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“THE BATTERED WOMEN SYNDROME”

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ABSTRACT

The capitalist society that we live in today, emphasizes and builds upon the principles of patriarchy. A social order is established whereby men are seen as more dominant than women. Men are supposed to be masculine, strong, and aggressive and on the other hand, women are supposed to be fragile, docile, and submissive. Establishing this, there are micro-aggressions or normalized forms of violence that are faced by women on a daily basis. One form of violence that women endure is Intimate Partner Violence. Often, due to internalization of society's expectations from women, they are unable to leave abusive marriages. Moreover, they are unable to find any recourse in the legal system. Left with no choice, some women believe that the only solution they have is killing their abusive husbands. In the 1970s, the concept of Battered Women Syndrome was introduced. It aimed at justifying the killing of husbands by battered women. However, its application has resulted in lowering the credibility of women and portraying them as hysterical. The question this paper aims to answer is whether this concept reinforces the principles of patriarchy, rather than subverting them? This paper will also examine the scope of this concept within the Indian law, and its development alongside the Nallathangal Syndrome. Part I of this paper examines the context within which men feel capable to batter women. Part II will have a brief description of the concept introduced by Lenroe Walker. Part III will lay down the application and adoption of the concept in law and

its criticism. Part IV will discuss the relevance of this syndrome in Indian Courts. This paper will be concluded in Part V.

PART I: THE POWER STRUGGLE

Family is the basic unit of society; it is fundamental and indispensable. It is for this reason that all societal institutions aim at protecting the structure of the family. Protecting this structure means protecting the social order and abiding by it. These regulate roles for both men and women. Foremost, it creates a hierarchy that places men at the top, subordinating women. The idea that men are superior to women is embedded in the behavior of the society. While, women are relegated to the private sphere, that of family, children, and adopting a nurturing role, men are supposed to operate in the public sphere. Often, these two spheres are seen as opposite binaries. The sphere of a family is seen as a private affair that must not be encroached upon. To maintain the power men have, they often resort to violence. Aggression and violence are seen as a feature of masculine power which is glorified on a daily basis.¹ Women are seen as properties of men and fail to have any independent identity of their own. Any transgression of this demarcation is met by an effort to push them back within the private sphere. In marriages, when men make use of the power they hold, it is termed as Intimate Partner Violence. Rebecca and Russell Dobash in *Violence against Wives: A Case against Patriarchy* commented, "*men who assault their wives are actually living up to cultural prescriptions that are cherished in Western Society – aggressiveness, male domination, and female submission- and they are using physical force as a means to enforce domination.*"²

So far, a brief discussion on 'why he hits her' has taken place. But the question that emerges in the minds of most is 'Why do battered women not leave their abusive husbands?' Patriarchy dictates the domination of men over women in all spheres of life. It uses violence as a common tool to achieve those goals. Violence is normalized to the extent, where men do not see anything wrong with inflicting it upon their wives. Battered women, often, internalize this narrative and start believing that they deserve what they are getting. Along with this, patriarchy leaves women with no means to fend for herself. They have to stay with their husbands for their basic survival. There is also a risk of continued harassment after their relationship ends. This

¹ Donna Scott Tilley & Margaret Brackley, *Men Who Batter Intimate Partners: A Grounded Theory Study Of The Development Of Male Violence In Intimate Partner Relationships*, 26 ISSUES IN MENTAL HEALTH NURSING 281, 285-287 (2005).

² R. EMERSON DOBASH & RUSSELL DOBASH, *VIOLENCE AGAINST WIVES: A CASE AGAINST PATRIARCHY* (New York Free Press, 1979).

situation becomes more complicated when a child is involved. Children are exposed to domestic violence with the risk of transgenerational transmission of aggressive behaviors. Moreover, women are fearful of losing custody of their children. Visitations by the husband can also provide him with the opportunity to continue the abuse. Further, the failure of judges to respond adequately to these cases plays a huge role. In many cases, the anti-victim bias and anti-woman bias emerges in the judgment of the court.³ With no reprieve from society or societal institutions, women choose to stay in abusive marriages. They are reduced to being in a kill or be killed situation.

PART II: BATTERED WOMEN SYNDROME

The Battered Women Syndrome (BWS) was introduced by Dr. Lenroe Walker in the 1970s. It was introduced in the background of the rising second wave of feminism and Violence Against Women Movements. This concept was put forth in a bid to justify the killings of abusive husbands by their wives. It is based on the idea that battered women are left with only two options- to either kill or be killed. According to Dr. Walker, a battered woman is one who has undergone the battering cycle twice. The battering cycle consists of three stages. The first stage is the tension building phase. In this phase, the woman endures minor physical violence and verbal attacks, which she minimalizes and subsequently tries to placate her husband. This leads to the second stage, that is, the battering stage. This stage consists of acute battering incidents, incidents that involve extreme violence, an explosion of tensions that had been built up in the first stage. This is the stage that regulates most of the woman's acts. Lastly, there is the honeymoon phase. The attacker expresses a regretful demeanor and ensures the woman that he will stop. The cycle then repeats itself, often with an increase in the violence every cycle. With every cycle of violence, the man normalizes the violence he inflicts on his wife. It is the third stage of this cycle, which makes women believe that they must stay with the batterer in the hope of an end to this cycle and maintenance of the family. Along with this cycle, Dr. Walker elucidated on the theory of 'learned helplessness' from the psychological studies of Martin Seligman. According to this theory, the battered women stop trying to escape their abusive relationship. Instead, they start focusing on their survival. It is argued that women suffer paralysis in a battered relationship due to the aspect of learned helplessness, which is another

³ Ola W Barnett, *Why Battered Women Do Not Leave, Part 1: External Inhibiting Factors Within Society*, 1 TRAUMA, VIOLENCE & ABUSE 343 (2000).

reason they feel trapped. Emphasis was also made on portraying the syndrome as a part of Post-Traumatic Stress Disorder. This makes the act of killing the abusive husband as not an active action on part of the woman but as an act committed under the infliction of the disease.⁴

PART III: APPLICATION IN COURTS AND CRITICISM

The Battered Women Syndrome initially gained recognition as a theory, which was later transformed into being a reasonable defense for women to plead for their actions. This involved bringing in expert testimonies to understand the psychology of battered women who commit this act. In 1979, this syndrome was admitted in the court in the US case, *Ibn-Tamas v United States*.⁵ Even though the woman did not win this case, the imminent danger she feared was considered based on the battered women syndrome. In cases of murder, there are three defenses available- provocation, self-defense, and diminished responsibility (or insanity). In the United Kingdom, the principle for provocation was established in *R v Duffy*.⁶ It was held that the loss of self-control for provocation must be sudden and temporary. The existence of a cooling-off period between the loss of self-control and the crime makes this defense inapplicable. In cases of domestic violence, the provocation is not sudden but is built up and is known as the slow burn. This was recognized in *R v Ahluwalia*,⁷ where the court overturned *R v Duffy* and took into consideration the Battered Women Syndrome. In a subsequent English case, *R v Thornton*,⁸ however, the court upheld the rule in *R v Duffy*.⁹

The judgments of both the cases inherently focused on the conception of a 'good' and a 'bad' wife. Sara Thornton was portrayed as a promiscuous lady who had several relationships with men. She was rebellious because she had a job and rejected her conventional role of domestic duties. Moreover, the court put an onus on her for knowing that she was marrying an alcoholic. On the other hand, Kiranjit Ahluwalia was shown as the epitome of femininity. She was submissive, docile, and fulfilled her traditional role as a woman. She tried to hold her family together. The Battered Women Syndrome could be applied to *R v Ahluwalia* because Kiranjit

⁴ Aishwarya Deb, *Battered Woman Syndrome: Prospect of Situating It within Criminal Law in India*, SSRN (May 30, 2018), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3458792.

⁵ *Ibn-Tamas v. United States*, 407 A 2d 626 (DC 1979).

⁶ *R. v. Duffy*, 1 All ER 932, 935 (1949).

⁷ *R. v. Ahluwalia*, 96 Cr App R 133 (1993).

⁸ *R. v. Thornton*, 96 Cr App R 112 (1993).

⁹ Aman Deep Borthakur, *The Case for Inclusion of 'Battered Woman Defence' in India*, 11 NUJS L. REV. 1, 10-11(2018).

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Ahluwalia fit the framework of what is a 'good wife'. The application of this syndrome in courts has led to an increased emphasis on the aspect of learned helplessness. This results in focusing on the passivity of the women's actions. Throughout the Ahluwalia judgment, the court considered her to be a victim of her fate, of things happening to her. This takes away women's agency from them. Learned helplessness doesn't center on the rationality of the killing but on the stereotypes that have been set up by the society where women are viewed as subordinate to men.¹⁰

Justice Claire L'Heureux Dubé noted in *R. v. Malott*, (Supreme Court of Canada) that:

*By emphasizing a woman's 'learned helplessness', her dependence, her victimization, and her low self-esteem, to establish that she suffers from 'battered woman syndrome', the legal debate shifts from the objective rationality of her actions to preserve her own life to those personal inadequacies which explain her failure to flee from her abuser. Such an emphasis comports too well with society's stereotypes about women.*¹¹

Moreover, the defense of diminished responsibility is applicable if the person is suffering from an abnormality of mind at the time of the commission of the offense. This excuses the crime committed by women, instead of justifying it. This once again focuses on the incapability of women to make rational decisions and classifies them as hysterical. BWS also undermines the credibility of women's testimony. In the case *People v Dilliard*,¹² (United States) the syndrome was mentioned by the husband to undermine the credibility of the woman. The wife did not mention the syndrome, neither was there evidence to prove that she suffered from this syndrome. Yet, the court admitted the concept which made her unreliable. Another important area where BWS causes a problem is child custody. Often, on the use of BWS, the courts look at women as weak and dependent on their husbands. They are seen as neglecting the duties they have towards their children.¹³ Further, because of the concept of learned helplessness, they are seen as incapable of making appropriate and rational choices.

¹⁰ Donald Nicolson, *Telling Tales: Gender Discrimination, Gender Construction, and Battered Women who Kill*, 3 FEMINIST LEGAL STUDIES 185 (1995).

¹¹ *R v Malott*, 1 S.C.R. 123 (1998).

¹² *People v Dilliard*, 53 Cal. Rptr. 2d 456 (Ct. App. 1996).

¹³ Rebecca D. Cornia, *Current Use of Battered Woman Syndrome: Institutionalization of Negative Stereotypes about Women*, 8 UCLA Women's L.J. 99, 114-115 (1997).

PART IV: RELEVANCE IN INDIA

The feminist movement in India in the 1970s focused on the Anti-dowry Violence Movement and recognizing violence within the family as a matter which cannot be interfered in. Years of struggle and a shift to protests concentrated on domestic violence culminated in the Protection of Women from Domestic Violence Act, 2005. This is a civil law which aims at the protection of women from abuse within their families.¹⁴ According to a National Family Health Survey released by the Union Health Ministry, every third woman in India from the age of 15 has faced domestic violence. More often than not, these women refrain from filing cases against their husbands, relatives. They are forced to compromise or reconcile and continue living with their partners. Marital rape is a common form of violence that men inflict over their wives. Marital rape not being an offense, women usually undergo these ordeals silently. These issues are minimalized not only by the wife but by her family and society. Furthermore, the idea that women are objects is still prevalent. The fathers are relieved of their burden when girls marry and often see women raising issues on domestic violence as a nuisance, which they do not wish to undertake. The Battered Women Syndrome was not introduced in India until very recently, instead it had developed the concept of 'Nallathangal's Syndrome'. This syndrome was established in *Suyambukkani v State of Tamil Nadu*¹⁵ in the Madras High Court in 1989. It was adopted from a Tamil ballad which recited the story of a woman who committed suicide along with her children due to the misery she suffered. This case also widened the concept of provocation to include sustained provocation, which is an extension of a time interval between the provocation and commission of the act.¹⁶

In 2013, the Guwahati High Court set aside the murder charge in *Manju Lakra v State of Assam*¹⁷ on the defense of sustained provocation. The court referred to the Nallathangal Syndrome and held that it should recognize a situation that may lead the battered woman to kill her attacker. Many have argued for an increase in the scope of self-defense, which would provide a full defense, instead of a partial one as in provocation. To avail of this defense, the threat to the body must be imminent and the force used must be necessary and proportional

¹⁴ Supra note 3.

¹⁵ *Suyambukkani v. State of T.N.*, (1989) LW (Cri) 86.

¹⁶ Keerthana Medarametla, *Battered Women: The Gendered Notion of Defences Available*, 13 SOCIO-LEGAL REVIEW 108, 112-114 (2017).

¹⁷ *Manju Lakra v. State of Assam*, (2013) SCC OnLine Gau 207.

against the threat. The court allowed for this defense in *Champa Rani Mondal v State of West Bengal*.¹⁸ In this case, the accused woman killed her brother in law for trying to rape her. The reason why this defense is not easily applicable in courts is due to the fact that courts consider this defense only when the force used is immediate. In many cases, battered women may use force in non-confrontational situations. These situations may be classified by the courts as not being in the nature of imminent threat. In situations, where the acts of the husband are itself not considered as an offense, women have no recourse.¹⁹ The concept of BWS has yet to be fully explored in India. The inherent conception of the roles assigned to men and women is so deeply rooted, that an action against these conceptions is seen as a violation of the society as a whole.

PART V: CONCLUSION

BWS started as a theory to reason for the actions of battered women killing their abusive husbands, but it has deviated from its original purpose. With the increasing recognition of this theory in courts, the theory has not been captured fully in its essence. The main focus has remained to be the learned helplessness of women which leaves them in a state of paralysis, unable to make rational decisions. This fits well with the preconceived notions of society. It has helped in re-emphasizing the principles of patriarchy instead of subverting it. Taking the defenses available in law, they are further classified as insane or irrational. The law that is in place is largely male-centric. It takes into consideration only how men would react to certain situations, completely disregarding the narratives of women. Through the judgments, it can also be seen that the defenses can only be available to women if they react in a certain way. In the UK, the defense of provocation has been replaced with the defense of loss of control.²⁰ This amendment has gone a step forward to remove the gender bias that exists within the law. Even though BWS might have been instrumental in the acquittal of women in some cases, it is not a beneficial tool for women in the long run. It gives the façade of attacking the patriarchal institutions, which on application does not seem to be the case. There must be an incorporation of the perspective of women in law, and support must be provided to the battered women to escape the cycle of violence in which they are trapped.

¹⁸ *Champa Rani Mondal v State of West Bengal*, (2000) 10 SCC 608.

¹⁹ *Supra* note 16, at 122-124.

²⁰ *Supra* note 16, at 121.