) 10 SCC 582: AIR 2011 SC 265.

⁵⁰ *Surendra Mishra v. State of Jharkhand*, (2011) 11 SCC 495; *S Sunil Sandeep v. State of Karnataka*, (1993) Crim.L.J. 2554 (Kant).

⁵¹ (2007) 8 SCC 66, 2007 (8) SCALE 455.

or kills another person by mistake or error.⁵² But, clearly analysing the said section, if it continuous to have similar approach towards victims of BWS, then the acts done by them would always tend to be a murderous act. They get provocation for their act after tolerating series of brutal acts of the accused. Their provocation could be thus deemed to be ‘grave’ but not ‘sudden’. In order for this exemption to occur, the provocation must be both extreme and unpredictable.⁵³ Hence, here a need for having a law that takes into consideration the psychological conditions of such women is required.

In *Sankaral Alias Sankarayee v. State*, a Division Bench of Madras High Court has explored this possibility and held that:⁵⁴

in cases when there is positive evidence to show that there was grave and sudden provocation at or about the time of occurrence, there would be no difficulty in applying the said principles. There are other type of cases, where there has been sustained provocation for a considerable length of time and there would not have been a real sudden provocation immediately preceding the murder.

Under Para 30 of *Poovammal v. State*, Madras High Court cleared the fog and gave a precise and meaningful idea of what is sustained provocation, as follows:⁵⁵

It is concerned with the duration of the provocation. There may be incidents/occurrences, which are such that they may not make the offender suddenly to make his outburst by his overt act. However, it may be lingering in his mind for quite some time, torment continuously and at one point of time erupt, make him to lose his self-control, make his mind to go astray, the mind may not be under his control/ command and results in the offender committing the offence. The sustained provocation/frustration nurtured in the mind of the accused reached the end of breaking point, under that accused causes the murder of the deceased.

⁵² The Indian Penal Code, 1860 (Act 45 of 1860), s. 300(1).

⁵³ *Gyanendra Kumar v. The State of U.P.*, AIR 1972 SC 502; 1972 Crim.L.J. 308; (1972) 4 SCC 819; *Harendra Nath Mandal v. State of Bihar*, 1993 SCR (2) 137; *State of Punjab v. Jagtar Singh*, (2011) 14 SCC 678; AIR 2011 SC 3028; *Guru Dev Singh v. State of M.P.*, (2011) 5 SCC 721; AIR 2011 SC 2088; *B.D. Khunte v. Union of India*, 2014 SCC OnLine SC 872; 2015 Crim.L.J. 243.

⁵⁴ 1989 MLW (CrI) 468.

⁵⁵ MANU/TN/0189/2012; *P. Rengasamy v. State*, MANU/TN/3871/2017; *Rajendran v. State of Tamil Nadu*, MANU/TN/0146/1997.

About the necessity of adopting the said exception under IPC, not only Madras but Allahabad High Court, very recently, too advocated about its recognition and explained reasons for it in glowing terms:⁵⁶

Slowly and gradually the concept of "sustained provocation" has also crept-in in criminal jurisprudence of India. The law, as we all know, is a product of social requirements. It is a living organism. It has to keep pace with changing times and its challenges. Justice cannot be slave of straight jacket formulae in all cases. The purpose of legal jurisprudence is to secure justice in all its possible dimensions.

In one of the cases entitled *Vashram Narshibhai Rajpara v. State of Gujarat*⁵⁷, even Apex court acknowledged sustained provocation. The house purchased by the accused was not to the liking of his wife and daughter and they continuously rebuked him, unable to bear this at one point of time he killed them. The Supreme Court of India held that, despite the fact that they were all living together, the constant harassment and nagging could have harmed his mental balance and, as a result, sustained provocation could have reached a boiling point, resulting in the dastardly act, and thus set aside the death sentence and awarded him a life sentence.⁵⁸ In *Suyambukkani v. State of Tamil Nadu*⁵⁹, it was observed that the leading decision in that field of 'sustained provocation' is the most popular *K.M. Nanavati v. State of Maharashtra*⁶⁰. The English Courts also have welcomed the Indian innovative principle of "sustained provocation" as "cumulative provocation" in their criminal jurisprudence.⁶¹

Thus, it may be concluded that it is the need of the hour to add 'Sustained Provocation' as an exception under section 300 IPC through legislative amendment to give legal recognition to the persons whose acts though prima facie appears to be murderous; but if probed deeper, turn out to be an innocent act done by a victim under his psychological and emotional infirmity.

Self Defence – Can it fit in such cases?

⁵⁶ *Jag Prasad v. State of U.P.*, MANU/UP/1293/2018: 2018 (104) ACC 186.

⁵⁷ MANU/SC/0367/2002: 2009 (9) SCC 168.

⁵⁸ *Santosh Satish Bhusan v. State of Maharashtra*, MANU/SC/0801/2009: 2009 (6) SCC 498.

⁵⁹ *Supra* note 14.

⁶⁰ AIR 1962 SC 605.

⁶¹ *Supra* note 20.

The right to self-defense is founded on the cardinal idea that it is any person's primary responsibility to assist and defend themselves. A human being's first impulse is to defend themselves. In his book *Principles of the Penal Law*, constructive school jurist Jeremy Bentham says:⁶²

The right of defence is absolutely necessary. The vigilance of Magistrates can never make up for the vigilance of each individual on his own behalf. The fear of the law can never restrain bad men as the fear of the sum total of individual resistance. Take away this right and you become in so.

But before analysing the validity of private defence in light of BWS, it's very basic essentials are required to be enlightened, which are as follows:⁶³

- (i) There must be a bonafide belief that the person was in impending hazard of unlawful bodily harm.
- ii) There must be utilization of very reasonable and proportionate measure of force to tackle the imminent threatened danger.
- iii) Claimant of self-defence cannot be the aggressor or must not have utilized the defence for some ill-motive.
- iv) Absence of any alternatives to retreat safely from the hazardous place.

In a research conducted by *Penal Reform International*, it was found that victims of domestic abuse have raised the defence of private defence before the courts and law has recognised them too, subject to other circumstantial evidence. Self-defence is the most frequently invoked protection in many of Australia's states and territories. In the United States, the majority of defendants plead self-defense, and proof of an experience of assault can be a key factor in determining the reasonableness and proportion of the accused's conduct. Many female criminals in Poland have used self-defense to defend themselves despite becoming victims of violence in the past. A history of violent actions by the batterer can help in setting certain conditions

⁶² Jeremy Bentham, *Principles of Penal Law* 269 (CreateSpace Independent Publishing Platform, 1st edn., 2016).

⁶³ *Supra* note 21.

favorable for attracting these defences, such as a history of acts of violence as relevant precedent to establish that revenge occurred in self-defence was reasonable and balanced.⁶⁴

The acts committed by victims of BWS can also be deemed as ‘psychological self-defence’. Giving strict interpretation to the orthodox and ancient essentials of private defence and accommodating BWS under it would surely not yield positive results as in majority of cases such women kill their batterers not being under imminent threat and despite other alternatives being available to them. In the middle of this discussion, a case of Supreme Court of North Dakota titled *State v. Leidholm*⁶⁵ has to be enlightened in which a battered woman killed her batterer husband whilst he was asleep. This case proved to be a landmark in establishing self-preservation as defence for acts done under the garb of BWS. Defendant in this case was charged and tried for murder. At the trial, Janice Leidholm, the defendant claimed that on that dreadful night she had acted in self-defense to protect herself from apprehending harm and also introduced expert testimony as evidence to prove that she had suffered from BWS. The court turned down the defendant’s plea and upheld objective test to self-defence, which adjudges the said defence from the point of view that how a reasonably prudent person would have acted in similar circumstances where (s)he would have a rational belief that they were about to be killed or suffer from bodily harm, and hence Janice was found guilty and convicted of manslaughter. On appeal, the North Dakota Supreme Court overturned the lower court's decision and upheld the arbitrary test of self-defense. The court ruled that in such cases, the question of fair belief should be seen from the eyes of an individual who shares the defendant's mental and physical characteristics.

According to the BWS hypothesis, an abused woman senses threat during the intervals of relaxation between incidents of violence when she is in a persistent condition of fear and distress during the cycle's first two phases.⁶⁶ She considers the spell of peaceful intervals as her only chance to protect herself against a stronger and abusive man and she ultimately decides to attack

⁶⁴ Linklaters LLP, “Women who kill in response to domestic violence: How do criminal justice systems respond?” (2016), *available at*: https://cdn.penalreform.org/wp-content/uploads/2016/04/Women_who_kill_in_response_to_domestic_violence_Full_report.pdf (last visited on June 8, 2021).

⁶⁵ 334 N.W.2d 811 (1983).

⁶⁶ Loraine P. Eber, “The Battered Wife’s Dilemma: To Kill or To Be Killed” 32 *Hastings Law Journal* 895, 928 (1981).

then.⁶⁷ In *State v. Wanrow*,⁶⁸ the Supreme Court of Washington gave a liberal interpretation to objective test to accommodate the circumstances encircling the accused to stand as closely as possible in the shoes of accused and As a result, he will decide the character of the act from his perspective. According to this logic, any rational person in the role of BWS victim will be constantly terrified of imminent injury, thereby satisfying the first aspect of self-defense.⁶⁹

When a victim anticipates the brutality of a brawny man or a violently threatening, exploitive, and manipulative man, she may be forced to use deadly action if she is caught in a never-ending loop of potentially fatal abuse⁷⁰, thereby satisfying the second essential.⁷¹

Further, battered women evolve ‘learned helplessness’, which is the reason of their not retreating from the relationship.⁷² This was recognized by the Supreme Court of New Jersey in *State v. Kelly*, in which court stated that:⁷³

some women become so demoralized and degraded by the fact that they cannot predict or control the violence that they sink into a state of psychological paralysis and become unable to take any action at all to improve or alter the situation.

If the battered woman possesses the capacity to retreat is determined by their socio-economic and cultural benchmarks.⁷⁴ Thus, a battered woman's “learned helplessness” combined with socioeconomic and cultural pressures, especially in India, leads her to stay in an abusive relationship, satiating the remaining defense requirements.⁷⁵

Thus, from the aforesaid discussion, it can be concluded that in order to accommodate self-preservation as defence to acts done by victims of BWS, a subjective, adaptive and more flexible approach is what is required to be taken by the Apex court and it has to establish a precedent regarding the same.

⁶⁷ *Supra* note 2 at 142.

⁶⁸ 88 Wash 2d 221: 559 P 2d 548 (1977).

⁶⁹ *Supra* Note 21.

⁷⁰ David L. Faigman, “The Battered Woman Syndrome and Self-Defense: A Legal and Empirical Dissent” 72 *Virginia Law Review* 619 (1986).

⁷¹ *Supra* note 21.

⁷² Abramson et al., “Learned Helplessness in Humans: Critique and Reformulation” 87 *Journal of Abnormal Psychology* 49, 50 (1978).

⁷³ 97 NJ 178: 478 A 2d 364 (1984).

⁷⁴ Elizabeth Kenny, “Battered Women Who Kill: The Fight Against Patriarchy” *U.C. London Jurist Review* (2007).

⁷⁵ *Supra* note 21.

VI. Domestic Violence in India *via-á-vis* “Nallathangal Syndrome” with special reference to COVID-19 Lockdown

In a patriarchal society, the girls since childhood are taught that the home of her in-laws is their ultimate abode. The general saying which is widespread in Indian society, goes “*beti to paraya dhan hoti hai*” (a daughter is alien or external asset). Too much sacrosanctity is attached to the institution of marriage in Indian society, it is seen as an unbreakable bond, that is bound to continue, despite innumerable ups and downs.⁷⁶ A peculiar social stigma attaches with a divorced female.⁷⁷ Questions are raised about her character and status. Even in worst cases, even parents of girl, since childhood or even after marriage teach their daughter to adapt to her situations and refuse to bear her responsibility after marriage. A girl becomes a mother one day, and the feeling of motherhood and sole consideration of welfare of her child is one of the prime factors that make her thick skinned, cold and indifferent towards the atrocities committed against her.⁷⁸ Such mother would ultimately do two things if her child is a female, either she would endure everything and do what all is required to give her daughter a completely different better future from hers or she would again teach her child what she learnt from her mother – Resilience is the virtue of a female.⁷⁹ Hence it is the peculiar socio-cultural setup of Indian society which prevents the prey of evil of domestic violence from coming out openly in society about her sufferings and take early steps in that regard.

The domestic violence complaints filed with National Commission for Women, in the first half of 2021 surpassed the annual records since year 2000 and 70% of the victims did not seek any help or did not disclose about the violence endured to anyone else.⁸⁰ There could be several reasons attributing for it yet, Nallathangal Syndrome may be regarded as the profound cause. Thus, the research attempts to highlight this further.

⁷⁶ Meghna Bhat and Sarah E. Ullman, “Examining Marital Violence in India” 15 *Trauma, Violence & Abuse*, SAGE Publications 72 (2014).

⁷⁷ Jean Chapman, “Violence against Women in Democratic India: Let’s Talk Misogyny” 43 *Social Scientist* 57 (2014).

⁷⁸ R. K. Bag, “Domestic Violence and Crime Against Women: Criminal Justice Response In India” 39 *Journal of the Indian Law Institute* 373 (1997).

⁷⁹ Michelle T. Hackett, “Domestic Violence against Women: Statistical Analysis of Crimes across India” 42 *Journal of Comparative Family Studies* 280 (2011).

⁸⁰ “Domestic violence complaints received in past five months reach a 21-year high”, *The Hindu*, November 27, 2021, available at <https://www.thehindu.com/data/data-domestic-violence-complaints-received-in-past-five-months-reach-a-21-year-high/article34877182.ece> (last visited on April 11, 2022).

In India, this record shattering data is nothing new or surprising, as since decades, it has been among the topmost nations with highest number of domestic violence cases. The nexus between domestic violence and Nallathangal syndrome is the most direct one and to exemplify the same, the following two cinematic pieces are pertinent to note. Way back in 2006, the movie “Provoked” attempted to display a nexus between gradual violent treatment of husband towards her wife that impacts in development of Battered Women Syndrome which makes wife to commit homicide of her batterer. It was a real-life depiction of Kiranjeet Ahluwalia case.⁸¹

Quite recently, the over-the-top (OTT) series “Criminal Justice: Behind Closed Doors” attempts to present a realistic picture of a victim of Nallathangal Syndrome, who, owing to consistent emotional and sexual torture by her husband, ends up in causing his death, and like a peculiar victim of Nallathangal Syndrome as distinguished from Battered Women Syndrome, even once attempts to commit suicide. Both the aforesaid works highlight how the general public, the court system, and, more importantly, the female herself are oblivious being suffering from the syndrome and its consequences. Additionally, the series like these make viewers to ponder upon the hypothetical situations that things could have been entirely different if the victim, at an earlier stage, had shared her sufferings to the world and not kept the same confined to herself.

The very seeds of Domestic Violence are sown when a distorted view of Patriarchy (which is prevalent in most parts of India⁸²) is internalized by the aggressor due to which he starts seeing his female counterpart as an inferior being, and it is then the nature of relationship thus shifts from healthy to abusive. As a consequence, the female then mandatorily leads a life of a slave to their male partner, complying uninterruptedly with their whims and caprices.⁸³ On the worst side, even after blind adherence to the words of husband, owing to intoxication, anger, *etc.*, at times, the female has to unnecessarily suffer violence. Owing to the flaws of her family, or demands from her maternal family, she has to endure violence. For similar reasons that are even out of her control, for instance, giving birth to a girl child, she has to again suffer battering.⁸⁴ These are just a very few situations under which she suffers violence and the list is exhaustive!

⁸¹ *Regina v. Kiranjeet Ahluwalia*, MANU/UKCR/0001/1992: (1992) 4 All ER 889; (1992) EWCA Crim 1.

⁸² Himani Bannerji, “Patriarchy in the Era of Neoliberalism: The Case of India” 44 *Social Scientist* 20 (2016).

⁸³ Michael Salter, “Multi-Perpetrator Domestic Violence” 15 *Trauma, Violence & Abuse* 110 (2014).

⁸⁴ Navtej Purewal, “Sex Selective Abortion, Neoliberal Patriarchy and Structural Violence in India” 119 *Feminist Review* 31 (2018).

The year 2020 was a historic event for the mankind, as approximately after more than a century, humans came across an invisible enemy, COVID-19 which irreversibly and immensely impacted lives of everybody irrespective of their age, gender, socio-economic status, etc. The world got engulfed into a dark and never-ending era of pandemic which particularly casted a dark eclipse on the lives of women. Women were especially susceptible to domestic abuse as a result of the prolonged lockdown imposed by the Government to contain the pandemic. Within their households, women were combating a shadow epidemic. A comprehensive global study done by UN Women suggests that although the figures fluctuate by nations and demographics, the COVID-19 outbreak has exacerbated women's exposures to violence and damaged their senses of safety.⁸⁵ Owing to this, their tension and anxiety levels have grown significantly, especially in situations of physical aggression, causing an overall psychological derailment. Globally such violence happened irrespective of age and the women did not attempt to seek any external help.⁸⁶

Highlighting the situation in India where the figures are even more perturbed. In 2020, the National Commission for Women recorded 23,722 complaints of offenses against women⁸⁷, the greatest in the previous six years and 25% of them were solely of domestic Violence.⁸⁸ On the opposite side, a study⁸⁹ which critically analyzed data gathered from various NGOs across India concluded that there has been a drop in the number of complaints about domestic violence, which might be linked to the victim's isolation in household, the abuser's continual surveillance and manipulation of decision-making, the victim's social alienation from family members and peers, and a paucity of support choices. Another thought-provoking study⁹⁰ noted that the number of domestic violence incidents and their overall reporting was moderate when lockdown began in March 2020, spiked significantly in April, May and first half of June when the lockdown was at its stringent level, and then when restrictions gradually started loosening, the

⁸⁵ COVID-19 and violence against women: What the data tells us, *available at*: <https://www.unwomen.org/en/news-stories/feature-story/2021/11/covid-19-and-violence-against-women-what-the-data-tells-us> (last visited on April 11, 2022).

⁸⁶ Catherine Porter, Marta Favara, Alan Sanchez and Douglas Scott, "The impact of COVID-19 lockdowns on physical domestic violence: Evidence from a list randomization experiment" 14 *SSM - Population Health* 8 (2021).

⁸⁷ National Commission for Women, "Nature-Wise Report of the Complaints Received by NCW in the Year: 2020" (2021), *available at* <http://ncwapps.nic.in/frmReportNature.aspx?Year=2020> (last visited on June 13, 2022).

⁸⁸ Increase in Domestic Violence against Women, *available at*: <https://pib.gov.in/PressReleaseDetailm.aspx?PRID=1657678> (last visited on April 11, 2022).

⁸⁹ Akshaya Krishnakumar and Shankey Verma, "Understanding Domestic Violence in India During COVID-19: a Routine Activity Approach" 16 *Asian Journal of Criminology* 34 (2021).

⁹⁰ Sucharita Maji, Saurabh Bansod and Tushar Singh, "Domestic violence during COVID-19 pandemic: The case for Indian women" 10 *Journal of Community & Applied Social Psychology* 6 (2021).

figures again began to slowly decrease in second half of June, July and August. Domestic violence & intimate partner violence have grown as a result of chronic confinement, family overcrowding, increasing substance usage, skewed relationship trends, traveling constraints, and limited access to health care. Coercive sexual practices have also risen. Domestic abuse went underreported and mismanaged in India during lockdown due to a deficiency of awareness, social stress, administrative anhedonia, suspicion of legal hassles, and insufficient knowledge–attitude–practice linked to help-seeking, that can propagate the vicious cycle throughout the current health crisis.⁹¹ India, with its multi-cultural populace has been among the worst-affected countries by the epidemic. Worries within “closed doors” are just as dangerous as the outbreak itself, with the surge in instances of gender-based violent acts premised on underlying gender inequity.⁹²

Now, the question which arises at this juncture is that despite so much viciousness, what stops a woman from reacting or responding in her own ways to such violence. The preceding discussion has clarified the fog completely from this fact that not all, but majority of the victims of domestic abuse prefer to remain silent and endure the pains inflicted upon them.⁹³ While some keep on fighting the battle throughout their lifetime, some lose it in between and succumb to death.

The above discussed factors also reflect a psychological element, peculiar to Indian women, that is implanted since the very beginning in their mindset and grows with time, which forces them to become a silent sufferer. Women who have been the victims of domestic violence are more likely to suffer from despair, attempt suicide or other physical harms and attract psychosomatic diseases.⁹⁴ And studies have also suggested that victims of domestic violence in India are more vulnerable to aforementioned issues (despair, suicidal attempts, *etc.*) as compared to women who suffer from other problems in their life apart from domestic violence.⁹⁵ Apart from this, few research works have also established that such women are also not alien to homicidal

⁹¹ “Crisis Within the Walls”: Rise of Intimate Partner Violence During the Pandemic, Indian Perspectives, *available at*: <https://doi.org/10.3389/fgwh.2021.614310> (last visited on April 12, 2022).

⁹² Gender-Based Violence During COVID-19 Pandemic: A Mini-Review, *available at*: <https://www.frontiersin.org/articles/10.3389/fgwh.2020.00004/full> (last visited on April 12, 2022).

⁹³ *Supra* note 83.

⁹⁴ Shuba Kumar, Lakshmanan Jeyaseelan, Saradha Suresh and Ramesh Chandra Ahuja, “Domestic violence and its mental health correlates in Indian women” 187 *British Journal of Psychiatry* 65 (2018).

⁹⁵ Domestic violence and women’s health in India, *available at*: <https://www.orfonline.org/research/domestic-violence-and-womens-health-in-india/> (last visited on April 13, 2022).

tendencies.⁹⁶ This quite objectively establishes that certain psychological impacts are directly related to cases of domestic violence.

Due to all aforesaid factors, enduring continues, and with passage of time, it derails the sane mental stability of women, and pushes them to take the matter into their own hands, it is what we call as Nallathangal Syndrome.

The resilient attitude just suppresses the reaction but it does not end the pain that the body of female senses, whenever she is subjected to torture, as sensing the pain, very basically, is a biological trait of human beings, and brain can surpass it but cannot exterminate it completely. So, this sense of pain keeps on accumulating and the last act of accused, becomes the “*last straw breaking camel’s back*”.⁹⁷ It appears ironical that when such victims, owing to their troubled mental stability, commit death of their batterer or cause self-harm, the entire purpose for which they kept their mouth stitched for so long, eventually gets frustrated. Furthermore, in case of homicide, such women are treated mechanically by the criminal justice administration. And hence, as the title of instant research work says, “A Victim becomes a Perpetrator” within no time. This calls for a need for Welfare State, to relook from a psychological and humanitarian perspective, towards such victims, and hence prioritizing “understanding” before “penalizing”⁹⁸. When the progressive Indian Judiciary⁹⁹ is leaning towards conducting a psychological evaluation¹⁰⁰ of death row convicts, then it is not an over-the-top expectation from the *sentinel on the qui vive* to adapt an empathetic approach, while taking into consideration all the aforementioned psychological aspects, towards the victims of Nallathangal Syndrome, who have been ignored for a long time now by conventional Indian criminal justice jurisprudence.

VII. Conclusion & Recommendations

⁹⁶ Alka S Vachher and A K Sharma, “Domestic violence against women and their mental health status in a colony in Delhi” 35 *Indian Journal of Community Medicine : Official Publication of Indian Association of Preventive & Social Medicine* 404 (2010).

⁹⁷ *Suyambukkani v. State of Tamil Nadu*, 2014 (3) MLJ (Cr.) 562

⁹⁸ Aishwarya Deb, “Battered Women Syndrome: Prospect of Situating it within Criminal Law in India” 8 *BRICS Law Journal* 110 (2021).

⁹⁹ *Jai Prakash v. State of Uttarakhand*, SLP (Cr.) 1707-1708/2022.

¹⁰⁰ Live Law News Network, “Supreme Court Stays Death Sentence Awarded To POCSO Convict; Directs His Psychological Evaluation”, *LIVE LAW*, March 4, 2022, available at <<http://www.livelaw.in.nludelhi.remotexs.in/top-stories/supreme-court-death-sentence-pocso-psychological-evaluation-193409>> (last visited on April 13, 2022).

In the Indian Society, since time immemorial, women are treated as a lower being who ideally expected to silently endure everything and fulfill their obligations of life towards their family members. By the silent enduring, they are even expected to act dumb towards their abuse and exploitation too. Till the point they agree silently on everything, all of it goes fluently. But if the said silence piles up and bursts one day, isn't it then wrong to treat by harsh legal procedures, a victim who just retaliated due to basic human instinct of self-preservation. Such treatment would ultimately lead to death of faith upon legal system of a huge chunk of females in our society who look towards legal system as savior of the last resort to their sufferings. Law and Justice are two different concepts, Justice is the Ideal, Law is just a means to attain that ideal. By abiding black and white codes strictly in such cases, the purpose of law would be fulfilled but the Justice would lose the sight. Thus, there is need for balanced multi-directional approach.

What this paper suggests for courts to take into adequate consideration, a victim justice approach apart from criminal justice approach. The courts must not become a tool for mechanical disposition of cases but must deal with cases in a humanitarian manner understanding the perspective of victim and his/her reason for involvement in crime. Adopting the same yardstick for a hardened criminal as well as a victim of abuse would surely not serve complete justice. And for all of this, the law needs to undergo certain changes, as suggested in aforesaid chapter. The entire framework of homicide law needs a reformulation, especially in treating the victim of battered women syndrome who retaliate towards their abuser. As it had been established the preceding chapter, such females should be allowed to avail the defences of Insanity and Self Defence, provided that the conventional notions of these defences needs to be adapted as per the requirement of specific cases. Many High Courts have proposed that the principle of unexpected and grave retaliation be extended to cover the defense of sustained provocation, which the Supreme Court has also adopted in one of its rulings. Yet, there is no strong precedent of Supreme Court affirming all the previously mentioned suggestions in the existing regime. However, the Apex court could take into consideration the precedents of High Courts to protect the rights of such offending victims from a humanitarian and compassionate point of view. Along the role of Supreme Court, the role of parliament also comes into play to give a legal force to such changes for securing justice for the special offenders, as it had been established in aforesaid chapter that the ancient IPC if taken strictly could create a hurdle sometimes in meeting the changes of the current times. All of this is necessary because many International Legal

Systems are accepting the defence of Battered Women Syndrome and India still treats such victims as hardened criminals, tagging the Indian legal system very aptly as obsolete and robotic. It is time that the judiciary steps into the shoes of the battered women to discover the latent victimhood in the patent incrimination and in doing so, the courts must consider psychological factors as mentioned in several parts of this research, precisely chapters V & VI. It is also suggested that whenever such cases arise, their merits must be strictly scrutinized before giving them benefit of any lenient treatment so as to prevent the misuse of the said principle as highlighted by the Supreme Court in case of *Arnesh Kumar v. State of Bihar*.¹⁰¹

¹⁰¹ (2014) 8 SCC 273.