

ARTICLE

Grave and Sudden Provocation: Revisiting *R. v. Ahluwalia* – Implementing a New Exception Under Section 300 of the Indian Penal Code and the Defence of the Battered Woman Syndrome

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Abstract

Lenore Walker introduced the concept of battered woman syndrome in the 1970s, which helps explain the psychological state of battered women and why such women face a slow-burn reaction. This article helps explain why battered woman syndrome must be included under the Indian Penal Code, 1860. It is further proposed that the present exception of a grave and sudden provocation be retained, and a new exception of sustained provocation be created under the Indian Penal Code. The inclusion of sustained provocation would help the cause of battered women. The article concludes with a proposal for creating a new exception under §300 of the Indian Penal Code.

Keywords battered woman syndrome, grave and sudden provocation, Section 300 of the Indian Penal Code, 1860, new exceptions, *R. v. Ahluwalia*

INTRODUCTION

The case of *Kiranjit Ahluwalia*¹ is a landmark case that sheds light on the plight of women who face constant and long-term domestic violence. Her case is one of the first in the United Kingdom to accept battered woman syndrome as reliable evidence. In the 1970s, feminist psychologist Lenore Walker (2016) introduced the term “battered woman syndrome”. Battered woman syndrome helps explain the psychological reactions of women who are put through severe, long-term domestic abuse by their partners (Walker 2016:3). In most instances, the actions of the battered woman killing her husband are determined by asking the question of whether her actions were reasonable or not (Schneider 1980). As adopted by

¹*R. v. Kiranjit Ahluwalia* (1993) 96 Cr App R 133. England and Wales Court of Appeal (Criminal Division), 31 July 1992.

judges, the reasonable man's perspective is an objective concept, open to various interpretations. This test fails to consider the circumstances of prolonged abuse suffered by women and the impact of the suffering on their psychological state (Schneider 1980). The emotional and physical turmoil faced by women domestically abused by their partners can be better understood through Ahluwalia's case. On 9 May 1989, Kiranjit Ahluwalia threw gasoline on her husband and set him on fire.² The mental trauma and agony of constant battering made her take this drastic step. After seven months, the Crown found Ahluwalia guilty and convicted her of murder.³ She was sentenced to life imprisonment. At a retrial in September 1992, the Court of Appeal allowed her to appeal against her murder conviction because the trial court judge had refused to admit the depression faced by her due to the constant battering.⁴ The Appeals Court accepted the plea of "diminished responsibility" and convicted her of manslaughter.⁵ The Court held that the mental state of the accused would be considered while deciding whether the defence of provocation would apply.⁶

This article argues that the battered woman syndrome theory should be applied in the Indian setting; a new exception of "sustained provocation" should be created under §300 of the Indian Penal Code, 1860, while exception 1 to §300 should be retained. Furthermore, it is also argued that the present statutory framework be amended, and a separate exception for battered woman syndrome under §300 of the Indian Penal Code be implemented.

GENDER BIASES, ALONG WITH THE REASONABLE MAN TEST

One case that highlights the sexist treatment in the English Court is that of *R. v Holford*⁷ in 1963. The wife taunted the accused several times for his unfaithful behaviour and sexual abilities. The constant chiding by the wife provoked the husband, and he took the drastic step of killing her.⁸ Despite the husband's extreme behaviour, the judge was keen to show mercy and condemned the wife's actions. The Court considered the provocation sufficient, and the husband was convicted of manslaughter rather than murder (Williamson 2020). The judge sentenced the accused to only three years' imprisonment. Likewise, in 1992, a wife was killed by her husband for constantly complaining. Joan Smith, a feminist writer, observes that the courts during the 1990s accepted the unacceptable behaviour of a husband and reasoned that "a man of reasonable self-control might have done what you did" (Smith 1993). The husband killed his wife by cutting her with a saw and boiled her bones and skin. The extreme and gruesome behaviour of the husband was considered rational and justifiable as he could resort to the defence of grave and sudden provocation (Smith 1993).

²*Ibid.*, [5].

³*Ibid.*, [13].

⁴*Ibid.*, [6].

⁵*Ibid.*, [14].

⁶*Ibid.*, [11].

⁷*R. v Harvey Holford*, see *The Guardian*, 30 March 1963; *The Daily Mail*, 7 July 2006; The National Archives, Kew, DPP 2/3540.

⁸*Ibid.*

Contrastingly, when gender roles were reversed and the woman was the perpetrator, she could not avail of the defence of grave and sudden provocation. In the landmark case of *R. v. Duffy*,⁹ the defendant killed her sleeping husband with a hammer. The Court was reluctant to accept the plea of a grave and sudden provocation as they felt that the wife's actions were premeditated, not sudden.¹⁰ The Court emphasized the requirement of "suddenness", which would cause a temporary loss of self-control.¹¹ The judges failed to consider the long-term domestic abuse faced by the woman and instead emphasized the provocation to be sudden, which causes a loss of self-control. Thus, it can be inferred that the reasonable man test adopted by the courts in the United Kingdom was male-centric and failed to cater to the gruesome experiences of domestic abuse faced by women.

BATTERED WOMAN SYNDROME IN INDIAN LAW

The law in England failed to consider the battered woman's mental agony and the prior abuse she faced. However, while formulating the battered woman syndrome as a defence in the Indian situation, it is not only essential to comprehend the social setting in which domestic abuse is undertaken in India but also the prior abuse faced by battered women. Socialization has profoundly influenced the social setting, where women are instructed to be submissive and obedient and not fight back against the abuser (Nigam 2016). This sentiment informs judges' decisions when they scrutinize the reasonability of a woman's actions.

Under the Indian Penal Code for the defence of murder, two exceptions are available. Firstly, as laid down in §76 to §106, General Exceptions consist of defences such as necessity and personal defence (Vibhute 2012). The second exception is the Statutory one in §300, which defines murder. These exceptions, which incorporate grave and sudden provocation, would relieve culpability from the more rigid offence of murder to that of culpable homicide not amounting to murder, which is actionable under §299 (Vibhute 2012).

GRAVE AND SUDDEN PROVOCATION

The first exception to §300 is the grave and sudden provocation defence. To avail herself of this defence, the woman must kill her husband "while being deprived of the power of self-control by grave and sudden provocation".¹² Reasonableness of the conduct of the accused and casualties at and around the occurrence of the offence assume a significant part in deciding the accountability of the accused and the quantum of retribution (Kumari 1999). Contingent upon the judges, perception of an act being reasonable or unreasonable, the accused may be charged with murder or culpable homicide not amounting to murder. Further, the misogynistic attitude of Indian judges and the influence of socio-normative ideas, including gender roles, inform their decisions (Kumari 1999). Most Indian cases, such as

⁹*R. v. Duffy* [1949] 1 All ER 932, [1]–[2].

¹⁰*Ibid.*

¹¹*R. v. Duffy*, above note 9, [1].

¹²The Indian Penal Code, 1860 (Act No. 45 of 1860), §300.

K. M. Nanavati v. State of Maharashtra,¹³ have supported the objective test of provocation, which states that the Court must look at whether the reasonable man, when placed in the position of the accused, would have been incited into killing the sufferer.¹⁴ Another important aspect of the doctrine is the “cooling-off” period. The Supreme Court in *Khunte v. Union of India and Others*¹⁵ held that the provocation should be immediate, and the offence should follow directly after. Further, the Court held that if adequate time had passed between the provocation and the occurrence of the offence, the defence of grave and sudden provocation would not apply as the accused would have adequate time to regain self-control.¹⁶

The battered woman syndrome must be applied except for grave and sudden provocation. The current law states that the provocation must be sudden and grave for availing of this exception. Further, the provocation must result in the loss of control which causes the defendant to kill the plaintiff, and the killing must be committed immediately after the provocation. Several Indian judgments like that of *Nanavati v. State of Maharashtra*¹⁷ explain that the defendant’s failure to act immediately after being provoked would be considered premeditation (Kumari 1999).

As demanded by the law, the requisite of sudden provocation would be unfair for battered women as provocation works very differently for them. Generally, it is impossible to point to a certain triggering event that leads to loss of self-control as the battering is continuous and long term (Donovan 1991). Especially, the feeling of desolation induced by prolonged battering does not cause the woman to lose self-control immediately. Thus, in the case of battered women, the provocation is sustained over a substantial period of time (Donovan 1991). This justifies that the exception of “sustained provocation” be created under §300 of the Indian Penal Code, 1860, as battered women face a gradual and “slow-burn” nature of provocation (Young 1993). It can also be argued that the exception of sustained provocation would aid the accused, such as *Nanavati*,¹⁸ who would end up walking free if not for the reasonable man test. Thus, it is proposed that a new exception of “sustained provocation” be created while retaining the existing exception of “grave and sudden provocation”. Further, the exception of “sustained provocation” would only be applicable after looking at the psychological state of the victim and the long-term abuse faced so that an accused such as *Nanavati* cannot take recourse under the exception.

BATTERED WOMAN SYNDROME IN THE INDIAN CONTEXT

Before proposing changes to the existing laws, it is imperative to analyse the interpretation of the battered woman syndrome in the Indian context.

¹³*K. M. Nanavati v. State of Maharashtra*, 1962 AIR SC 605, [1]–[87].

¹⁴*Ghulam Mustafa Gahno v. Emperor*, 1938 SCC OnLine Sind JC 74.

¹⁵*B. D. Khunte v. Union of India and Others*, (2015) 1 SCC 286, [1]–[20].

¹⁶*Ibid.*, [13].

¹⁷*Nanavati v. State of Maharashtra*, above note 13.

¹⁸*Ibid.*

Drawing inspiration from the battered woman syndrome development in the United States, women activists (feminists) brought about the first wave of the feminist movement in India in the 1970s, which is also known as the Anti-Dowry Movement. Before the 1970s, the laws related to domestic abuse were inadequate and ill-formed (Deb 2018), thus posing a significant challenge to getting justice for domestically abused women. Intense pressure by various feminist groups in the Court led to the amendment of the Indian Penal Code in the 1980s. Acts of extreme cruelty to women, compelling them to commit suicide or causing grave injury, were penalized under §498A. Causing the death of a woman for demanding dowry was penalized under §304B (Deb 2018). The shortcoming of the Anti-Dowry Movement was that it only addressed the issue of abuse meted out to a wife for dowry demands. Because of these restrictions, culprits of abusive behaviour at home, irrelevant to dowry requests, got away from arraignment, adding to an unavoidable cultural disposition lenient toward different types of brutality against women (Deb 2018). The second phase of the feminist movement led to the creation of the Domestic Violence Act, 2005, which protected women from abuse within their homes irrespective of their marital status (Jaising 2002:73). In India, the general perception is that the sacredness of everyday life pervades the universe of law implementation. Accordingly, the detention of the abuser is seen as a final resort in cases related to domestic violence (Deb 2018). It is only in outrageous conditions that a woman may contemplate ending the domestic violence she is facing by taking the extreme step of killing the abuser (husband) (Deb 2018).

BATTERED WOMAN SYNDROME IN INDIAN COURTS

India has only recently recognized battered woman syndrome, unlike other countries, and hence there is limited research on the permissibility of battered woman syndrome in the Indian setting. Nevertheless, in 1989 the Madras High Court advanced the concept of “Nallathangal’s syndrome” in *Suyambukkani v. State of Tamil Nadu*.¹⁹ It is considered a predecessor of battered woman syndrome. In this case, the constant domestic abuse at the hands of her husband compelled the woman to commit suicide by jumping into a nearby well²⁰ with her children. She survived, but her children died as a result. She was charged with murder and convicted. On appeal, her lawyer, N. T. Vanamamalai argued that the actions of the accused did not constitute murder and that she was a victim of circumstances. He pointed out how frequently these situations occur in India, with the mother believing that her duty to care for the children means that she cannot die and leave them behind. He reminded the Court that in Tamil, there is the Nallathangal ballad,

narrating in a heart-gripping manner the tribulations of a rich lady reduced to unbearable misery who committed suicide with her seven children . . . The ballad has created . . . an imitative propensity among the womenfolk, and the Nallathangal syndrome is still largely prevalent . . . Usually, the unfortunate mother succeeds fully . . . and the matter does not reach the Court.

¹⁹*Suyambukkani v. State of Tamil Nadu*, 1989 LW (Cr) 86.

²⁰*Suyambukkani v. State of Tamil Nadu*, *ibid.*, (1).

Here is a rare case where we have to determine the nature of the offence committed by the mother surviving against her will.²¹

By agreeing to apply Nallathangal's syndrome, the Court held her liable for culpable homicide not amounting to murder. It also opined that Nallathangal's syndrome could be considered an exception to §300 of the Indian Penal Code.²² However, in 2010 when the first research on battered woman syndrome was undertaken in India, analysers did not highlight the existence of Nallathangal's syndrome. They emphasized that battered women could not avail of any legal defences under the Indian Penal Code in India.

Battered woman syndrome was recognized for the first time in India by the High Court of Gauhati in *Manju Lakra v. State of Assam*.²³ The wife suffered extreme physical and mental abuse at the hands of her husband. Incapable of handling the abuse, she snatched the wooden piece from her drunk husband's hand and stabbed him to death.²⁴ The Court itself referred to battered woman syndrome and convicted the wife of culpable homicide, not amounting to murder. The High Court referred to the case of *R. v. Ahluwalia*²⁵ and explained the justification of the wife's actions against her husband, the abuser. The High Court stated:

Though she had been controlling and suppressing the rage and the resentment, which had been building up inside her, her rage and resentment were waiting to erupt at any further violent conduct of her husband. The accused-appellant had been, thus, sitting on a volcano of resentment and rage, which had been continuously building up and boiling inside, waiting to burst open, and even a small flicker of any other intolerable behaviour of her husband could have made the volcano erupt, and that is precisely what happened on the fateful evening, when her husband, having come home in a drunken state, as usually he did, started beating her up. The provocation, which the conduct of the accused-appellant's husband so provided to the accused-appellant, was not only grave but can be perceived as sudden, too.²⁶

The Court felt that the said case would fall under the first exception of §300. Thus, the wife was charged with culpable homicide, not amounting to murder.²⁷

Lastly, the Madras High Court recognized the battered woman syndrome in *Amutha v. State*.²⁸ The Court in *Amutha v. State*²⁹ held that the continuous abuse meted out to the wife caused a loss of self-control which caused her to take the extreme step of killing herself and her daughters. Justifying the victim's steps, the Court reasoned that the victim's decision was taken to put an end to the violence

²¹*Suyambukkani v. State of Tamil Nadu*, above note 19, (7).

²²*Suyambukkani v. State of Tamil Nadu*, above note 19, (22).

²³*Smti Manju Lakra v. The State of Assam*, 2013 SCC OnLine Gau 207.

²⁴*Manju Lakra v. The State of Assam*, *ibid.*, (4).

²⁵*R. v. Ahluwalia*, above note 1.

²⁶*Manju Lakra v. State of Assam*, above note 23.

²⁷*Ibid.*

²⁸*Amutha v. State*, 2014 (2) MWN (Cr) 605.

²⁹*Ibid.*

faced by her at the hands of her husband.³⁰ Analysis of the above cases highlights that the courts did not allow expert testimony on battered woman syndrome. In this way, the acknowledgement of battered woman syndrome just through legal caution leaves open the chance of conviction for women who kill their victimizers in such conditions. Besides, since there have been just three situations where battered woman syndrome has been perceived up to this point, the courts have been compelled to allude to a global point of reference to oblige the instance of a battered woman within the available defences (Deb 2018). Hence, it is recommended that the present statutory framework be amended.

CHANGING THE LAW

The exception of “sustained provocation” should be created under §300, and the present law needs to be amended. Before considering changes to the present law, it is imperative to analyse the UK Coroners and Justice Act, 2009, which includes elements related to the exception of battered woman syndrome. The trigger of “fear of violence”³¹ under the Act acknowledges the repetitive nature of battering violence and considers the danger of battering faced by a woman (Law Commission of the United Kingdom 2005).³² Other provisions include the deletion of sexual infidelity and suddenness, which reduces the male-centric nature of the provision.³³

It is proposed here that a new exception to §300 be created, which includes the concept of battered woman syndrome that can be availed by battered victims only. The new exception would include the following explanation:

For the purpose of this exception, when the accused is suffering from continuous physical and psychological abuse, the provocation would be considered as the entire period of abuse suffered by the accused. The provocation need not be sudden but sustained.

The amendment would incorporate the “sustained provocation” rule and apply only to battered victims.

CONCLUSION

The primary aim of this paper is to make a case for battered women such as Kiranjit Ahluwalia,³⁴ who are often wronged by the male-centric laws and misogynistic attitude of the Indian judges presiding over lawsuits related to battered woman syndrome. Including battered woman syndrome under the Indian Penal Code would help mitigate the unjust liability imposed upon battered women. Battered woman syndrome helps explain the psychological state of battered women who face

³⁰*Amutha v. State*, above note 28.

³¹The Coroners and Justice Act, 2009, §54 (1).

³²Sections 4.9–4.10.

³³See the Coroners and Justice Act, 2009, §55(6)(c): “the fact that a thing done or said constituted sexual infidelity is to be disregarded.”

³⁴*R. v. Ahluwalia*, above note 1.

long-term domestic abuse and why such women face a slow-burn reaction when provoked. Including battered woman syndrome would also help explain to the judges the emotional state of battered women.

Nonetheless, lower courts in the past have been unwilling to entertain the defence of battered woman syndrome and have imposed harsh punishments on battered women. The creation of “sustained provocation” under §300 and amendment of the Indian Penal Code by including battered woman syndrome as a valid defence would be sufficient to reduce the charge of murder to culpable homicide not amounting to murder or manslaughter.

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TRANSLATED ABSTRACTS

Abstracto

Lenore Walker introdujo el concepto del síndrome de la mujer maltratada en la década de 1970, que ayuda a explicar el estado psicológico de las mujeres maltratadas y por qué enfrentan una reacción de combustión lenta. Este artículo ayuda a explicar por qué el síndrome de la mujer maltratada debe incluirse en el Código Penal de la India de 1860. Se propone además que se mantenga la actual excepción de una provocación grave y repentina, y se cree una nueva excepción de provocación sostenida en el Código Penal de la India. La inclusión de la provocación sostenida ayudaría a la causa de las mujeres maltratadas. El artículo concluye con una propuesta para crear una nueva excepción bajo §300 del Código Penal de la India.

Palabras clave síndrome de la mujer maltratada, provocación grave y súbita, Sección 300 del Código Penal de la India, 1860, nuevas excepciones, *R. v. Ahluwalia*

Abstrait

Lenore Walker a introduit le concept de syndrome de la femme battue dans les années 1970, ce qui aide à expliquer l'état psychologique des femmes battues et pourquoi ces femmes font face à une réaction de brûlure lente. Cet article aide à expliquer pourquoi le syndrome de la femme battue doit être inclus dans le Code pénal indien de 1860. Il est en outre proposé que l'exception actuelle de provocation grave et soudaine soit conservée et qu'une nouvelle exception de provocation soutenue soit créée dans le Code pénal indien. L'inclusion de la provocation soutenue aiderait la cause des femmes battues. L'article se termine par une proposition de création d'une nouvelle exception en vertu de l'article 300 du Code pénal indien.

Mots-clés syndrome de la femme battue, provocation grave et soudaine, article 300 du code pénal indien, 1860, nouvelles exceptions, *R. c. Ahluwalia*

抽象的

Lenore Walker 在 1970 年代引入了受虐女性综合症的概念, 这有助于解释受虐女性的心理状态以及为什么这些女性会面临缓慢的烧伤反应。本文有助于解释为什么受虐妇女综合症必须纳入 1860 年印度刑法典。进一步建议保留目前的严重和突然挑衅的例外情况, 并根据印度刑法典创建持续挑衅的新例外情况。包括持续挑衅将有助于受虐妇女的事业。文章最后提出了一项根据《印度刑法典》第 300 条创建新例外的提议。

关键词 : 关键词, 受虐妇女综合症, 严重和突然挑衅, 1860 年印度刑法第 300 条, 新例外, *R 诉 Ahluwalia*

المحل خص

قدمت لينور وولكر مفهوم متلازمة المرأة المعنفة في السبعينيات ، مما يساعد في تفسير الحالة النفسية للنساء المعنفات ولماذا تواجه هؤلاء النساء رد فعل بطيء للحرق. تساعد هذه المقالة في توضيح سبب وجوب إدراج متلازمة المرأة المعنفة في قانون العقوبات الهندي لعام 1860. ومن المقترح أيضا الإبقاء على الاستثناء الحالي للاستفزاز الخطير والمفاجئ ، وإنشاء استثناء جديد للاستفزاز المستمر بموجب قانون العقوبات الهندي. إن إدراج الاستفزاز المستمر من شأنه أن يساعد قضية النساء المعنفات. تستخدم المقالة باقتراح لإنشاء استثناء جديد بموجب المادة 300 من قانون العقوبات الهندي.

الكلمات الدالة متلازمة المرأة المعنفة، الاستفزاز القبر والمفاجئ، القسم 300 من قانون العقوبات الهندي، 1860، استثناء جديد، أر ضد أطواليا

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