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Battered but Not Broken: Legal Recognition of BWS in India

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ABSTRACT

Battered Women Syndrome (BWS) is an outcome of Intimate partner violence (physical and psychological) exhibited by a woman, a sufferer of abuse on a repeated basis. Lenore E. Walker coined the term BWS as a legal defense in the 1970s to explain the complex psychological and behavioral patterns of women who endure sustained domestic abuse, including verbal attacks, threats, and physical and sexual violence. In India, Nallanthangel Syndrome was found in the landmark case Suyambukkani v. State of Tamil Nadu.

The paper seeks to analyze the evolution of BWS as a legal defense globally and in the Indian context. In certain sections of the IPC (Indian Penal Code), some sections are argued as a valid defense for BWS, like S.300 and S.100, which talk about sudden provocation and acts of self-defense. It would contextualize BWS as a theoretical concept, giving a global and Indian overview of landmark cases and how the decisions evolve. As psychological evidence in India, BWS has yet to develop much and is nascent. Still, landmark cases like Manju Lakra v. State of Assam have started accepting it as a valid defense.

The larger object of the paper would be to provide a gender-just analysis of criminal laws about BWS and how there is a need for subjectivity in physical and mental hardships faced by women instead of Male perspective, which will help in better understanding and bringing different perspectives on criminal laws.

Keywords: *Battered Women Syndrome (BWS), Cycle of Violence, Legal Defense, Domestic Violence, Expert Testimony.*

I. INTRODUCTION

Understanding BWS is crucial for recognizing the complexities of abusive relationships and the psychological trauma experienced by victims. In the late 1970s, the American clinical psychologist Lenore Walker introduced the concept of BWS to recognize the severity of intimate partner violence within households.² It was developed to justify and describe behavioral patterns found in abusive relationships and why women do not leave such relationships. The BWS gained recognition in the United States, Canada, the United Kingdom,

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²Aishwarya Deb, *Battered Woman Syndrome: Prospect of Situating It Within Criminal Law in India*, 8(4) BRICS L.J. 103, 105 (2021).

and Australia, where it was admitted through expert testimony to support defense pleas and justify the actions of battered women facing homicide charges.³

BWS is a pattern of psychological and behavioral symptoms resulting from prolonged abuse by an intimate partner.⁴ The *Cycle of Violence* theory consists of a recurring pattern of three phases, consisting of tension-building, acute battering incidents, and honeymoon phases in abusive relationships.⁵ Tension-building is a phase in which there is a gradual increase in tension, anger, and conflict within the relationship.⁶ Acute battering incidents are the next cycle, where the tension built up in the previous phase erupts into an acute episode of violence or abuse.⁷ It can include physical, emotional, or sexual abuse directed at the victim. The victim may feel helpless and trapped and unable to escape the abuse. The last is the honeymoon phase, where the abuser may show remorse, apologize, and behave affectionately toward the victim.⁸ The above-stated phase may create a sense of relief for the victim and foster hope that the abuser will change. However, it is often short-lived, and the cycle begins again with the tension-building phase. The 'learned helplessness' theory refers to a condition in which a person feels a sense of powerlessness, often due to continuous trauma.⁹ It is the psychological state of a battered woman subjected to constant abuse who feels unable to escape or change her situation.¹⁰ The above theory explains why some women may stay in abusive relationships, as the cycle of violence can create feelings of helplessness and dependency.¹¹ Understanding BWS is crucial for recognizing the complexities of abusive relationships and the psychological trauma experienced by victims.

Ultimately, this essay will provide solutions for using BWS as a legal defense. By providing a comprehensive understanding of BWS and its legal evolution across prominent legal systems, it seeks to provide effective legal defense strategies and potential legal reforms in India. In doing so, the paper hopes to empower victims, ensure justice, and pave the way for a future where BWS is understood and effectively confronted and overcome.

The essay proposes the BWS as a separate general exception in the Indian Penal Code (IPC). *First, I present* a small comparative analysis of the evolution of jurisprudence surrounding BWS

³*Id.* at 105.

⁴*Id.* at 105.

⁵Lenore E. A. Walker, *Battered Women Syndrome and Self-Defense*, 6 Notre Dame JL Ethics & Pub Pol'y 321, 330 (1992).

⁶*Id.* at 330.

⁷*Id.* at 330.

⁸*Id.* at 330.

⁹*Id.* at 330.

¹⁰*Id.* at 330.

¹¹*Id.* at 330.

in the U.S. and U.K. legal systems and how they have adapted it. *Second*, it analyses the evolution of the usage of BWS as a concept in a few cases of Indian jurisdiction. Indian jurisdictions' stand on BWS cases is nascent. It reflects the need for legal reformation and a more gender-sensitive and gender-neutral approach to effectively address the concerns of battered women and integrate their experiences. *Finally*, I argue why the Indian legal system should adopt BWS as a separate legal defense.

II. ANALYSING THE DEVELOPMENT OF THE U.S. AND THE UK LEGAL SYSTEM AND PROPOSING CHANGES IN THE INDIAN LEGAL SYSTEM

The journey of the US legal system to accept BWS as a defense using expert opinion has been filled with essential steps and discussions. The first large case to mention the BWS in expert opinion was *Dyas v. United States* in 1979.¹² A three-point test, the *Dyas test*, lets in expert testimony. The test¹³ is explained below:

- 1) the subject matter must be so distinctively related to some science, profession, business, or occupation as to be beyond the ken of the average layman.
- 2) the expert testimony is admissible only if the state of the pertinent art or scientific knowledge permits a reasonable opinion to be asserted by an expert. It requires whether there is a general acceptance of a particular scientific methodology.
- 3) the witness must have sufficient skill, knowledge, or experience in that field or calling to make it appear that his opinion or inference will probably aid the trier in his search for truth.

Here, expert testimony refers to where a qualified expert witness with specialized knowledge is called. It helps to explain how a battered woman would perceive danger and to establish that her actions were a result of the psychological trauma she experienced.

Roberta argues that the *Dyas test* needs to be more flexible, barring relevant and valuable expert insights from consideration.¹⁴ In the second part of the test, the critical point is that when determining the admissibility of expert testimony on BWS, the focus should not be on whether specific concepts derived by the expert are widely accepted or if different researchers would choose other methods. Instead, the emphasis should be on whether the research methods employed by the expert have gained general acceptance within the scientific community.

¹²Roberta K. Thyfault, *Self-Defense: Battered Woman Syndrome on Trial*, 20 Cal W L Rev 485, 497, (1984)

¹³*Id.* at 499-508.

¹⁴*Id.* at 497.

These studies emphasize evaluating the value of expert input without requiring that the subject matter is beyond the average person's grasp. The debate persists over whether to follow the rigid Dyas test or take a more flexible approach when allowing expert testimony on BWS. The evolution highlights the constant efforts to balance welcoming expert input in BWS cases with meeting admissibility requirements for expert testimony.

The integration of BWS as a legal defense in the UK has progressed gradually. The 1992 case, *R v. Ahluwalia*, involving the defendant Kiranjit Ahluwalia killing her abusive husband, marked early deliberation. While Ahluwalia was convicted of murder, the case illuminated domestic violence and battered women's experiences. Subsequently, awareness grew about accounting for prolonged abuse's impacts when battered individuals kill abusers. It catalyzed the admission of expert testimony to the BWS. Expert testimony on BWS started to be allowed in UK courts.¹⁵ It provided insight into the psychological effects of domestic violence on defendants. It enabled a more holistic understanding of the situations leading battered women to kill their batterers. The testimony made judges and juries understand the psychological trauma and fear defendants experienced. The UK legal system's approach to BWS cases has faced criticism because it does not fully consider the nitty-gritty involved.¹⁶ Although advances have been made in allowing expert testimony on BWS, discussions persist regarding the capacity of the legal framework to meet the needs of battered women, such as understanding their perceptions in battering situations, which have been gradually impaired.

III. ANALYZING THE DEVELOPMENT OF BWS IN INDIA

Earlier, battered women were faced with murder convictions, as they did not fit within the conventional defenses available for homicide.¹⁷ Defenses include the defense of sudden and grave provocation, self-defense, or insanity. In severe and sudden provocation, it has been argued that the continuous abuse and violence suffered by the battered woman provoke them to the point where they react in a manner that leads to the offense of killing the batterer. Indian cases where sudden and grave provocation has been applied will be discussed below. In defense of self-defense, it can be invoked to argue that the woman acted in self-defense to protect herself from imminent harm or danger posed by the abuser. In defense of insanity, it can be argued that the psychological impact of the abuse led to a state of mental incapacity at the time of the offense. These traditional defenses favored men and did not expect women to be charged with

¹⁵Amanda Clough, *Battered women: Loss of control and lost opportunities*, 3(2) Journal of International and Comparative Law 279, 284, (2016), <https://researchonline.ljmu.ac.uk/id/eprint/4191>

¹⁶*Id.* at 284.

¹⁷Aishwarya, *supra* note 1, at 105.

homicide.

In India, BWS has been recognized in 3 cases, *Manju Lakra v State of Assam*, *Amutha v State*, and *State v Hari Prasad*, but remains less utilized. Men committed most murders, and extreme cases were expected to be committed by women; thus, the laws were male-centric, and battered women were considered offenders. The *Suyambukkani v. State of Tamil Nadu*¹⁸ was the first case to capture the concept of BWS in the form of *Nallathangal syndrome*. The syndrome originated with the High Court of Tamil Nadu and is based on sustained provocation. Sustained Provocation involves a series of more or less grave acts spread out over some time by the batterer on the battered woman, with the last act breaking the threshold of the victim, leading to a horrible outcome of killing the batterer.

The accused had been living since her marriage in a state of constant adversity and had also faced abuse by her callous husband. When the situation became unbearable, she decided to commit suicide along with her children by going to the nearest well. However, she survived, and her children died as a result, for which she was accused of murder. Most major legal systems, such as the U.S. and the U.K., recognized BWS as a legal defense during the above-stated case. For example, a woman lit her husband on fire at midnight¹⁹.

Later, the BWS was officially recognized in *Manju Lakra v. State of Assam*,²⁰ which was a landmark case that marked a shift in the Indian legal system—in the above case, she accused her husband of enduring prolonged abuse. One day, while in a drunken state, he severely beats her with a piece of wood, causing injuries. Unable to endure extra abuse, she retaliated by using the same piece of wood to defend herself, resulting in fatal injuries to which her husband died. Unlike earlier explained expert evidence, it has been admitted by the UK and US legal systems as a necessity. However, in the above case, the Court focused on the acceptability of BWS by international legal systems. The Court reasoned that the above case falls under the First exception of Section 300 of the Indian Penal Code (IPC).

The first exception to Section 300 of the IPC provides a legal defense in cases of culpable homicide not amounting to murder. It states that culpable homicide is not considered murder if it is committed in the heat of passion, upon sudden provocation, or without premeditation. It recognizes that in certain situations, individuals may be provoked to such an extent that they lose self-control and act in the heat of the moment. The critical elements of the exception are ‘Heat of Passion, Sudden Provocation, and Lack of Premeditation.’ Through the essential

¹⁸*Suyambukkani v. State of T.N.* (1989) LW (Cri) 86.

¹⁹*R. v. Kiranjit Ahluwalia*, (1993) 96 Cr App R 133.

²⁰*Manju Lakra v State of Assam* (2013) SCC OnLine Gau 207, (2013) 4 GLT 333.

aspects of the exception, it can be argued that battered women experience emotional and psychological distress due to prolonged abuse, leading to the highest emotional arousal. The continuous trauma and fear experienced by battered women can contribute to a constant state of emotional distress. Then, it can progress to sudden provocation, where the cumulative effect of sustained abuse can lead to sudden and intense provocation. Battered women often do not have the opportunity to premeditate their actions due to the ongoing nature of the abuse.

Therefore, the situation of the battered woman fits with exception one given in Section 300 of the IPC, as the accused acted due to sudden provocation without any premeditated plan to kill and was suffering from BWS. The Court explains how prolonged abuse by the batterer mounted a sense of revenge or anger against her partner. The rage was built from the beginning of the battering until the rage was at its height. In the above case, it was that day when her husband beat her in a drunken state, and her rage was maximized. It reflects the amount of emotional and physical abuse a woman goes through, which leads her to act ragefully.

In *Amutha v State*,²¹ the accused, a woman facing prolonged domestic violence, pushed herself and her daughters into a well, but she survived. In the above case, the Court recognized facts similar to the explanation of BWS given in *R v Ahluwalia*²² and of *Nallathangal Syndrome* from the *Suyambukkani* case.²³ In some instances, the accused (women) take their lives, as it is generally considered that men are physically stronger than women instead of killing their husbands. For instance, in *State v Hari Prasad*,²⁴ the accused, unsatisfied with the dowry, used to physically and mentally torture his wife. Eventually, one day, she complained about the Crime Against Woman Cell, where the accused apologized. Nonetheless, that night, he again brutally tortured her, and after the torture, she committed suicide. The Trial Court acquitted him, but the High Court recognized BWS; however, she was different from the other accused, who usually killed their partner. The Court held the accused guilty under Section 306 (Abetment of suicide) of the IPC. In the above case, the Court used the BWS as a theory and did not admit expert testimony to justify the BWS.

A similarity could be traced from all the above-discussed cases in that the Courts rely on BWS as a theory due to the limitations of cases in India. Therefore, they cannot use expert testimony as a precedent for landmark cases. Another issue is that the Indian judiciary has applied BWS in cases to convict a victim's partner of abetment because the facts in the UK jurisdiction cases

²¹ *Amutha v State*, (2014) 2 M.W.N. (Cr.) 605 (India).

²² *R. v. Kiranjit Ahluwalia*, (1993) 96 Cr App R 133.

²³ *Suyambukkani v. State of T.N.* (1989) LW (Cri) 86.

²⁴ *State v Hari Prasad*, (2016) 228 D.L.T. 1 (D.B.).

on BWS were that the accused (victim or woman) killed their partner to end their relationship. In India, exception one of Section 300 of the IPC coincides with providing a defense to the accused in BWS cases. However, one could argue that the right to private defense, as given in Section 100 of the IPC, is applicable as a defense in BWS cases. However, it would be tough to prove in cases where the accused (woman) killed their husband, as one could not argue that she was in reasonable or proportionate threat. In such instances accused kill their partner only when there is no physical apprehension of death, grievous injury, rape, etc. Therefore, using Section 100 of the IPC as a legal defense in BWS cases is difficult and impractical.

Section 84 of the IPC addresses insanity as a defense where an act committed by an insane person does not result in a crime, as they lack guilty intention. It could be argued that insanity is a defense in BWS cases for battered women. It is clear from Walker's "*cycle of violence*" theory²⁵ and "*learned helplessness*"²⁶ that insanity develops when a violated woman does not leave the violent relationship or make necessary repairs. The woman's judgment is seriously compromised as a result of the violent relationship's cyclical highs and lows. Therefore, it can be proven that cognitive ability is impaired and that she has a distorted image of the act's circumstances.²⁷ Using expert evidence that she was suffering from BWS during the commission of the act, it would be easy to prove that she lacked men's rea. However, using insanity as a defense for battered women, while potentially helpful, can force them to accept the label of mental illness and reinforce harmful gender stereotypes. Therefore, women in BWS cases will be labeled 'insane' and will not consider their suffering from prolonged domestic violence. Thus, applying insanity as a defense should not be considered or discouraged.

From the earlier UK and US legal systems analyzed, we can learn that eventually, the Indian legal system should adopt expert testimony as a criterion for admissibility for BWS as a defense, as it will help in facilitating the application of BWS as a defense. The above approach will help the Court understand the brutal past experiences of battered women. BWS should be listed as a general exception in IPC, even if it can be quickly resolved through sudden and grave provocation present in the exception of Section 300 of IPC. Adopting BWS as a defense will provide such cases with greater deliberation on the accused's mental health and suffering. The approach will help in putting greater emphasis on accused people's brutal experiences of physical and psychological torture. Using insanity or sudden provocation as a defense does not emphasize the suffrage of the accused. While making the above exception, careful consideration

²⁵Lenore, *supra* note 4, at 105.

²⁶Lenore, *supra* note 4, at 105.

²⁷Aishwarya, *supra* note 1, at 127.

should be taken to ensure that the language demonstrates its primary purpose of helping those in abusive relationships, particularly women, while still maintaining accessibility for all victims regardless of gender.²⁸ Such a defense must balance acknowledging the reality that domestic violence disproportionately impacts women without compromising gender neutrality. If not, the world will become a living hell for her through passing comments and treating them indifferently. A complete defense addressing the above issue should respect the experiences of all harmed people by maintaining formal equality under the law.

IV. CONCLUSION

BWS offers a crucial lens into the harrowing realities of domestic violence. While India has shown glimpses of recognizing BWS in specific cases, a more comprehensive approach is imperative. This essay proposes two key actions:

Firstly, BWS should be established as a separate legal defense. It goes beyond relying solely on current exceptions and offers a deeper understanding of the dynamics of abuse.

Secondly, allowing expert testimony on BWS would illuminate the psychological trauma endured by victims, guiding judges and juries toward informed decisions.

These changes mark a critical shift towards a justice system that truly understands and supports victims trapped in abusive relationships. Recognizing BWS is not just about legalities but about creating a society where victims find compassion, understanding, and a path toward healing. By implementing these recommendations, India can take a crucial step towards protecting vulnerable individuals and fostering a culture that rejects domestic violence entirely. Let us not create a society that ignores the suffering of victims but rather one that empowers them to rebuild their lives and find true refuge in the law.

²⁸Aishwarya, *supra* note 1, at 134.

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