

**BATTERED WOMAN SYNDROME  
and  
THE LAW ON SELF-DEFENSE**

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*ABSTRACT*

*In order to obtain a greater understanding of battered women and the legal system, this paper provides a brief situationer on women's rights, violence in the home, and legal remedies available under civil and criminal statutes. The paper then presents the concept of battered woman syndrome, its nature and elements, and how it has been used in law.*

*The main objective of this paper is to be able to contribute to the greater understanding of abused women, the situations they face and how the legal system can help in their plight.*

**I. INTRODUCTION**

In society, the relations between women and men is regulated by stereotypes and double standards. The female is considered to be weaker and submissive whereas the male is stronger and aggressive. Women are assigned the role of caregivers and home-makers while the men are the breadwinners and heads of the family. This assignment of gender roles perpetuates and reinforces the unequal power relation that has led to the domination over and discrimination of women by men.

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Historically, attitudes on women and the institution of marriage have made it acceptable for a husband to inflict harm on his wife. This is grounded in the belief that a wife is owned by the husband whom he may strike at will in order to correct her errant behavior and instill discipline. But a woman is not a possession but is a human being entitled to the right to be free from harm.

Few women speak out the abuses they suffer from their husbands or their partners for a variety of reasons, such as fear of reprisal, economic dependence, and the belief that the man has a right to hurt her. Nevertheless, the number of women who seek counseling, who ask for legal advice, who seek shelter away from the abuser is indicative of the pervasiveness of this form of violence inflicted against women because of their being women.

The problem of wife battery or domestic violence is made more difficult for women by the treatment of this problem by law enforcers, and the community in general, as a private affair that is for the family to resolve and does not need state intervention. This is evident from the fact that as of today, there is still no law criminalizing domestic violence.

Once in a while we hear of women who, after years of repeated violence inflicted upon them, end up either doing a Lorena Bobbit<sup>1</sup> or, worse, killing their abusers. Under Philippine law, if a woman kills her husband, she is guilty of parricide. If there is no marital relationship between them, the crime is either homicide or murder. However, if any justifying circumstance exists, the woman will not be criminally liable for her action. Self-defense is one such justifying circumstance.

In the United States, various state courts have already recognized battered woman syndrome as evidence for women accused of inflicting physical violence on or killing her husband. This theory is generally admitted in relation to the plea of self-defense.

## II. WOMEN'S SITUATIONER

### A. Women's Rights

The 1987 Philippine Constitution declares that “the State values the dignity of every person and guarantees full respect for human rights.”<sup>2</sup> Enshrined therein as a state policy is the recognition of the role of women in nation building and the “fundamental equality before the law of women and men.”<sup>3</sup> Within this framework, women are guaranteed respect of their personal dignity and human rights and equal treatment in all aspects of life.

The constitutional acknowledgement of women's rights is reiterated in numerous statutory enactments relating to such subjects as civil relations, family rights, and labor conditions. Various international instruments to which the Philippines is a signatory signify and reinforce the state's commitment towards upholding these rights.

The *UN Declaration on Human Rights*<sup>4</sup> recognized that women's rights are human rights with the assertion that “all human beings are born free and equal in dignity and rights” and are “entitled to equality before the law and protection of the law.”

The international bill of rights for women, the *UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*,<sup>5</sup> legally binds States parties to achieve equal rights for women in all fields. Article 1 defines discrimination against women as “. . . any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”

At the time of the adoption of the CEDAW, violence against women (VAW) was not yet generally recognized as a human rights problem. It was therefore not surprising that the Convention made no reference to violence in its text.

The reality of VAW was later on recognized and specifically addressed in the *UN Declaration on the Elimination of Violence Against Women*.<sup>6</sup> It was the first universal legal instrument aimed specifically at combating violence against women and putting abuse on the map of international human rights legislation.<sup>7</sup> Under Article 1, violence against women means “any act of gender-based violence that results in, or is likely to result in physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.”

The most recent documents upholding women's rights are the *Beijing Declaration and Platform for Action*,<sup>8</sup> which were signed during the Fourth World Conference on Women in Beijing, China. At said conference, women from all over the world reviewed and debated twelve (12) critical areas of concern that were identified as obstacles to the advancement of women which include violence against women. The Declaration expresses the determination of governments to strengthen efforts and actions for the advancement of women by the end of the century that would result, *inter alia*, in the elimination of all forms of violence against women and girls.

Undeniably, there is no dearth of statutory protection for women, whether at the national or international level, but regrettably, the law is more respected in its breach than its observance. Thus the need for a continuous and vigorous struggle for the recognition of, and more importantly, respect for women's rights.

Sad to say, social progress, economic development, and technological advancement have not dispelled archaic notions

about women and men's "proper" roles and behavior in society. Existing norms and practices as well as social institutions — the family, political and educational systems, religions, and media — reinforce and perpetuate gender inequalities. The patriarchal view that women are subordinate to men, and exist primarily to serve them, makes violence against women acceptable. It is within this social context that the issue of domestic violence is trivialized.

## **B. Violence In The Home**

The problem of domestic violence is a reality to millions of women in the world, cutting across socio-economic or class boundaries, ethnic, cultural, race, or religious backgrounds. But despite its gravity and prevalence, it is only recently that family violence is being recognized as a major social problem requiring state intervention.

Domestic violence is a pattern of abusive behavior against a woman in an intimate relationship with the effect of establishing power and control over her. This abusive behavior of the male partner is characterized by intentional, hostile, and aggressive acts of violence. Its manifestations encompass not only the use of physical force, such as slaps, pushes, stabbing and shooting, but also include economic or financial deprivation, verbal harassment, emotional abuse, and psychological humiliation, and sexual assault.

Although the assault on the woman is a clear violation of her basic rights to personal dignity and physical integrity, the police, the courts, and the community at large remain reluctant to intervene. This attitude of non-interference is grounded on ancient laws and customs that treated women and children as mere chattel or property that were subject to the complete and absolute control of men.

Women's subordination was codified in law as early as ancient Rome. The first known law of marriage, which was formalized by Romulus in 8<sup>th</sup> Century B.C., obliged "married women, as having no other refuge, to conform themselves entirely to the temper of their husbands and the husbands to rule their wives as necessary and inseparable possessions."<sup>9</sup> This gave men the right and responsibility to control their wives and use force when necessary to preserve "order" in their families.<sup>10</sup>

In some parts of Latin America and Asia, the killing of a wife for indiscretion has usually been acceptable.<sup>11</sup> In other cultures, the physical domination of the wife by her husband was tolerated, if not encouraged, in recognition of the authority of the man to instill and maintain discipline within the household. Considering the absence of any form of sanction against the husband, wife beating was practiced with impunity.

Laws that promoted or regulated domestic violence were for the most part repealed in the early twentieth century.<sup>12</sup> Presently, there is no law that permits a husband to strike his wife, even in the guise of domestic chastisement. However, domestic violence is still treated as a family affair rather than a legal matter best resolved by the parties themselves within the confines of their home. This is rooted in the prevailing traditional view that a "man's house is his castle" and activities therein are "private matters" which are beyond the public's concern. Inadvertently, the institution of marriage appears to have become a license to abuse a woman and family violence is protected by the concept of domestic privacy that shields it from public scrutiny.

Society's reluctance to intervene by classifying woman battering as a private affair has mainly kept the issue a hidden problem. However, the battered woman's refusal to speak out against her abuser may also have contributed to the lack of awareness of the nature of domestic violence. The culture of silence among abused women can be attributed to their

socialization as passive and submissive partners that undoubtedly conditioned them into accepting their situation, however violent it may be, and staying in the relationship.

Although leaving the abuser may appear to be the simplest solution to the problem, the complexity of the woman's situation makes the decision to leave a little more difficult. Research indicates that battered women remain in the relationship for a variety of reasons, among which are: 1) fear of threats of greater physical harm; 2) isolation and lack of emotional support from family and friends; 3) social pressure to remain and "preserve the marriage;" 4) fear of reprisals from children and spouse;<sup>13</sup> 5) emotional attachments; 6) lack of financial or economic independence; 7) lack of knowledge of law and resources for battered women; 8) cultural and religious beliefs; and 9) feelings of low self-esteem.<sup>14</sup> In many cases, the women blame themselves for having become involved with the abusive man in the first place.

For the few women who chose to escape their abusers and disclose their sufferings, society has not been sensitive or sympathetic of their plight. The lack of understanding of domestic violence is best exemplified by the common reaction of blaming the woman for her predicament that not only discourages women from speaking out but even reinforces the tendency of remaining silent.

The private nature of woman-battering, the social conditioning of the women, the community's denial of its existence, the ambivalence of the police authorities and the legal system all contribute to the conspiracy of silence on domestic violence. Consequently, this causes difficulty in documenting and acquiring accurate statistics on the extent and pervasiveness of the problem.

National statistics in ten (10) countries estimate that between 17 and 38% of women have been physically assaulted by an

intimate partner. Studies in Africa, Latin America and Asia report even higher rates of physical abuse among the population studied — up to 60% more of women.<sup>15</sup> In the U.S., it is commonly accepted that the number of battered wives nationwide in any given year reaches into millions. The Federal Bureau of Investigation (FBI) believes that domestic violence is the most unreported crime, probably ten times more unreported than rape.<sup>16</sup>

In the Philippines, 58% of the 6,655 disadvantaged women serviced by the Department of Social Welfare and Development (DSWD) were abused or battered. And six out of ten wives randomly surveyed in Cebu in 1991-1992 experienced domestic violence.<sup>17</sup>

Notwithstanding the limited data on the subject, there is general consensus on several facts: that there is a higher incidence of domestic violence than what is currently reported; that the assaultive behavior directed against the woman tends to escalate in frequency and intensity over time; and that the manifestations of abuse run the gamut of physical behavior.<sup>18</sup>

Existing data reflect the pervasiveness, frequency and intensity of violence perpetrated against women in the home. The recognition of woman abuse as a social problem of a life-threatening nature has led to the institution of legal reforms entitling women to protection under civil and criminal statutes.

### **C. Recourse Under Philippine Law**

Physical attacks on women are now considered criminal under various assault statutes. In some legal systems, offenses specific to the domestic context have even been established. The Puerto Rican Domestic Violence Law of 1989 enacts in a single statute protection orders and specific crimes of domestic violence, which are punishable by imprisonment and entitles the victim



to compensation from the offender.<sup>19</sup> The Brazilian Constitution of 1988 and the Colombian Constitution of 1989 specifically condemn violence in the home.

Domestic violence laws have been passed in Australia, the Bahamas, New Zealand, Trinidad and Barbados, and the United Kingdom. Generally, these acts clarify the definition of domestic violence and empower the courts to issue women orders of protection.<sup>20</sup> The “spousal abuse” statutes in the United States are similar to the Puerto Rican law and Portuguese Criminal Code.<sup>21</sup>

Within the legal framework, women are granted the right to an effective remedy by competent tribunals for any violation of their rights. Unfortunately, in our jurisdiction, there is no specific law that addresses and responds to the distinct nature and circumstances of domestic violence. Nevertheless, battered women have recourse in existing civil and criminal laws.

### *1. Civil Remedy*

Matrimonial relief is available to women who are subjected to abuse by their husbands. In other jurisdictions, divorce is legally obtainable although the grounds for its grant may vary. But under Philippine law, divorce is not allowed. However, a battered woman may opt to avail of the provisions of the Family Code to bring about the separation or severance of the marital ties in cases where marriage exists between her and the abuser.

In instances where the husband displayed his abusive behavior only during the marriage, Article 55<sup>22</sup> can be the basis for filing a petition for legal separation. The provision recognizes physical cruelty by a husband as a valid ground for seeking legal separation. The grant of the petition relieves the woman from the duty of cohabiting with her husband for the decree of legal separation entitles her to live separately.<sup>23</sup> However, it does not

grant her the right to remarry for the marital bonds are not severed.

Article 36,<sup>24</sup> on the other hand, grants relief to a woman through a declaration of absolute nullity of her marriage upon a showing of the existence of psychological incapacity on the part of the abusive partner. Its manifestations may be demonstrated by his pattern of physical violence, emotional abuse, and psychological immaturity. The effect of Art. 36 is more closely similar to that of divorce for it declares the marriage void *ab initio*. In this instance, there is a severance of the marital ties, which carries with it the right to remarry.

During the pendency of either action, the women may seek, and the court may grant, provisions for her support, especially in cases where she may be financially dependent on the man. In the event that there are children involved, the issue of support and their custody may also be resolved during the course of the proceedings.

## 2. *Criminal Action*

Aside from availing of civil remedies, a battered woman has the legal option of instituting a criminal action against her abusive partner. Criminal laws may be invoked for the many forms of domestic abuse because a man is not entitled by reason of marriage or cohabitation to inflict violence against his wife or female partner. In such cases, resort may be made to penal provisions that cover physical violence where no distinction is made between the violence against a woman and that against a man. Title Eight of the Revised Penal Code classifies the crimes against persons which focuses on the gravity of the physical harm caused to the victim or where death results.

For the killing or attempt on the life of the victim, the offender may be penalized for parricide under Art. 246 if the

victim is the legitimate spouse of the accused. For common-law relationships, the criminal charge may either be murder under Art. 248, where the act was attended by any qualifying circumstance or homicide under Art. 249, where the killing was not justified or not attended by any of the qualifying circumstances of murder.

In cases where there is an infliction of physical harm on the victim, the offender may be charged with mutilation under Art. 262 which penalizes the intentional act of mutilating another or depriving her or him of some essential organ for reproduction or other part or parts of the body of the offended party.

Where injuries are sustained in other parts of the body, the offender may be liable for serious physical injuries under Art. 263, for less serious physical injuries under Art. 265, or for slight physical injuries under Art. 266. The nature of the offense is determined by the body parts affected, the offended party's illness, length of incapacity or need for medical attendance.

While the aforementioned laws provide sanctions of imprisonment and/or fine against the convicted offenders, the remedy under this law is available only if the acts complained of meet the definition of the crime. Thus, criminal liability attaches only to acts of physical violence. Other acts of abuse or maltreatment—psychological or emotional—are outside the purview of the law and therefore go unpunished. Considering that the abusive behavior directed against the woman includes these acts, which are likely to recur and even intensify in the future, the fact that they are not within the contemplation of the law pose serious implications on a woman's safety and well-being.

It is distressing that battered women often risk reprisal and even death in their effort to seek out legal remedies, only to find the community and the legal system unable or unwilling to help them. Thus, victims may finally believe it necessary to protect

themselves because of the lack of effective protection from assaults.<sup>25</sup> In many cases, battered women are sometimes left with only two choices: stay with their batterers and risk death or strike back. It is in instances wherein a woman decides to fight back and end up killing her abusive partner that consideration must be given to a battered woman's perception of her situation in determining whether she incurs criminal liability.

### *3. Creation of Family Courts*

In 1997, President Fidel Ramos signed into law the Family Courts Act. The law established a Family Court in every province and city all over the Philippines. Its jurisdiction includes cases of domestic violence against women which are acts of gender-based violence that results, or are likely to result in physical, sexual or psychological harm or suffering and other forms of abuse such as battering or threats and coercion which violate a woman's personhood, integrity and freedom of movement. Should the act constitute a criminal offense, the accused or batterer shall be subject to criminal proceedings and the corresponding penalties.

The Family Court may issue a restraining order against the accused or defendant upon a verified application by the complainant or the victim for relief from abuse. The court may also order temporary custody of the children in all civil actions for their custody as well as order support *pendente lite*, including deduction from the salary and use of conjugal home and other properties in all civil actions for support.<sup>26</sup>

### **D. Legislative Initiatives to Address Wife Battery**

Although as of today there is still no law particularly addressing the issue of wife battery, there are several bills on this issue pending before Congress.

**1. HOUSE BILL No. 35**

This bill, filed by Representative Bellaflor Angara-Castillo, is known as the “*Anti-Abuse of Women in Intimate Relationships Act.*” It makes protection orders available to women, children, or any household member in cases of acts of violence or threats thereto.

**2. HOUSE BILL No. 583**

Authored by Rep. Darlene R. Antonino-Custodio, it is known as “*An Act Defining and Imposing Penalties for the Crime of Domestic Violence.*” This bill seeks to criminalize domestic violence as family violence, specifically and exclusively applying to cases of violence among blood relatives or relatives by affinity or consanguinity.

**3. HOUSE BILL No. 2753**

Also filed by Rep. Darlene Antonino-Custodio, this bill introduces the laudable idea of incorporating the mandatory training of direct service agencies. It is known as the “*Anti-Domestic Violence Act of 2001.*”

**4. HOUSE BILL No. 1320**

This bill, known as the “*Anti-Domestic Violence Act,*” by Rep. Glenda B. Ecleo, reiterates the urgent nature of protection orders and directs courts, police, and the *barangays* on how to treat such cases.

The foregoing legislative proposals are indicative of the recognition that there is a need to have a law that particularly addresses domestic violence. The bills filed on the issue are very much appreciated. However, we have yet to see a legislative body

that recognizes the seriousness of the problem, enough for it to enact the much-needed statute.

Noteworthy about these bills is their recommendation for the creation of support services for battered women. The early identification of battered women and early justice and social service system intervention can give these women a way out of the violent relationship before the violence reaches the point where killing the batterer is the only option left. Between 1979 to 1984, a study revealed that the increase in shelters and other forms of assistance to battered women resulted in a 25% reduction in the rate of homicides committed by women against their male partners.<sup>27</sup>

The public should also be made to understand the plight of women. It is also important, as some of the bills recommended, that law enforcers, prosecutors, and judges should be given training as to the proper handling of cases of this nature. This ought to convey the message to society in general of the seriousness of the offense.

### III. BATTERED WOMAN SYNDROME

The definition of a "battered woman" has been difficult to operationalize. The term has been used in a number of different ways by the courts, legal commentators, media, and psychiatrists. The most acceptable define a battered woman as "one who is repeatedly subjected to any forceful physical or psychological behavior by a man in order to coerce her to do something he wants her to do without concern for her rights."<sup>28</sup> This definition given by American psychologist Lenore Walker has been called the most accurate for it is not limited to the infliction of physical injuries on the woman. It encompasses even the psychological cruelty and sexual assault the woman suffers.

The rather broad definition is justified in view of the severe consequences of psychological abuse on the battered woman. Constant and repeated assault on a woman by her male partner leaves enduring emotional scars on her. Women themselves relate that the psychological abuse inflicted is sometimes more significant than the physical harm itself in view of the degree of intimacy previously shared by her and the abusive partner.

The definition has been clarified to exclude any reference to minor, isolated incidents common to many relationships. In her study of 435 battered women, Walker found that every one of them reported having been subjected to each of the eight (8) forms of abuse labeled “psychological torture” by Amnesty International: 1) social isolation; 2) exhaustion stemming from deprivation of food and sleep; 3) monopolization of perception manifested in obsessive or possessive behavior; 4) threats (including threats of death) against the woman, her relatives and friends; 5) humiliation, denial of power and name calling; 6) administration of drugs and alcohol; 7) induction of altered states of consciousness; and 8) “indulgence” which maintained the woman’s hope that the abuse would cease.<sup>29</sup>

The physical and psychological trauma experienced by women in abusive relationships has been amply documented and confirmed in a number of studies conducted on battered women. It has been found that these women, as a result of the repeated abuse inflicted on them, tend to develop an altered perception of their situation. In some cases, their violence-laden situation and instinct for survival have compelled abused women to attack and even kill their batterers. In this regard, the defense in criminal prosecutions have sought to introduce expert testimony on battered woman syndrome to explain the reasonableness of the violent action of the abused woman in assaulting, and in particular, killing her male partner.

## A. Nature Of The Syndrome

Battered woman syndrome is not a defense in and of itself.<sup>30</sup> The concept was developed by Walker to dispel misconceptions about domestic violence after conducting extensive psychological research on battered women. Psychologists use the syndrome to describe the characteristics of abused women<sup>31</sup> trapped in a cyclical pattern of physical and psychological abuse. It is an attempt to relate the common psychological characteristics of battered women and explain their actions in certain situations.<sup>32</sup>

The syndrome identifies the common characteristics of women in abusive relationships and the effects that regular beatings have on them. It also explains why women subjected to habitual physical attacks are psychologically unable to terminate these relationships. The constant battering results in feelings of guilt, helplessness and low self-esteem, making the victim passive and unable to help herself.<sup>33</sup>

## B. Elements of Battered Woman Syndrome

Evidence of the syndrome helps explain the battered woman's perceptions of her situation and establishes the reasonableness of her actions against her abuser. The syndrome rests on the psychological theories known as "Walker Cycle Theory of Violence" and "Learned Helplessness."<sup>34</sup>

### 1. *Cycle Theory of Violence*

The cycle theory postulates that the syndrome encompasses a three-phase pattern of hostility and violence. The three (3) distinct phases of abuse are tension building, acute battering and loving contrition. A woman is considered a battered woman when she has been through the cycle of violence at least twice.<sup>35</sup> The cyclical nature of the relationship allows the battered woman



to anticipate oncoming violence, and entices her to remain with her abuser after the violent stage is over.<sup>36</sup>

The first phase of the cycle, the “tension-building phase,” involves a period of heightening of tension characterized by minor physical or verbal abuse and the man’s argumentativeness where the abusive husband maintains some degree of control over his violent tendencies. There is a series of incidents such as name-calling, other mean intentional behaviors, and/or [relatively mild] physical abuse.<sup>37</sup> In response, the woman attempts to placate or avoid the batterer in order to avoid the escalation of violence. This phase is the longest, with the initial incarnation lasting up to ten (10) years.<sup>38</sup>

The second phase of the syndrome, which is the “acute battering incident,” results from the growing and unresolved tension characteristic of the initial phase. During this phase, the batterer unleashes the anger and tension, and subjects the woman to severe physical abuse and usually while also verbally abusing her. At this point, the woman feels powerless to stop her husband and her goal is to survive the phase rather than to escape from it. Eventually, the batterer stops and after the incident, there is a predictable sharp reduction in tension.<sup>39</sup> This is the shortest phase of the cycle, typically lasting only two to twenty-four hours.<sup>40</sup>

The reduction in tension leads to the third phase known as the “loving contrition” phase. In this phase, the batterer positively reinforces his victim’s reasons for remaining in the relationship by apologizing profusely, being attentive and kind and perhaps even by giving the woman gifts.<sup>41</sup> Remorseful and apologetic, the batterer gives the woman assurances that the violence would not be repeated, and that he will even seek professional help.

According to studies, most women treat the initial battering incident as an isolated occurrence and do not expect future abuse. The contrite behavior of the batterer reinforces the woman’s

commitment to the relationship and her hope for change in the man's abusive conduct.

This third phase may last for extended periods of time. Eventually, however, the cycle returns to the first phase. The tension mounts anew until the woman is subjected again to acute battering. As the relationship progresses over time, the loving contrition phase becomes shorter and less conciliatory and the tension-building phase becomes more dominant.<sup>42</sup>

Unfortunately, as the cycle is repeated, the level of violence and accompanying psychological abuse escalates. But with the completion of each cycle, the woman is encouraged to believe that the batterer will eventually change and the battering will cease.<sup>43</sup>

## *2. Learned Helplessness*

The development of "learned helplessness" is perhaps the most pervasive emotional consequence of battering, whether physical or psychological, for it is the primary psychological condition resulting from the repetition of the triphasic cycle of abuse.<sup>44</sup>

The concept of learned helplessness, developed by Seligman, is used by psychologists to describe the response of an organism repeatedly and unpredictably subjected to painful stimuli.<sup>45</sup> Learned helplessness is a psychological state, which develops when, as a result of being repeatedly exposed to outcomes beyond one's control, one "learns" that nothing one does will affect or alter the outcome.<sup>46</sup>

The theory has also been used by many to explain the failure of battered women to leave their batterers or even to seek help. This rationalization finds basis in the conduct of animal and human research which demonstrated that "those who experienced uncontrollability show reduced initiative of voluntary responses

[and] have difficulty learning that responses produce outcomes.<sup>47</sup>

In Seligman's own laboratory research, dogs were subjected to inescapable electric shocks. They were taught that their actions did not affect the frequency of the shocks they were receiving. At the early stage of the experiment, the dogs tried to escape but as it progressed, the dogs became compliant, passive and submissive even when given opportunities to avoid being shocked. Other dogs that did not experience inescapable shocks quickly learned to avoid being shocked. But the helpless dogs never did and when their cages were later opened, they remained passive and refused to leave. It was concluded that the dogs' perception of "helplessness" in avoiding the shocks caused distortions in their behavior.

Psychologists observe the same symptoms in people, including battered women who experience repeated exposure to painful stimuli such as beatings, sexual assault and psychological torture. Realizing they have no control over their situation and there are no apparent avenues of escape, these women display the classic symptoms of learned helplessness.

Conditioned to expect the battering as part of her life, a battered woman learns to respond to her partner's uncontrollable anger with passivity. Believing that nothing she does will alter the relationship or prevent further abuse, the woman eventually ceases any attempt of avoiding the abuse and even fails to recognize or take advantage of opportunities for escape. The battered woman's lack of control in the battering relationship — realizing that the abuse may occur at any time and feeling powerless to prevent the violence — diminishes her motivation to avoid the beatings and may perceive herself as being totally helpless.

#### IV. THE BATTERED WIFE SYNDROME AND THE LAW

##### A. Battered Wife Syndrome in Foreign Jurisdictions

The battered wife syndrome is a concept new in Philippine law. However, this concept has been used extensively before US Courts as well as in British Courts. Below are some rulings on the varied application of the syndrome.

##### *1. Rulings of United States Courts*

Ibn-Tamas vs. United States (1979, Dist Col App) 407  
A2d 626

This is considered to be a landmark case with regard to the concept of battered wife syndrome. It was ruled that the exclusion by the trial judge of the testimony of a clinical psychologist which was offered by the defense on the subject of battered women was an error necessitating the reversal of the wife's conviction for second-degree murder of her husband. The court reasoned that the psychologist, Dr. Leonore Walker, was not going to express an opinion on the ultimate question whether defendant actually and reasonably believed she was in danger when she shot her husband but rather would have merely supplied background data to help the jury make that crucial determination.

It was offered to inform the jury that there was an identifiable class characterized as "battered women" to explain why the mentality and behavior of such women were different from the ordinary perception of others, of how someone would be likely to react to a spouse who was a batterer and to therefore provide a basis from which the jury could comprehend why the defendant perceived herself to be in imminent danger at the time of the shooting.

The court further explained that the question is whether the expert witness' methodology had the required general acceptance and not whether there was a general acceptance of the battered women concept derived from that methodology.

State vs. Baker (424 A2d 171 [1980, NH])

The court held that the trial judge was not wrong in admitting the testimony of an expert on domestic violence regarding the battered woman syndrome where such evidence was offered in rebuttal of the defendant's plea of not guilty of killing his wife by reason of insanity.

The expert testified that husbands who beat their wives had themselves often been subjected to or observed physical violence in their own homes, and that current research did not indicate that mental illness was an important cause of wife-beating. The court explained that such testimony was offered to establish the state's theory that the attempted murder was but a single episode in a recurring pattern of domestic violence and was neither caused nor produced by mental illness or insanity.

State vs. Leidholm (334 N.W. 2d 811[N.D. 1983])

The battered wife syndrome testimony that had been admitted at trial must be included in jury instructions pertaining to the defense of justifiable homicide. The existence of such a syndrome in a marriage does not of itself establish the legal right of the wife to kill the husband. The evidence must be considered in the context of self-defense. The case was reversed and remanded for new trial.

State vs. Lynch (416 So. 2d 567 [La. 1983])

The Supreme Court of Louisiana reversed the conviction of Sheral Lynch for manslaughter of her common-law husband and

discharged her from any further prosecution. No expert testimony describing the battered woman syndrome was presented during the trial. The evidence that Lynch was beaten several times by the deceased revealed the reasonableness of her actions. The court said that the rational trier of facts could not have found on the evidence presented that Sheral Lynch did not act in self-defense. In a footnote, the court cited a law review article on battered wife syndrome that is an indication of the court's recognition of the probative value of battered wife syndrome as evidence.

Borders vs. State (433 So. 2d 1325 [Fla. Dist. Ct. App.1983])

In this case the court ruled that the testimony of the clinical psychologist with regard to Geraldine Borders' battered wife syndrome defense should have been considered during the trial. Mrs. Borders killed her husband in one of their frequent fights. Both were alcohol abusers and their drinking often resulted in violence. Mr. Borders is muscular and larger than his wife. Friends often intervened in their violent confrontations.

Mrs. Borders was convicted of second-degree murder. She appealed and alleged as error the trial court's refusal to admit expert testimony on battered wife syndrome.

The District Court of Appeals said that the defendant should have been granted the opportunity to develop the issue for further consideration by the trial court. It adhered to the *Ibn-Tamas* ruling and so the case was reversed and remanded for further proceedings.

State vs. Ciskie (751 P. 2d 1165 [ Wash. 1988])

The state's expert testimony on battered wife syndrome was admissible to assist the jury in understanding the victim's delay in reporting the alleged rape and her failure to discontinue her relationship with the defendant.

State vs. Frost (577 A. 2d 1282 [N.J. Super. Ct. App. Div. 1990])

The battered wife syndrome was considered as admissible evidence to bolster the victim's credibility in a prosecution for assault. The prosecutor was allowed to use a series of prior assaults on the victim as well as calls to the police and reconciliations over a period of time to explain why the victim remained with the defendant and even visited him in jail.

McNaugh vs. State (612 A. 2d 725 [R.I. 1992])

The defendant appealed her murder conviction. Based on the evidence of abuse and expert testimony on battered wife syndrome, the court found that her husband's infliction of severe mental and physical abuse upon her coerced her into describing the homicide in a way that would be favorable to him but prejudicial to her own best interests. The evidence indicated that the husband's domination through a focused pattern of abuse prevented the defendant from assisting her attorney and preparing a reasonable defense.

Knock vs. Knock (621 A. 2d 267 [Conn. 1993])

Although the case involved custody determination, the court held that battered wife syndrome was admissible in evidence.

State vs. Cababag (850 P. 2d 716 [Haw. Ct. App. 1993])

Expert testimony on battered wife syndrome was admitted in the trial of a man accused of beating the woman he was living with. This was used to explain why the woman had recanted her pre-trial accusations that the defendant battered her and to assist the jury in assessing the woman's credibility. The court said that the seemingly bizarre behavior [recantation, minimization, and

other related behavior] of the alleged victim is beyond the knowledge or understanding of lay persons who normally serve on juries x x x and does require a special expertise to understand.

## 2. *United Kingdom Court Ruling*

### R. vs. Kiranjit Ahluwalia (4 All E. R. 889 [1992])

Deepak Ahluwalia began beating his wife Kiranjit days after their arranged marriage. After several years, Deepak's violence continued despite two restraining injunctions. It even came to a point that the violence occurred almost daily. Kiranjit suffered bruises, broken bones and teeth, split and swollen lips, scalding and being knocked unconscious. Sometimes Deepak would make death threats while holding a knife or foot-long screwdriver close to her. Despite these and two suicide attempts, Kiranjit remained steadfast in her sense of responsibility as a wife and mother since her Asian code of family honor taught her that she must try to keep the marriage intact no matter what.

In 1989, she discovered that Deepak was having an affair with another woman. He left her for a few days but she pleaded for his return. When he returned, the beatings continued. One evening, she begged him not to leave the family but he said the marriage was over. He demanded money and threatened to beat her if she did not produce the amount. Later, he placed a hot iron on her face. He also threatened to burn her if she did not leave him alone. Afterwards, Deepak went to sleep. Two and a half-hours later, Kiranjit got some petrol, lit a candle, poured petrol over Deepak and set him on fire. She calmly collected her son and left the house. Neighbors reported her to be in a state of shock. Six days later Deepak died from his burns.<sup>48</sup>

During her trial, Mrs. Ahluwalia denied having the requisite *mens rea* and pleaded provocation in the alternative. She was however convicted for murder and began serving a life sentence.



Due to the efforts of the campaign group called the Southall Black Sisters, Mrs. Ahluwalia was able to obtain leave to appeal. Her grounds for the appeal were jury misdirections on the subjective and objective conditions of provocation and the existence of fresh evidence of diminished responsibility.<sup>49</sup> The latter ground made the Court of Appeal set aside the conviction for being unsafe and unsatisfactory and ordered a retrial. Her plea of manslaughter was accepted and was sentenced to forty (40) months' imprisonment.

## **B. The Battered Wife Syndrome and Self-Defense**

### ***1. Self-Defense Under Philippine Law***

Article 11 of the Revised Penal Code enumerates six justifying circumstances recognized by law. These are those circumstances where the act of a person is said to be in accordance with law thereby freeing her/him from liability.<sup>50</sup> One of which is self-defense. The first paragraph of said article provides that:

11. Anyone who acts in defense of his person or rights, provided that the following circumstances concur:

*First.* Unlawful aggression;

*Second.* Reasonable necessity of the means employed to prevent or repel it;

*Third.* Lack of sufficient provocation on the part of the person defending himself.

It is incumbent upon the accused who invokes self-defense to prove that he or she indeed acted in defense of himself/herself. Reliance should be made on one's own clear and convincing evidence and not on the weakness of the prosecution's evidence.

Self-defense under Philippine law is made lawful under the penal statutes because it is highly improbable that the State can prevent aggression against its people in all instances. And because

a person's natural instinct is to protect, repel, and save his/her person or rights from impending danger.<sup>51</sup>

The first requisite of self-defense is the presence of an unlawful aggression on the part of the victim as against the person defending himself. There is unlawful aggression when the peril to one's life, limb or right is either actual or imminent. There must be actual physical force or actual use of weapon.<sup>52</sup> The peril to one's life must be actual and imminent. It is actual when the danger is in actual existence. The danger is imminent when the danger is on the point of happening.<sup>53</sup>

There must also be actual physical force or actual use of a weapon. Thus, in the case of *U.S. vs. Carrero*,<sup>54</sup> insulting words addressed to the accused, no matter how objectionable, without physical assault, could not constitute unlawful aggression.

Unlawful aggression therefore refers to an attack that has actually broken out or materialized or at the very least is clearly imminent. It cannot consist in oral threats or a merely threatening stance or posture.<sup>55</sup> It is also essential that the unlawful aggression must come from the person who was attacked by the accused. A mere threatening or intimidating attitude, not preceded by an outward and material aggression, is not unlawful aggression because it is necessary that the act be offensive and positively strong, indicating the wrongful intent of the aggressor to injure.<sup>56</sup> An example of a threat to inflict real injury would be when a person aims a revolver at another with the intention of shooting him.<sup>57</sup>

In homicide cases, in order for it to be justified under self-defense, it is necessary that the killing of the deceased by the defendant is simultaneous with the attack made by the deceased, or at least both acts succeeded each other without appreciable interval of time.<sup>58</sup> When the killing was after the attack made by the deceased, the accused must have no time nor occasion for deliberation and cool thinking.

The second requisite of self-defense is the reasonable necessity of the means employed to prevent or repel the unlawful aggression. This means that there is a necessity of the course of action taken and there is a necessity of the means used. Reasonableness in this case depends upon the existence of unlawful aggression and its nature and extent.<sup>59</sup>

The Supreme Court ruled that the person attacked is not duty bound to expose himself to be wounded or killed, and while the danger to his person or life subsists, he has a perfect and indisputable right to repel such danger by wounding his adversary and, if necessary, to disable him completely so that he may not continue the assault.<sup>60</sup>

Defending one's person or rights does not necessarily mean killing the unlawful aggressor. However, in defending one's self, he or she cannot be expected to think clearly and thereby control his/her blow. As long as the mortal wounds were inflicted at a time when the danger of harm or injury existed, the elements of complete self-defense are present.<sup>61</sup>

The reasonableness of the means employed depends upon the nature and quality of the weapon used by the aggressor, his/her physical condition, character, size, and other circumstances, and those of the person defending himself/herself and also the place and occasion of the assault. It does not imply material commensurability between the attack and the defense. "What the law requires is rational equivalence, in the consideration of which will enter as principal factors the emergency, the imminent danger to which the person attacked is exposed and the instinct, more than reason, that moves or impels the defense, and the proportionateness thereof does not depend upon the harm done, but rests upon the imminent danger of such injury."<sup>62</sup>

There should also be lack of sufficient provocation on the part of the person defending himself/herself. This is the third requisite for there to be self-defense. The presence of this requisite

is also vital because when the person claiming that he/she acted in self-defense gave sufficient provocation, such person is also to be blamed for having given cause for the aggression.

Sufficiency of the provocation means that it should be proportionate to the act of aggression and adequate to stir the aggressor to its commission.<sup>63</sup> To illustrate, in a case where the accused tried to forcibly kiss the sister of the deceased, the accused gave sufficient provocation for the deceased to attack him. There is no complete self-defense because the third requisite is not present.<sup>64</sup>

## *2. Review of Some Parricide Cases*

In Philippine jurisprudence, a review of parricide cases decided upon by the Supreme Court from 1901-1997 revealed that there were cases of parricide wherein the wife had a history of battery from her husband. But the fact that the wife had been subjected to abuses was given little attention or was not considered as relevant at all.

Had the battered woman syndrome been admissible under Philippine law, perhaps these cases would have been decided differently. There would be a clearer picture of what the real situation these women faced. And maybe they would have a better chance of getting the justice they deserve.

Admittedly, the scope of this study is very limited.

It is therefore recommended that further research be done not only of cases decided by lower courts but also of cases where a woman with a history of battery kills her live-in partner, an offense that does not fall under parricide.

### People vs. Teopista Canja (86 Phil 522)

In this case, the husband, Pedro, arrived one evening very drunk. Without warning, he immediately boxed his wife,

Teopista, in the stomach who fainted from the impact. When she regained consciousness, she asked her husband why she was boxed and Pedro replied that if she still resists he would do it again. She then prepared dinner. While eating, her husband threw away the rice from the plate and left. When he returned, he boxed her again because, according to him, Teopista was always jealous. For this reason, she felt resentment towards him and also because he sold all their lands, had gambled and kept a mistress. So, while Pedro was sleeping, Teofista got a hammer and chisel and struck his head and face until he was dead. Afterwards, she wrapped his body with a mat, carried the body with the help of her daughter, and left it near a creek. Teopista was convicted of parricide and the Supreme Court affirmed her conviction.

In the trial court, she pleaded self-defense saying she awoke because someone was strangling her so she grabbed a piece of wood and gave the assailant two blows in the face. When she lighted a lamp, she saw that it was her husband. The court rejected this claim because of her plea of guilt during preliminary investigation; the nature of the wounds inflicted; and the testimony of her daughter.

What is worth noting in this case is the statement of Justice Montemayor in his concurring opinion. He said that the violence with which Teopista killed her husband reveals the pent-up righteous anger and rebellion against years of abuse, insult, and tyranny seldom heard of. He therefore recommended that Teopista be given executive clemency.

People vs. Josefina Samson (GR L-14110, March 29, 1963)

Josefina was convicted of parricide for killing her husband. Her husband was cruel and of violent character and for many

years had been maltreating her at the slightest provocation. On several occasions, he had inflicted upon her physical injuries.

One fateful day, the husband pulled her hair because of the kind of coffee she had brought for him. He then asked her for money and became angry when she wasn't able to give him more. He grabbed her arm, twisting it, and then held her by the neck until she could no longer speak. He threw her against the table and threatened to kill her if she does not give him money. He said that if she didn't have enough she better work as a maid or if not, be a prostitute. He then got a gun and was about to strike her when she sidestepped him. While grappling with him for the gun, it went off and the bullet hit him on the neck.

The court ruled that Josefina could have neither the resolution to kill her husband nor the time to meditate or reflect on the criminal act she would commit. The shooting came about spontaneously from the unexpected turn of events.

People vs. Cunigunda Boholst-Caballero (GR L-23249, November 25, 1974)

Cunigunda Boholst-Caballero left her husband because he gambled, drank, maltreated her, and beat her at times. One evening, when they met in the street, he accused her of prostituting. She told him that he had nothing to do with her anymore. This statement irked him for which he threatened to kill her. He grabbed her hair, slapped her face until her nose bled and pushed her towards the ground. They struggled and since she had no other choice because she was being choked, she pulled out his knife and thrust it at him. After she released herself from him, she ran home. The court ruled that she acted in the legitimate defense of her person and was acquitted.

People vs. Rosa Macali (GR L-68036, August 31, 1987)

The husband of Rosa David Macali was a jobless gambler and womanizer, a drunkard given to laying hands on his wife whenever he likes especially when Rosa refuses to give him money. The court *a quo* even described him as “the type who could drive his wife into fits of desperation.”

One day, Rosa requested her husband to massage her hand that was sprained when they had a quarrel. But she was spurned. Her husband said “*mabuti nga yan lang ang inabot mo*” then boxed and kicked her. He asked for money and when she refused, he grabbed it from her. She went to the second floor of their house and yelled at him. In response, he got a kitchen knife and rushed towards Rosa. She pushed him and he fell down the stairs. Landing on the ground, he rose and went out of the house. Rosa later learned that her husband suffered a fatal stab wound. Rosa was acquitted because of the failure of the prosecution to prove her guilt beyond reasonable doubt.

**3. *People vs. Dolores Lorenzo Case* (GR 110107, January 26, 1995)**

For allegedly killing her husband Agapito Lorenzo on 30 July 1990, Dolores Lorenzo, a policewoman, was charged with and convicted for the crime of parricide by the Regional Trial Court (RTC) of Tuguegarao, Cagayan on 24 February 1993.

The facts as found by the trial court was that on the said evening, a tricycle driver informed SPO1 Jose Eclipse that a stabbing incident occurred. Eclipse rushed to the reported crime scene. On his way, he met PO1 Dolores Lorenzo, a policewoman from his own station who immediately surrendered to him a blood-stained bolo and fan knife and told him that she killed her husband. They proceeded to where the victim, Agapito Lorenzo, was. Agapito’s body was sprawled in front of the store

of Barangay Captain Isabelo Liban in whose presence Dolores surrendered after she killed her husband. Eclipse and Dolores went to the police station and registered the incident in the police blotter.

According to the defense, it was a drinking buddy of Agapito, Robert Santos, who killed him and not his wife Dolores. However, the trial court convicted Dolores for parricide. On appeal, this was affirmed by the Supreme Court saying that even without the testimony of the witnesses for the prosecution, the circumstances point to the guilt of Dolores: that a tricycle driver reported the incident to Eclipse; that Eclipse met Dolores who surrendered to him blood-stained bolo and fan knife; that Agapito sustained chop wounds, incise wounds and stab wounds all over his body; that Dolores went to the police station where Eclipse reported that she surrendered to him and told him that she killed her husband and which was entered in the police blotter; that Dolores heard the report but did not object to the same; and that Dolores never asked the police authorities to investigate Robert Santos whom she implicated, two and a half years after the incident, as the alleged killer of her husband.

A motion for new trial was filed by the Women's Legal Bureau, Inc., (WLB) a feminist non-governmental organization, which became Dolores' counsel only during this stage.

### *3.1. Motion for New Trial of Dolores Lorenzo*

In the motion for new trial, the defense argued that Dolores Lorenzo was suffering from battered wife syndrome, which they advanced as newly discovered evidence entitling her to the defense of self-defense or temporary insanity. This may very well have been the first time that the battered wife syndrome was used as a defense in court.



Dolores and Agapito married in 1984. Weeks after, Agapito started to abuse Dolores both physically and mentally. The abuses occurred unremittingly and escalated into more violent behavior as months and years passed. It happened in the presence of neighbors, fellow soldiers of Agapito, friends, and relatives, as well as strangers. Agapito would even maltreat Dolores during sexual intercourse. There was even a time when he made her sleep beside him and his paramour. Dolores could not ask for help from neighbors, friends, and relatives because of fear of increased aggression against her, which happened several times before when she related the violence to her superiors and when she attempted to escape from her husband.

During their marriage, Dolores experienced repeated violence from Agapito. There were times when he would bang her head against the wall, scrape her skull with a knife, and bite her nose. Once, he even threw a grenade at her and their sleeping daughter. She developed tuberculosis of the breast, an ailment precipitated by the constant boxing of her whole body, which required her to undergo an operation.

Throughout all these, Agapito would threaten to kill both Dolores and their child or massacre Dolores' entire family if she dared leave him. On three occasions, Dolores attempted to leave but Agapito followed her and begged her to come home with him again. He even promised his superiors that he would not maltreat her again. But his cycle of aggression still persisted after each reconciliation. Dolores endured the violence believing that it would save her life, that of her child, and her entire family and in the hope that Agapito would change someday.

The defense argued that all the requisites of self-defense was present in this case. First, there was unlawful aggression. It contended that the imminent danger required by law should not be confined to the one-time encounters most common to

male adversaries or attacks by strangers. In the case of battered women, they become sensitized to the cues of impending assault and the danger of being killed by her partner is always imminent. An abused woman may kill her husband during the period of threat that precedes a violent incident or right before the violence escalates into a dangerous level. Or the woman may take action during a lull in an assaultive incident or after its culmination in an effort to prevent a recurrence of violence. Defense counsel asserted that in the case of Dolores Lorenzo, the imminence of bodily harm against her was not only present on the night of the incident but continuously existed throughout her six-year marriage with her husband.

Second, it was submitted that the rule requiring that the course of action must be reasonable and necessary for there to be self-defense does not take into account the cumulative effects over time of repeated violence against battered women for whom the danger of being killed is always imminent.

On the evening of July 30, 1990, Dolores, upon arriving home from work, was met with verbal abuse by her husband. Then, her head was whipped with a stool and then hit with a drinking glass by him in the presence of his drinking companion. Dolores' pleas pacified her husband temporarily. Agapito then slept on the sofa but woke up after Dolores finished her novena prayers. Agapito shouted for her and cursed her for not waking him up to eat dinner. Without any warning, he lunged at her and repeatedly tried to stab her with a knife. Dolores ran to the kitchen in desperation, saw the bolo on top of the dining table, grabbed it and, crazed by fear of the imminent danger, faced Agapito. Dolores and Agapito parried blows but Dolores was able to strike him on the ear. He then lost his grip and dropped the knife he was holding. Thereafter, Dolores stabbed him in frenzy and even ran after him as he fled for his life. Dolores only

realized that she killed her husband when her eyes were able to focus on her husband's body lying in a pool of blood. Dolores admitted to the killing, narrating in detail the horrible ordeal she suffered in the hands of her late husband and how she finally snapped under the pressure of years of abuse. Their only child, at a very tender age, was both a witness to and a victim of the inhuman and cruel conduct of her own father.

At the point when her husband lunged at and tried to stab her, it was clear in Dolores' mind that her husband was bent on killing her. When she saw the bolo, she used it and faced her attacker. It was also reasonably necessary for her to take the knife that fell from her husband's hand because it might be used against her. Being a battered wife for several years, the usual conduct required by law to those facing unlawful aggression, which is to desist when the aggression ceases, should not be applied to Dolores.

Third, there was no sufficient provocation on the part of Dolores. It was her husband who gave sufficient provocation. He was the one who subjected his wife to repeated beatings all throughout their married life.

The defense also argued that the concept before English Courts of diminished responsibility as an absolatory cause as applied to cumulative violence experienced by battered women could be accepted under Philippine law by broadening the concept of temporary insanity in the light of the battered wife syndrome.

Notwithstanding the rational and well-researched arguments presented by defense counsel, the motion for new trial was denied. Dolores is presently serving a life sentence term at the Correctional Institute for Women in Mandaluyong City. It is quite unfortunate that this motion was not granted. It would have been an occasion for the Supreme Court to rule on the

applicability of the concept of battered wife syndrome before Philippine courts. This may be an indication that the Supreme Court, like the rest of Philippine society, needs to be better informed about the issues faced by women battered by their partners.

## V. CONCLUSION

The law claims to be neutral, applicable to both men and women, and guarantees the rights of both. But based on women's experiences in dealing with the law, it can be said that women are discriminated upon in law.

Women are largely discriminated upon due to the fact that the law looks at women from a male standard. Women are categorized as different from or the same as men, not taking into consideration that women have particular needs and have experiences that are uniquely their own. The law ignores the realities of women and measures them by standards that reflect the experiences and aspirations of men. Women are not allowed to be women on women's own terms.

Considering the law's treatment of women, some may choose not to deal with the law at all. However, it is a reality that there is a law. One cannot choose not to deal with it but must resort to it. New standards as well as new laws will indeed take time. For now, what can be done is to work with what the legal system offers while at the same time advocate for changes in the system.

The battered woman syndrome is one such chance of working within the legal system to address women's concerns. The concept has been extensively used to explain how the history of repeated violence shaped a battered woman's perceptions leading to her belief that she was at risk of imminent death or injury even though she might have killed her husband at a time other than when he attacked her.<sup>65</sup>

According to the testimony of a psychiatrist in one self-defense claim, the classic signs of the battered woman syndrome was described as:

“The abused wife undergoes a personality change as the abuse increases. She becomes frightened and unable to project her thinking into the future. She lives her life from one beating to the next and her thoughts relate solely to her efforts to avoid the next beating. The wife is usually hopeful that, if she pleases her husband, the abuse will stop. For his part, the husband usually expresses remorse after a beating and attempts to reconcile with gifts and/or promises to refrain from abuse in the future. The wife then sees the husband in a different light and is filled with false hope. Another aspect of the syndrome is that the wife eventually feels that she cannot escape her tormentor and that she will be tracked down if she attempts to flee the situation. Her self-esteem vanishes and her confidence is shattered. She feels that no one would believe her if she told them about the abuse and thus, she keeps it to herself.”<sup>66</sup>

From the foregoing it would appear that the cycle of violence a battered woman repeatedly endures causes feelings of helplessness, fear and confusion. They are not battered because they are helpless and afraid but it is the battering relationship that causes their helplessness and fear.<sup>67</sup> Thus, enduring an abusive relationship significantly affects a battered woman's perception of her whole situation and the options open to her.

Suffering from cyclical abuse, a woman learns to recognize signs of her batterer's anger and notices changes in his behavior, which indicates to her that imminent danger of great bodily harm, or death exists.<sup>68</sup> She may even recognize these signs of impending attack before he actually becomes violent. In extreme circumstances, a battered woman, as a last resort, may kill her abuser to avoid being killed herself. But the situations wherein a battered woman kills may appear far removed from classic self-defense situations. She may kill him while he is asleep or drunk,

while merely lying on a bed, or while otherwise posing no apparent threat to her.<sup>69</sup>

In such cases, the probative value given to expert testimony on battered woman syndrome becomes very important for the woman's defense. Admission of such evidence may reveal the pattern of violence and abuse the battered woman was subjected to and establish its causal connection to her altered perception of her situation. This will then substantiate her belief that she was in imminent danger *every* moment she was in the presence of her abuser and establish the reasonableness of her actions against him.

Buda and Butler argued that the battered woman syndrome evidence can and should be incorporated within the existing self-defense doctrine to avoid going against the constitution. The 14<sup>th</sup> Amendment of the United States Constitution has been used as basis for challenging battered wife syndrome as unconstitutional. However, it may be argued that the current law on self-defense itself violates the equal protection clause. It neglects the rights of battered women defendants while giving protection to the rights of male homicide defendants and victims.<sup>70</sup>

The issue is not the development of a new standard of self-defense for women but perhaps the adjustment of existing law to account for the differences in the experiences of women and men so that the same standard can be applied to all victims.

When battered women kill, they enter a culture that lacks understanding of their act. While still in shock at the assault that almost killed her and at the realization that she had killed her husband, she is charged and placed behind bars. She is separated from her children, she loses friends and relatives, and her children are shunned. These battered women who kill their abusers enter legal categories that do not accommodate their behavior and are tried and sentenced by courts that do not comprehend their actions.<sup>71</sup>

Self-defense which justify and partially excuse homicide are limited to male definitions and behavioral practices.<sup>72</sup> Simply stated, homicide is primarily a male act. Women are said to be less inclined than men to commit murder. A study by Lunde, a Stanford psychiatrist, concluded that male homicide victims precipitate their death through their own violent behavior. Wives are the offenders in 85% of “victim-precipitated” homicides between spouses. This indicates that husbands act much more often than their wives to provoke a deadly force response.<sup>73</sup> Also, Susan Jacoby said that the woman who kills does so as a “desperate, final response” to physical threat and attack while a man kills as a logical extension of the abuse he has been dispensing for years.

Also, women are physically smaller and weaker and were brought up to perceive themselves to be helpless. This influences the women’s perception of danger.<sup>74</sup> A small unarmed, abused woman may see her husband’s body as deadly against which her only defense is a dangerous weapon.

In the case of *State vs. Wanrow*,<sup>75</sup> the woman was 5’4” in height with a cast on her leg and used a crutch while the batterer was an intoxicated 6’2” man. She was convicted of murder because the court held that a reasonable person has no right to repel a threatened assault with naked hands by using a deadly weapon.

The Supreme Court, however, granted a retrial and commented that “there was a misstatement of the law in persistently using the masculine gender, giving the jury the impression that the objective standard x x x is, that which is applicable to an altercation between two men.” It insisted that the perceptions of the battered woman and not the perceptions of a hypothetical or actual man are the key factors in determining whether or not the battered woman acted reasonably.

Although the battered wife syndrome was intended to address damaging myths and misconceptions, it has not been spared from criticisms. One of which is that it contributes in a subtle way to an image of maladjustment or pathology.<sup>76</sup> The term syndrome connotes impairment. Using the battered wife syndrome under the self-defense doctrine is said to be a risk.<sup>77</sup> It presupposes psychological paralysis arising from an abusive environment and lack of alternatives. What the counsel for the defendant does is to rely upon the allegation that the woman's behavior was partially determined by external factors.<sup>78</sup>

According to Schneider, this overemphasis on the "passive victimized aspects of battered women's experience" renders it hard to explain the woman's agency in the action of self-defense and detracts from the focus of the plea — the circumstances which might explain the homicide as a woman's necessary choice to save her own life. This may cause the revival of the diminished capacity defense for women who kill which would result in excusing the homicide instead of showing how the actions taken by a woman in imminent fear of death fall under self-defense.

Insanity and diminished capacity are based on the presumption that the act was wrong but because of the impaired mental state of the accused, she should not be held liable for her actions. But battered women who kill do not appear to be mentally ill but are just reacting to the violence committed against them. The focus shifts to proving pathology in the woman and away from her right to be free from harm.<sup>79</sup>

According to Katherine O'Donovan, there is a perceived need for the law to have a universal and objective standard such as reasonableness to preserve its legitimacy. But for her, reasonableness is not always an ideal standard. Reasonableness concepts may be broadened to take into account the abused women's way of looking at her situation. This is a possible threat to the law's claim to objectivity.



On the other hand, the law's claim to universality is being challenged for its failure to incorporate the experiences of abused women.<sup>80</sup> In the case of battered women, the law may not consider it reasonable for her to wait until her abuser is asleep before attacking him. But from the victim's standpoint, it may be reasonable.

But as stated by Buda and Butler, the battered wife syndrome is not the panacea for domestic violence. They consider it as a "back-door" assault on an enemy that has long placed too many formidable obstacles in its path (the front door remedies being through institutions). Until those obstacles are weakened and defeated, the battered wife syndrome can be used for evidentiary purposes to give justice to women.<sup>81</sup>

An interesting development in Philippine law is the case of Marivic Genosa. She was adjudged guilty of parricide by the Regional Trial Court (RTC) of Leyte and was sentenced to death for killing her husband. The lawyers of Marivic filed an Urgent Omnibus Motion to bring to the attention of the Supreme Court certain facts and circumstances that could warrant the setting aside of her conviction. Among her arguments was that she suffered severe and repeated beatings at the hands of her husband and her act of killing her husband was equivalent to self-defense.

The Supreme Court, in an *en banc* decision, remanded the case to the RTC for the reception of expert psychological and/or psychiatric opinion on the "battered woman syndrome". This in effect is recognition by the Supreme Court that the "battered woman syndrome" can be considered "a viable plea within the concept of self-defense".<sup>82</sup>

We need not await the passage of a law while women in abusive relationships can only choose between getting killed or killing her abuser. All possibilities that can address this concern must be explored. To allow the battered woman syndrome con-

cept into the law is to let in much needed light to dispel the darkness covering women who kill because they chose to live.

### ENDNOTES

<sup>1</sup> An American woman who, after suffering several years of battering and abuse, cut off her husband's penis.

<sup>2</sup> CONST. art. II, sec. 11.

<sup>3</sup> CONST. art. II, sec. 14.

<sup>4</sup> GA Resolution 217A (III) of 10 December 1948.

<sup>5</sup> GA Resolution 34/180 of 18 December 1979.

<sup>6</sup> GA Resolution 48/104 of 20 December 1993.

<sup>7</sup> N. Seufert-Barr, *Seeking Action for Equality, Development, Peace*. UN Chronicle, June 1995, p. 41.

<sup>8</sup> Signed by 181 UN Member States in September 1995.

<sup>9</sup> A. BROWN, *When Battered Women Kill*, The Free Press, 1987, p. 164.

<sup>10</sup> A. Roberts, (Ed.) *Helping Battered Women: New Perspectives and Remedies*, Oxford University Press, 1996, p. 103.

<sup>11</sup> *Id.*, at 86.

<sup>12</sup> *Id.*, at 104.

<sup>13</sup> *Missouri's New Law on "Battered Spouse Syndrome": A Moral Victory, A Partial Solution*, 33 St. Louis U.L.J. 235. (1988)

<sup>14</sup> *Action Against VAW: The Arugaan ng Kalakasan Experience*. QC, Arugaan ng Kalakasan, (1997), p.19

<sup>15</sup> *The World's Women 1995: Trends and Statistics*, NY, UN Publication, (1995), p. 158.

<sup>16</sup> D. Sonkin (Ed.), *Domestic Violence on Trial: Psychological and Legal Dimensions of Family Violence*, NY Springer Pub. 1987, p.3.

<sup>17</sup> *The Curtain Should Not Remain Drawn*, Reprowatch, Oct. 16-31, 1996, p. 3.

<sup>18</sup> A. Roberts, *op. cit. supra* note 10 at 79.

<sup>19</sup> *Treatment of Violence Against Women as Reflected in National Legislation in Different Legal Systems*, Women 2000, No. 4, 1992, p. 10.

<sup>20</sup> *The World's Women 1995: Trends and Statistics*, NY, UN Publication, 1995, p. 159-160.

<sup>21</sup> *Ibid.*

<sup>22</sup> Art. 55. A petition for legal separation may be filed on any of the following grounds:

(1) Repeated physical violence or grossly abusive conduct directed against the petitioner, a common child, or a child of the petitioner;

x x x

(9) Attempt against the life of the petitioner.

<sup>23</sup> Art. 63. The decree of legal separation shall have the following effects:

(1) The spouses shall be entitled to live separately from each other, but the marriage bonds shall not be severed;

<sup>24</sup> Art. 36. A marriage contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply with the essential marital obligations of marriage, shall likewise be void even if such incapacity becomes manifest only after its solemnization.

<sup>25</sup> A. Browne, *op. cit. supra* note 9 at 171.

<sup>26</sup> Rep. Act No. 8369 (1997).

<sup>27</sup> C. Klein & L. Orloff, *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 21 Hofstra L. Rev. 1164 (1993)

<sup>28</sup> C. Ewing, *Battered Women Who Kill*, DC Heath and Co., 1987, p. 9.

<sup>29</sup> *Id.*, at 9.

<sup>30</sup> S. Appel, *Beyond Self-Defense: The Use of Battered Woman Syndrome in Duress Defenses*, U. Ill. L. Rev. 958 (1994).

<sup>31</sup> *Battered Woman's Syndrome and Premenstrual Syndrome: A Comparison of Their Possible Use As Defenses to Criminal Liability*, St. John's L. Rev. 563 (1985).

<sup>32</sup> *Missouri's New Law on "Battered Spouse Syndrome": A Moral Victory, A Partial Solution*, 33 St. Louis U. L. J. 229 (1988)

<sup>33</sup> *Op. cit.* note 31 at 560, cited as footnote 12.

<sup>34</sup> See note 32, *supra* at 229.

<sup>35</sup> S. Appel, *op. cit. supra* note 30 at 959.

<sup>36</sup> See note 31, *supra*.

<sup>37</sup> See note 32, *supra* at 230.

<sup>38</sup> See note 35, *supra*.

<sup>39</sup> C. Ewing, *op. cit. supra*, note 28 at 18.

<sup>40</sup> S. Appel, *op. cit. supra* note 30 at 960.

<sup>41</sup> See note 37, *supra*.

<sup>42</sup> S. Appel, *op. cit. supra* note 30 at 961

<sup>43</sup> C. Ewing, *op. cit. supra* note 28 at 19.

<sup>44</sup> See note 32, *supra* at 230.

<sup>45</sup> C. Ewing, *op. cit. supra* note 28 at 11.

<sup>46</sup> A. Browne, *op. cit. supra* note 9 at 67.

<sup>47</sup> C. Ewing, *op. cit. supra* note 28 at 20.

<sup>48</sup> D. Nicolson and R. Sanghvi, *Battered Women and Provocation: The Implications of R. vs. Ahluwalia*, Crim. L. Rev. 729 (1993).

<sup>49</sup> *Id.*, at 730.

<sup>50</sup> L. Reyes, 1 *Revised Penal Code* 141 (1993).

<sup>51</sup> *Id.*, at 140.

<sup>52</sup> *People vs. Crisostomo*, L-38180, Oct. 23, 1981.

<sup>53</sup> L. Reyes, *op. cit. supra* at 50.

<sup>54</sup> 9 Phil 544.

<sup>55</sup> *People vs. Lachica*, 132 SCRA 230 [1984]; *People vs. Tacan*, 182 SCRA 601 [1990]

<sup>56</sup> L. Reyes, *op. cit. supra* at 167.

<sup>57</sup> Dec. Sup. Ct. Spain, Sept. 29, 1905.

<sup>58</sup> *US vs. Ferrer*, 1 Phil 56.

<sup>59</sup> L. Reyes, *op. cit. supra* note 51 at 170.

<sup>60</sup> *US vs. Molina*, 19 Phil 227.

<sup>61</sup> L. Reyes, *op. cit. supra* note 51 at 173-174.

<sup>62</sup> *People vs. Encomienda*, 46 SCRA 522, 534, quoting *People vs. Lara*, 48 Phil 153; *People vs. Paras*, 9 Phil 367.

<sup>63</sup> *People vs. Alconga*, 78 Phil 366.

<sup>64</sup> *People vs. Getida*, CA-GR No. 2181-R, Jan. 6, 1951.

<sup>65</sup> A. Roberts, *op. cit. supra* note 10 at 162.

<sup>66</sup> C. Ewing, *op. cit. supra* note 28 at 3.

<sup>67</sup> S. Appel, *op. cit. supra* note 30 at 964.

<sup>68</sup> See note 32, *supra* at 233.

<sup>69</sup> *Id.*, at 231.

<sup>70</sup> M. Buda & T. Butler, *The Battered Wife Syndrome: A Backdoor Assault on Domestic Violence*, 23 J. FAMILY L. 3, 380 (1984).

<sup>71</sup> K. O'Donovan, *Defenses for Battered Women Who Kill*, 18 J. L. & S. 220 (1991).

<sup>72</sup> K. O'Donovan, *supra* at 219.

<sup>73</sup> *Does Wife Abuse Justify Homicide?* 24 Wayne L. Rev. 1705, 1714 [1978] citing D. Lunde, *Murder and Madness* 10 [1975]

<sup>74</sup> M. Buda & T. Butler, *supra* at 363.

<sup>75</sup> 88 Wash. 2d 221, 559 P. 2d 548 [1977].

<sup>76</sup> A. Browne, *op. cit. supra* note 9 at 185.

<sup>77</sup> M. Buda and T. Butler, *supra* at 374.

<sup>78</sup> *Ibid.*

<sup>79</sup> A. Browne, *op. cit. supra* note 9 at 191.

<sup>80</sup> K. O'Donovan, *Defenses for Battered Women Who Kill*, 18 J. L. & S. 235 (1991).

<sup>81</sup> M. Buda and T. Butler, *op. cit. supra* at 390.

<sup>82</sup> *People vs. Marivic Genosa*, G.R. No. 135981, September 29, 2000.

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