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AN ANALYSIS OF GENDER-BASED INTIMATE PARTNER VIOLENCE AND THE DEFENSE OF PROVOCATION

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ABSTRACT

Gender-based violence is a phenomenon deeply rooted in gender inequality and continues to be one of the most notable human rights violations within all societies. Gender-based violence is violence directed against a person because of their gender. Both women and men experience gender-based violence, but mostly the victims are women and girls. Social discriminations based on gender and disability increase the vulnerability to gender-based violence for both men and women with disabilities. However, women and girls with disabilities are at an increased risk because of emotional, sexual, and physical abuse. These male-dominated conjectures set-up in our society have excluded effective frameworks for understanding women's experiences and have consequently led to a failure of the criminal justice system to adequately protect women who are the victims of intimate partner violence. The outcome of gender-based violence in India is long-lasting for its victims and rampant for the often-inadequate responses prevalent in the system however, the progress made in the region in extending women's rights has yet to lead to a practical application of those rights regularly, either within or outside the justice administration sphere. In this article, Part II will seek to explain a sociological aspect of Intimate Partner Violence. Part III provides a comprehensive investigation of gender-based victimization in criminal law. Part IV delves deep into the notion of gender inequality resulting in the benefits derived primarily by male defendants who kill their intimate partners resulting in female victimization. In Part V, the paper will conclude with appropriate policies to contemplate intimate partner violence and diminish the gap between the criminal justice system.

KEYWORDS: Gender bias, intimate partner violence, violence against women, victims, law reform, criminal justice system.

I. INTRODUCTION

"It doesn't matter how rich or poor a person is, what gender or social class, or how much fame or education she possesses. Verbal, mental, and physical abuse can happen to anyone. It doesn't matter what a woman's ethnicity is because the only distinguishing colour of abuse is black-and-blue."

— La Toya Jackson

Violence against women in a marital home is not a predisposition; it is not a mental illness of a counterpart, anger issue, rage, or an inability to control sexual urges. It is a sheer violation of her right to live with dignity and shakes her belief in the matrimonial setup. Violence against women can take many forms or faces ranging from her birth in the form of female foeticide, infanticide, and genital mutilation rooted in traditional history and found in their blatant forms in societies that roughly adhere to patriarchal norms and dominance to another heinous crime against women such as 'uxoricide' i.e., killing of one's wife in rage and aggression. Intimate partner violence and domestic violence are interchangeable, but these terms have two different meanings. Domestic Violence (DV) can occur between a parent and child, sibling, or even roommate. It is violence within a household and can be between two people within that household. It features repetitive behaviour or a pattern with the dominant purpose of controlling the other person. It predominantly leads to apprehension and fear in the minds of the person abused. Intimate Partner Violence (IPV) on the other hand, is a type of violence that occurs only between romantic partners who may or may not share the same roof in the same household. The ***World Health Organization*** (WHO) defines[1] IPV as "… *any behaviour within an intimate relationship that causes physical, psychological or sexual harm to those in the relationship, including acts of physical aggression, sexual coercion, psychological abuse and controlling behaviours*."[2] The term ' domestic violence ' is used in many countries to refer to partner violence, but the term can also encompass child or elder abuse or abuse by any member of a household.[3] Intimate partner violence is one of the most common forms of violence against women and includes physical, sexual, and emotional abuse and controlling behaviours by an intimate partner.[4] Intimate partner violence (IPV) occurs in all social groups and among all socioeconomic, religious, and cultural groups. The receiving end of the violence is often a woman in all such groups.[5] Women are not murdered by women. Most often, they are murdered by men[6]. It is rare; too, for them to be murdered by strange men, therefore, the most common perpetrators of violence against women are male intimate partners or previous partners. The reaction of females varies from one to another as in certain situations the intimate partner starts gaining back the trust and affection of their partner after the episode of abuse, and starts thinking of reconciliation and escaping what all happened in the previous episodes[7] however, when such abuse takes a toll on her mental health and fortunately she starts

[1]World Health Organization, Understanding and addressing violence against women, http://www.who.int/reproductivehealth/publications/violence/en/index.html, (last visited Mar.24, 2022).
[2]*Id*.
[3]MICHAEL P. JOHNSON, A TOPOLOGY OF DOMESTIC VIOLENCE INTIMATE TERRORISM, VIOLENT RESISTANCE, AND SITUATIONAL COUPLE VIOLENCE (North-eastern University Press of New England 2008).
[4]*Id*.
[5]MICHAEL P. JOHNSON, *supra* note 3.
[6]U.S. Department of Justice, Bureau of Justice Statistics 2013:4.
[7]Rebecca D Cornia, *Current use of Battered Woman Syndrome: Institutionalization of Negative Stereotypes About Women*, 8 UCLA WOMEN'S L J (1997).

realising that this repetitive behaviour is not normal in any marital bond or relation, the females start going towards a violent step.[8] The trauma and abuse faced by a woman lead her to commit a crime that is taking the life of her partner.[9]

Male defendants who kill in the heat of passion find protection in the doctrine of manslaughter which reduces the sentence from murder to culpable homicide not amounting to murder or manslaughter. The flexible sentencing associated with voluntary manslaughter emerged in the common law as an alternative to the rigidity of murder sentences to afford leniency to males who have committed violent acts in response to sudden and grave provocation.[10] Today, voluntary manslaughter continues to accommodate men who kill their wives in the heat of passion or rage, but not women who kill their husbands for the same reason, due to the gender bias carved in the lenses of defence of provocation and the concepts inherited of objective and subjective reasonableness. In recent years, women who kill their abusive and violent husbands or counterparts have struggled to look for a defence to a charge of murder.[11]

The gendered operation of defence of provocation stands as the most hotly-debated aspect therefore, the researchers, lawmakers, and academicians have been vocal about the criticism of the defence, matching it with masculinity and perpetuating gender inequality in the criminal justice system.

II. SOCIOLOGICAL ASPECT OF INTIMATE PARTNER VIOLENCE

Intimate partner violence has existed as an acceptable social norm and behaviour for centuries; they continue to be condoned and even legally sanctioned. A fundamental aspect of current cultural support for exploited women is firmly established in the historical and contemporary context of the many forms of violence that operates to settle the patriarchal structure. The Bible prescribes the earliest written inscription for the bodily punishment of wives.[12] ***Deuteronomy 22:13-21*** lists a law condemning brides to death by stoning if they were not virgins.[13] By medieval times, the widespread nature of violence against women, and battering had been documented in several ways.[14] In France, female sexual adulterous behaviour was punishable by battering, as was disobedience. In Spanish law, a woman who committed adultery might get killed without any proceedings. The close of the Middle Ages saw an increase in the nuclear family along with the development of modern geographical states and the beginning of capitalism, all of which eroded the position

[8] *Id.*
[9] *Id.*
[10] Bartram v. State 33 Md. App. 115(1976).
[11] Alison Young, *Conjugal Homicide and Legal Violence: A Comparative Analysis*, 31 Osgood Hall L.J. 761 (1993).

[12] Richard M. Davidson, *Divorce and Remarriage in the Old Testament: A Fresh Look at Deuteronomy 24:1-4* JOURNAL OF THE ADVENTIST THEOLOGICAL SOCIETY, 2-22 (1999).
[13] *Id.* at 10.
[14] *Id.* at 10.

of women and strengthened the authority of men. The women remained within the four walls and restricted themselves to household work, degrading their value.

i) Abuse and Violence: Theoretical perspective

Sociologists started studying abuse and violence between husbands and wives in the 1970s, specifically violence against females. Feminist scholars, during their visit to shelters and meeting female victims, believed that the crucial cause behind such violence was patriarchal norms and setup.

According to Kentucky law:[15]

- **Domestic violence and abuse** mean physical injury, serious physical injury, stalking, sexual abuse, assault, or the infliction of fear of imminent physical injury, serious physical injury, sexual abuse, or assault between family members or members of an unmarried couple[16].
- **Family member** means a spouse, including a former spouse, a grandparent, a parent, a child, a stepchild, or any other person living in the same household as the child if the child is the alleged victim.[17]
- **Member of an unmarried couple** means each member of an unmarried couple who allegedly has a child in common, any children of that couple, or a member of an unmarried couple who is living together or has formerly lived together.[18]

Intimate partner violence has severe consequences on the victims. It leads to injury, chronic pain, depression, anxiety, sexually transmitted disease, and post-traumatic stress disorder. Along with the personal effects, it also harms society. The couple involved in such abuse faces major issues renting a house in any locality or area, and abused women cannot rent out a place because they are considered a liability and often face eviction. The victims of intimate partner violence skip their work to hide their bruises and wounds or in extreme circumstances when they are not in a condition to go to work, resulting in lower productivity and job dismissal.

ii) Theories of Violence

There are sociological theories related to the violence between the spouses often known as the ***big three***: Conflict Theory, Structural Functionalism, and Symbolic Interactionism.

[15]Kentucky: Domestic Violence, Types of Intimate Partner Violence, https://www.atrainceu.com/content/3-types-intimate-partner-violence, (last visited Mar.27, 2022).
[16]*Id.*
[17]Kentucky, *supra* note 14.
[18]*Id.*

- ***Social Conflict Theory***

This theory states that domestic violence occurs in an intimate relationship when one partner possesses more resources than the other partner, to compensate for one's wounded ego, the hurt partner usually resorts to violence.[19] A further study[20] buttressed the theory when they opine that marriage that can be seen as a social institution contains a variety of resources that may not be equally distributed. Some of the resources include jobs, talent, repute, and money. If one partner lacks resources, a sense of inferiority complex may arise for that partner and lead to conflict in the partnership. Whenever the difference of opinion intensifies, it results in abusive behaviour.

- ***Structural Functionalism Theory***

According to the theory[21], society has designated fixed roles for the genders in a relationship or marriage. However, domestic violence usually arises when the roles are switched. Perfect studying of this theory will give the partners an insightful knowledge that families differ from society to society and these rigid designated society roles should not take from the peace of the family.[22] In a situation where the roles of men are being carried out by women in marriages, it should not be a source of violence; rather the men should provide physical, psychological, and emotional support for the smooth running of the family.

- ***Symbolic Interactionism Theory***

Violence arises when partners in a relationship fail to understand each other's symbols and meanings. In symbolic interactionism theory[23], the two partners need to share symbols and meanings in marriages. When there is a disruption in shared symbols and means, domestic violence may occur. According to this theory, when two partners in a marriage understand each other's symbols, they ultimately have a mutual understanding and know each other better. Therefore, they will have no reasons for domestic violence in their relationship or marriage, and partners who do not understand each other through communication or symbols forcefully got married may be at a higher risk of resulting domestic violence in their marriage.

[19]THOMAS R. CHIBUCOS, RANDALL W. LEITE, DAVID L. WEIS, READINGS IN FAMILY THEORY, 183 SAGE (2005).
[20]Jenny M. Hoobler, Sandy J. Wayne and Grace Lemmon, *Bosses' Perceptions of Family-Work Conflict and Women's Promotability: Glass Ceiling Effects*, 52 THE ACADEMY OF MANAGEMENT JOURNAL, 941-947 (2009).
[21]Amy Lehrner, Nicole E. Allen, *Social Change Movements and the Struggle Over Meaning-Making: A Case Study of Domestic Violence Narratives*, 42 AMERICAN JOURNAL OF COMMUNITY PSYCHOLOGY, 220-234 (2008).
[22]*Id*.
[23]Wolitzky Taylor, *Psychological approaches in the treatment of specific phobias: A meta-analysis*, 28 CLINICAL PSYCHOLOGICAL REVIEW, 1021-37 (2008).

iii) Feminist perspective

Second-wave feminist theories of the causes of IPV generated in the 1960s and 1970s emphasize the need for power and control on the part of batterers and the societal arrangements of patriarchy and tolerance.[24] Patriarchy, or male dominance, is established and maintained through male socialization to societal and cultural ideals of masculinity, and authority over women. The concept of machismo or compulsive masculinity can be found in psychological, sociological, and anthropological literature, and recently in feminist scholarship and studies of masculinities, all of which have influenced current thinking about gendered roles and gender-based violence.

In the past two decades, feminist scholars have developed theories that explain how power and oppression affect the lives of women along with multiple social identities, for example, gender, race, class, age, disability, and sexuality. This "third wave" of feminist scholarship calls for social action to address the social injustices and inequities that power imbalances create and sustain.

III. MULTITUDE OF GENDER BIASNESS AND GENDER INEQUITY IN CRIMINAL LAW

The defence of provocation, which reduces murder to manslaughter for killings perpetrated within the heat of passion and suddenness, is one of the most disputed law points in the criminal jurisprudence because of its perceived gender bias nonetheless, most scholars and lawmakers have not recommended its amendment or complete abolishment. In the criminal justice system, individuals accused of murder can raise defence during their trials to show that they were not fully accountable for their criminal conduct or actions. The criminal system permits defences against murder to establish exceptions provided by the Indian Penal Code to reduce the punishment aiming for proportional justice. The special nature of voluntary manslaughter has an important result, because it is only relevant where in the ***actus reus*** and ***mens rea*** of murder are present, it cannot be charged as a separate offence by prosecution. The charge must be for the offence of murder, and then the accused may put forth a plea of guilty to manslaughter on the ground of loss of control.

[24]Scales, *Towards a Feminist Jurisprudence*, 56 IND. L.J. 375 (1981).

i) The requirement of suddenness and immediate retaliation in the provocation

In ***R v. Duffy***,[25] Devlin J. said that:

"Provocation is some act, or series of acts, done by the dead man to the accused, which would cause in any reasonable person, and causes in the accused, a sudden and temporary loss of self-control, rendering the accused so subject to passion as to make him or her for the moment not the master of his mind."

The response to the provocation must be ***immediate retaliation***. If any time has passed between the act of provocation and the act done by the accused giving enough time to regain control, then it would not be filtered in the defence of provocation. The "cooling-off" period is of much relevance while providing the defence. As per ***Duffy***[26] there must be evidence of a sudden and temporary loss of self-control. The period to fetch a weapon is also sufficient to cool off. [27]

It has been stated that juries should still be allowed to find provocation. There is much to be said for allowing juries to decide the provocation issue rather than leaving it solely to judges through sentencing discretion.[28]Therefore, complete abolishment of the defence of provocation is not advisable. An important aspect that has to be examined is the concept of "reasonableness" that spreads through the entire criminal justice system. The entire psychological behaviour and patterns are very important for both the accused and victim in any criminal act to decide the guilt of the accused and the punishment that has to be awarded.[29] The judge's perception of reasonableness matters in deciding the cases. Feminist scholars and writers have been criticising the standards set up by a male point of view in the form of a 'reasonable man'.

ii) Prolonged Violence subsides the essential requirement of suddenness

In ***R. v. Ahluwalia***,[30] Kiranjeet Ahluwalia sprinkled petrol on her husband after he had gone to bed and set him on fire. She was convicted of murder by the lower court. On appeal, the charge was reduced to manslaughter by reference to diminished responsibility because of her long-term battering. She had been married for ten years and was frequently and severely abused physically by her husband during that period.[31]

Katherine O'Donovan[32] talks about male standards hidden predominantly in the very formulation of the defence of grave and sudden provocation. The defence of grave and sudden provocation may lessen the murder to culpable homicide not amounting to murder if the accused was deprived of the self –control due to sudden and grave provocation.

[25][1949] 1 All ER 932.
[26]*Id*.
[27]B.D. Khunte v. Union of India, (2015) 1 SCC 286.
[28]CYNTHIA LEE, MURDER AND THE REASONABLE MAN: PASSION AND FEAR IN THE CRIMINAL COURTROOM, 15 NEW YORK UNIVERSITY PRESS (2003).
[29]R. Holton and S. Shute, *Self-Control in the Modern Provocation Defence* 27 Oxford JLS 49 (2007).
[30][1992] 4 All ER 889.
[31]*Id*.
[32]Katherine O'Donovan *Defences for Battered Women Who Kill*, 18 J.L. & Soc'y 219 (1991).

In the case of abused wives, decade-old violence or prolonged abuse is present; the element of the heat of the moment requirement of the current definition of the defence of provocation does not intake prolonged abuse. Therefore, if there is a delay in reaction to the abuse perpetrated by the abuser and the battered woman waits for revenge then this cannot be taken as a sudden loss of self-control.

For a plea of provocation to be successful, the defendant must lose self-control soon after the provocative incident by the batterer. The delay between the provocative act and the homicidal act is called the 'cooling-off period'-where a reasonable man would decide against taking a particular action in retort. In a case, the defendant planned and arranged an attack with the aid of others because she was continuously abused by the deceased. After a long cooling-off period, the deceased was killed by the abused woman. The Court categorically denied the protection of defence of provocation stating that the accused's act was not in a sudden loss of self-control as she had all the time to cool off.

IV. GENDER INEQUALITY AND SOCIAL DIVIDE SETTLING INTO LENIENCY TOWARDS PATRIARCHAL SET OF NORMS RESULTING IN FEMALE VICTIMIZATION

"A gender-equal society would be one where the word 'gender' does not exist: where everyone can be themselves."

— Gloria Steinem

The Criminal justice system tends to focus on the demands of a predominantly male population creating significant obstacles to achieving access to justice for women due to its gender-based operation. The criminal justice system takes hold of women who face barriers in accessing justice, whether they are victims, witnesses, alleged offenders, or prisoners.

A burning debate has always been about whether the patriarchal setup was a cultural, societal, and intellectual or a natural situation that was unavoidable as the prejudices of patriarchal norms in societies or communities are managed and led by patriarchal lines.

Scholars like Plato, Hippocrates, and Aristotle expressed their views on the subordination of women. Barriers were put on the women, controlling their movement, bringing them under domination, and finally linking it to the divinity that made the future generations deliberately assume women to be oppressed, imperfect, and lacking compared to men. Lamentably, this was a time when the image of the women started to disparage.

i) Implications of the Gender Bias

A gender-biased law has consequences peculiarly when resentment comes into the picture. The mode of resentment is crucial in a case of culpable homicide not amounting to murder or voluntary manslaughter. The retaliation done by the accused must be proportionate depicting a relation with the provocative act done by the deceased. In any case, retaliation should not be excessive. As discussed earlier, the mode of resentment takes the interval between the last provocative act and the final act of killing into contemplation. In cases where there has been domestic abuse in a long run, the person is supposed to be provoked by words or conduct of a partner. Therefore, the mode of resentment will not be appropriate to gulp in the standard way of reacting in proportion to the provocative conduct or act.

In ***Hafizullah v. State***[33], the court held that "in applying the test, it is of particular importance to consider whether a sufficient interval has elapsed since the provocation to allow a reasonable man time to cool, and to take into account the instrument with which the homicide was effected, for to retort, in the heat of passion induced by provocation, by a single blow is a very different thing from making use of a deadly instrument like a sharp and large knife."[34] Likewise in ***Gurya Bucha v. State of Gujarat***[35], the court deemed that "for Exception 1 to Section 300 of the Indian Penal Code to apply, the violence used by the offender which resulted in the death of a person must have a reasonable relation to the degree and duration of the loss of power of self-control that can be reasonably expected in the case of a normal person having regard to the exact nature of the grave and sudden provocation caused."[36]

In ***Attorney-General for Jersey v. Holley***[37], the defendant was an alcoholic who had been in a relationship with the victim for almost a decade. One night both of them had been drinking profusely and suddenly some sexual taunting initiated by the victim became the cause of her death as she was killed by her counterpart with an axe.[38] Therefore, words alone could constitute provocation resulting in the death of a person.

Therefore, the above judgments in defences to criminal law make the law looks gender biased and favourable towards male perpetrators of crime.

ii) Equality is a cardinal principle of civil society

Equality is a primary principle of civil society. All laws need conceptual scrutiny, but criminal law demands it the most. In India, Criminal law has ensured law and order by maintaining the status quo among various groups in the state. In other societies, men in India have enjoyed a better dominating social and political status. Paternalism entangles a protective approach, and the sameness approach ignores the difference in the

[33]Hafizullah v. State, AIR 1957 All 377.
[34]*Id.*
[35]Gurya Bucha v. State of Gujarat, AIR 1962 Guj. 39.
[36]*Id.*
[37]Attorney- General for Jersey v. Holley, (2005) 2 AC 580.
[38]*Id.*

social reality of men and women. The challenge is to ensure equality while respecting the differences between men and women to ensure substantive equality for women.

V. CONCLUSION

The spectrum differs now from the era when the Indian Penal Code came into existence; the age-old law needs to be amended or abolished to uplift the dignity of one gender. The law has developed in recent times and has given formal equality to women. Yet, even though feminist scholars and legal critics have asserted a more liberal and gender-neutral approach to the doctrine of a grave and sudden provocation, it still imbibes masculinity origins, favours the male gender, and has gender defects forever. The fact is that substantial changes are required to change the legal traditions, practices, and established ways of doing and seeing to accommodate the female experiences. The history of legislation in India does show that laws have been amended numerous times according to social movements and pressure from elite classes. Such amendments, however, have been gradual and not aimed at formalistic conversions.

Highlighting the flexible gender-sensitive aspects of defences is one thing; it is quite another thing for them to come into practice, it is because men still comprise the vast majority of our judges and legal practitioners, and they mould law as per their mind-set. When seen through the point of view of intimate partner killings, the male motive primarily revolves around possessiveness and jealousy; a woman does it on account of abuse, violence, torture, and fear. The patriarchal household and conventional gender roles provide for the woman's inferior position in the socio-cultural set up of our traditional Indian society. There is not just one truth about intimate partner violence, hence; there cannot be one theory to explain it: neither the causes of violence in this close relationship nor why some people go through such heinous and systematic violence in such close relationships. Legislative reforms and their implementation should be encouraged in such dire circumstances. The criminal law needs to be gender sensitised in its conception, formulation, and administration to ensure equal protection for women but criminal law or penal law is not a wholesome solution to all the problems faced by a woman, but its implementation in laying down de novo standards can't be done away. Gender injustice, resulting from the patriarchal nature of the legislation, precedents, and customs, has led to active discourses for the reconceptualization of the law.