

Legal Writing

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## **Women Who Kill Abusive Husband vs Punishment For Murder**

### **1. Introduction**

Violence against women is a common thing. According to the United Nations Declaration, violence against women includes “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 deprivations of liberty, whether occurring in public or private life (United Nations, 1993).”<sup>1</sup>

Domestic Violence is the most common type of violence against women, which is also known as physical, emotional or sexual abuse. One out of three women, during their lifetime, have been either slapped or pushed by their partner; one out of four, suffered physical violence.<sup>2</sup> For some women, the abuse goes far beyond physical pain and results in killing of an abuser

#### **1.1 Background**

Before mid-1800s, spousal abuse was not subject to law enforcement and considered to be a valid exercise of husband. In 19<sup>th</sup> –century, opinions of domestic violence started to change; however until 1870s there was very little attention paid to this issue. In a landmark case in 1871, *Fulgham vs the State of Alabama* court for the first time acknowledged that the law did not support spousal abuse and that a husband did not have the right to physically abuse his wife. The court ruled:

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<sup>1</sup> “Declaration on the Elimination of Violence against Women”, United Nations 1993

<sup>2</sup> Cook, Lindsey. "Domestic Violence Is as American as Apple Pie." U.S. NEWS. 25 Sept. 2014. Web

*“A rod which may be drawn through the wedding ring is not now deemed necessary to teach the wife her duty and subjection to the husband. The husband is therefore not justified or allowed by law to use such a weapon, or any other, for her moderate correction. The wife is not to be considered as the husband's slave. And the privilege, ancient though it be, to beat her with a stick, to pull her hair, choke her, spit in her face or kick her about the floor, or to inflict upon her like indignities, is not now acknowledged by our law.”*<sup>3</sup>

At the same time, the Massachusetts Supreme Court, in case *Commonwealth v. McAfee* stated that “beating or striking a wife violently with the open hand is not one of the rights conferred on a husband by the marriage, even if the wife is drunk or insolent”.<sup>4</sup> However, no criminal penalties were attached.

Attitude towards domestic violence had changed with the rise of the women’s liberation movement. A landmark 1962 case, *Self v. Self* agreed with Alabama and Massachusetts rulings "one spouse may maintain an action against the other"<sup>5</sup>, and gave a spouse right to sue for physical abuse. At that time, domestic violence was defined as a crime.

Now that domestic violence is defined as a crime, the main challenge is whether or not women who kill an abusive partner should be charged with the murder or whether this act be treated as a right to use deadly force in self-defense.

## **2. Judicial Response to Domestic Violence**

Over the past two decades many laws were enacted, which helped to expand the scope of responsibilities of the justice agencies in domestic violence. These legal innovation address protection order, including civil protection, which before were available only in pending

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<sup>3</sup> Fulgham v. State 46 Ala. 143, 1871 WL 1013 (Ala)

<sup>4</sup> *Commonwealth v. McAfee*, 108 Mass. 458, 108 Massachusetts 458 (1871)

<sup>5</sup> *Self v. Self* 58 Cal.2d 683 (1962)

divorce proceedings and recognition of legal defenses for abused women, one of which is “Battered Women Syndrome”.<sup>6</sup>

## 2.1 Battered Women Syndrome

The “traditional” self-defense laws state the following: “a person who has killed another and who seeks to assert self-defense has the burden of showing that she had a reasonable fear.”<sup>7</sup> In United States killing in self-defense is not a crime; however 75-80% of women who kill in self-defense are convicted for murder,<sup>8</sup> as it is hard to prove that woman’s actions were reasonable. To help to explain the reasonableness, a “Battered Women Syndrome” was introduced by Dr. Lenore Walker, which purpose was to allow expert to testify at trials, where women were on trial for killing her abuser.<sup>9</sup>

“Battered Women Syndrome is a mental disorder that develops in victims of domestic violence as a result of serious, long-term abuse.”<sup>10</sup> Victims of BWS become so depressed and defeated that they incapable to leave their abusive partner. BWS is recognized by many states and is considered to be a defense of women who kill their abusive partner. BWS, unfortunately, is the only alternative for women in self-defense cases.<sup>11</sup>

The centrality of expert witness testimony and theory of Battered Women Syndrome was recognized by the court in *Ibn-Tamas v. United States* and latter applied in *Nixon v. U.S.* where

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<sup>6</sup> Erez, Edna, (January 31, 2002). "Domestic Violence and the Criminal Justice System: An Overview" *Online Journal of Issues in Nursing*. Vol. 7 No. 1, Manuscript 3.

<sup>7</sup> Alison M. Madden, *Clemency For Battered Women Who Kill Their Abusers: Finding A Just Forum*, 4 Hastings Women’s L. R. 1 (1993)

<sup>8</sup> Jacobsen, Carol. "When Justice Is Battered." Solidarity. Web.

<sup>9</sup> Alison M. Madden, *Clemency for Battered Women Who Kill Their Abusers: Finding a Just Forum*, 4 Hastings Women’s L. R. 1 (1993)

<sup>10</sup> "Battered Women's Syndrome." FindLaw. Web.

<sup>11</sup> Alison M. Madden, *Clemency for Battered Women Who Kill Their Abusers: Finding a Just Forum*, 4 Hastings Women’s L. R. 1 (1993)

court ruled that as a matter of law, the “probative value of the proposed testimony outweighed its potential prejudice”<sup>12</sup>

The definition of “reasonableness” of an abused women’s action was first applied as a test against justification of defenses by the court in *State v. Kelly*, in which defendant stabbed to death her abusive husband and called a psychiatric witness to testify that she suffered from BWS. The court in this case agreed that testimony of the expert showed that defendant suffered from the syndrome and that her action arose out of a history of physical abuse and that killing her husband was reasonable for such abusive relationship.<sup>13</sup>

Battered women action of self-defense is morally justified. Women have no duty under the law to leave an abusive relationship; however their failure to leave raises a question to prosecutors, who assume that women liked the abuse. Women sometimes enter abusive relationships because of a lack of self-esteem and believe that there are no other choices. They began to learn that they are “helpless” and that there is no way out.<sup>14</sup> One has to consider, that there are other reasons, why battered women will not leave, such as family concern, economic dependency, religion, a fear that the abusers will become more violent; that friends and family may not support women’s decision; fear of being a single parent; or women may be unaware of sources of help.<sup>15</sup>

## **2.2 The Family Violence Prevention and Services Act**

The two main laws related to domestic violence, The Violence Against Women Act and The Family Violence Prevention and Service Act were passed by the Congress. FVPSA was authorized in 1984 and is the only federal funding source which dedicated to domestic violence

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<sup>12</sup> Nixon vs. U.S. 728 A. 2d.582 (1999)

<sup>13</sup> State v. Kelly 22 Ill.97 N.J. 178, 478 A.2d 364 (1984)

<sup>14</sup> Alison M. Madden, *Clemency For Battered Women Who Kill Their Abusers: Finding A Just Forum*, 4 Hastings Women’s L. R. 1 (1993)

<sup>15</sup> Alison M. Madden, *Clemency For Battered Women Who Kill Their Abusers: Finding A Just Forum*, 4 Hastings Women’s L. R. 1 (1993)

problems. In 2010 the act was reauthorized as a part of the Child Abuse Prevention and Treatment Act. The main purpose of the act is to provide funding to victims of domestic violence and their children by providing shelters and other related help.<sup>16</sup>

### **2.3 Violence Against Women Act**

The two main laws related to domestic violence, The Violence Against Women Act and The Family Violence Prevention and Service Act were passed by the Congress. The Violence Against Women Act (VAWA) was enacted in 1994 and is a landmark in recognizing the scourge of domestic violence.<sup>17</sup> The purpose of VAWA is to end violence against women. The significant of the VAWA is that it addressed the problem of law enforcement agencies; it encouraged states to adopt mandatory arrests and gave new protection to the victims of domestic abuse.

Since the introduction of the Act, the rates of domestic violence have decreased and the prosecution rates increased<sup>18</sup>. According to White House Fact Sheet: a) domestic violence has declined to 67% between years of 1993 to 2010; b) the rate of intimate partner homicides of females is also decreased to 35%. The Act has also increased number of people reporting domestic violence to police. Introduction of VAWA also led that over 35 states took violence against women more seriously and adopted their laws to address domestic violence.<sup>19</sup>

In 1990's significant changes in domestic violence legislation took place. The issue of violence against women was raised by several campaigns and by several conferences of United Nation, which recognized women's human rights.<sup>20</sup> However, despite this recognition, a lot of women are still prosecuted as murders, as the courts struggle when dealing with abused women

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<sup>16</sup> "Family Violence Prevention & Services Act." National Network to End Domestic Violence. Web.

<sup>17</sup> "Violence Against Women Act." FindLaw. Web

<sup>18</sup> Catalano Ph.D., Shannan. "Intimate Partner Violence, 1993-2010." Bureau of Justice Statistics. 27 Nov. 2012. Web.

<sup>19</sup> "Factsheet: The Violence Against Women Act." www.whitehouse.go. Web.

<sup>20</sup> Khan, Mehr. "Domestic Violence Against Women and Girls." UNICEF. Web.

and applying battered women syndrome as defense. This happens, because each prosecutor on his absolute discretion can set priorities in prosecuting domestic violence cases. As with any crime, prosecutors want to take effecting steps to end it.<sup>21</sup>

### **3 Conclusion**

A lot of improvements have been made in response to domestic violence, however, much more remains to be done. This research shows the need for more changes in our legal system. Prosecutors must take into account all circumstances and reasons of battered women, who kill their abusive partners and need to prosecute those abusers. Prosecutors should apply lesser chargers against abused women, as they pose no threat to the society. Actions of such battered women should be morally justified as they killed to save the lives of their children or their own lives.

The question must be raised by society and government how to treat women who exhaust all known to them alternatives before they used a deadly force for self-defense. The system must create more community correction and prison programs for abused women which will help deprive already traumatized women and their children and give women a chance to grow as an individual.

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<sup>21</sup> McGuire, Linda A. "Criminal Prosecution of Domestic Violence." Web.

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