Battered Woman Syndrome and Self-Defence

The article presents the gender inequality in the existing self-defence doctrine in the Penal Code. It calls upon our courts to admit expert testimony on the battered woman syndrome when battered women plead self-defence for killing their abusive partners in non-confrontational situations.

This article examines the specific scenario of battered women who kill their abusive partners in self-defence in non-confrontational situations. It seems that battered women in these situations would encounter the most difficulty in successfully pleading self-defence. The discussion will highlight the gender inequality evident in the Penal Code provisions on self-defence and the pronounced injustice this has on battered women who are accused of murdering their abusive partners.

I shall propose that our courts should admit expert testimony on the battered woman syndrome (‘BWS’) and explore the possibility of accommodating the admission of such evidence in the existing provisions. I shall also discuss the position in Canada where the courts have admitted BWS evidence. Canada is a prime example to look to for guidance as the provisions on self-defence in the Canadian Criminal Code are closely similar to those of our Penal Code.

Battered Woman Syndrome

The concept of BWS was first suggested by Lenore Walker, a psychologist and researcher on domestic violence. She based BWS on the fundamental premises of a ‘cycle of violence’ and ‘learned helplessness’. The cycle consists of three repetitive phases, namely, a first tension building phase where verbal abuse and minor battering incidents occur and the woman tries desperately to do anything to calm her batterer. The second phase is marked by acute battering and the woman has total lack of influence over her abuser’s actions. This is followed by the contrite loving phase, where the batterer is kind and apologetic and this behaviour seems to reward the woman for staying in the relationship. This cycle repeats itself and leads to learned helplessness, where the repeated batterings diminish the woman’s motivation to respond and fuel her belief that her attempts are futile. Walker defines the battered woman as one who has gone through this cycle of violence at least twice and is subject to physical, sexual or serious psychological abuse by her partner. BWS has been used to explain why a battered woman feels the need to kill her abusive partner in self-defence even in a purportedly non-confrontational situation.

Although our courts have yet to consider a specific case of a battered woman claiming self-defence for killing her abuser in a non-confrontational situation, the statistics show that this is not too far fetched a scenario. While an accurate portrayal of domestic violence in Singapore is unavailable, surveys have shown that quite a number of husbands beat their wives, and there are substantial numbers of cases of severely abused women who require hospitalisation. Due to the real prospect of a case of BWS being brought before our courts in the future, it is pertinent to consider whether the existing criminal law provides adequate protection for battered women who kill their abusers in self-defence.

Gender Inequality in Self-Defence

The traditional self-defence doctrine envisions a confrontation between male strangers, and justifies the accused’s conduct if a reasonable ‘man’ would have reacted in the same or similar manner. Thus, there is a male centred perception of reasonableness and imminence encapsulated within the defence. This ignores many characteristics and experiences that remain exclusive to women, which causes them to have different perceptions and reactions towards their threateners. Take, for example, the historical and social sexism and subordination of women leading them to feel more dependent and ‘helpless’ than men; the continued financial imbalance between men and women; and the typical variance in physical strength and size affecting the ability of women to defend themselves without the use of weapons. These matters explain why battered women may feel compelled to kill their abusers in their sleep, when they are less likely to respond with equally deadly force.

Self-defence is premised upon necessity as the law recognises that a person is justified in using force against a threatener in order to preserve herself or himself from the attack. However, lethal self-defence is arguably the weakest justificatory defence the criminal law recognises, and is accordingly restricted in order to maintain the principle that all human life, even that of an aggressor, should be preserved. The requirements of imminence, proportionate force and necessity seek to restrict self-defence to situations where there is no time to turn to the authorities for help, to emphasise that the use of deadly force in self-defence will only be considered as a last resort and to limit the use of self-help to circumstances in which there is no other alternative course of action. It is thought that relaxation of any of these requirements would have the effect of encouraging conduct that the law and society wants to discourage.

Remedying Gender Bias

These requirements, based as they are on male perceptions of violent encounters, prevent battered women from successfully pleading self-defence. BWS evidence will provide
contextual information that will help the court evaluate the accused woman’s experience and perceptions so that they can fairly apply the same legal standards to her actions as they would to a male defendant. The courts should, therefore, admit BWS evidence in a plea of self-defence in order to rectify the gender inequality presently found in our law of self-defence. Evidence on BWS is offered to support the reasonableness of a battered woman’s perception of imminence of an attack. It is also relevant to support the reasonableness of the battered woman’s belief that she was in danger of death or serious bodily injury.

The US, Canada and Australia are some of a growing number of jurisdictions that allow battered women defendants to introduce BWS testimony in support of self-defence pleas, even when the circumstances are non-confrontational. I shall concentrate on the Canadian experience because of the close similarity between the law of self-defence of that jurisdiction and our own.

Canadian Recognition of BWS

The criminal law of Canada, like our law, is governed by a criminal code. Furthermore, both Codes have similar provisions regarding self-defence. However, the Canadian courts have allowed evidence of BWS to be admitted on the ground that the testimony of BWS would provide jurors with unique information that was both necessary and essential for their understanding of such a case. Although Singapore does not have a jury system, BWS evidence would be equally necessary and essential for the judge’s understanding of the personal circumstances and experiences of battered women. This is because, however knowledgeable our judges might be about human behaviour, knowledge concerning the effect of BWS on women is confined to the domain of experts. I, therefore, submit that Singaporean judges should follow their Canadian counterparts to admit BWS evidence.

Judicial recognition of BWS in Canada was in reaction to the misapplication of the self-defence doctrine to battered women who had killed their spouses. The Canadian courts do not apply a ‘standard test’ for admissibility of expert testimony; rather, admissibility is based on the simple requirement that the evidence ‘be helpful’ to the court.

In Singapore, expert opinion is admissible to aid the court in forming an opinion on a point of science which requires special study. BWS testimony clearly fits this description.

The Law of Self-Defence in Singapore and Canada

At this juncture, it would be useful to reproduce the principal sections of self-defence in Singapore and Canada.

Under Singapore law, the relevant provisions in the Penal Code (Cap 224) read as follows:

Section 96

Nothing is an offence which is done in the exercise of the right of private defence.

Section 97

Every person has a right, subject to the restrictions contained in s 99, to defend:

(1) his own body, and the body of any other person, against any offence affecting the human body;

Section 99

(3) There is no right of private defence in cases in which there is time to have recourse to the protection of the public authorities.

(4) The right of private defence in no case extends to the infliction of more harm than necessary to inflict for the purpose of defence.

Section 100

The right of private defence of the body extends, under the restrictions mentioned in s 99, to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right is of any of the following descriptions:

(1) such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault;

(2) such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault;

Section 102

The right of private defence of the body commences as soon as a reasonable apprehension of danger
to the body arises from an attempt or threat to commit the offence, though 
the offence may not have been committed; and it continues as long 
as such apprehension of danger to 
the body continues.

Under Canadian law, the relevant 
 provision is s 34(2) of the Canadian 
 Criminal Code which reads as follows:

Every one who is unlawfully assaulted 
and who causes death or grievous 
 bodily harm in repelling the assault is 
justified if:

(a) he causes it under reasonable 
 apprehension of death or grievous 
 bodily harm from the violence with 
which the assault was originally 
 made or with which the assailant 
pursues his purposes; and 

(b) he believes, on reasonable grounds, 
that he cannot otherwise preserve 
himself from death or grievous bodily 
harm.

I shall now compare our Penal Code 
provisions with the Canadian one with 
a view to determining whether evidence 
of BWS can be accommodated within 
our provisions. The proposition here is 
that, if the Canadian Criminal Code and 
Penal Code provisions on self-defence 
are closely similar, our courts could 
take the lead afforded by their Canadian 
counterparts to admit evidence of BWS 
to assist in the determination of whether 
or not self-defence should succeed.

It is convenient to discuss the self-
defence provisions according to two 
aspects, namely, the nature of the threat, 
and the nature of the force applied 
in self-defence. I will now proceed to 
discuss both these aspects in turn.

Nature of the Threat

Reasonable apprehension of threat

For the accused to be justified in 
exercising the right of private defence 
in Singapore and Canada, the law requires 
the defendant to have reasonably 
believed the nature of the threat to be 
an imminent and unlawful threat.21 
Both jurisdictions employ the use of 
a two-tier subjective/objective test of 
reasonable apprehension. The accused 
must actually believe that a threat 
existed (subjective) and the belief 
must be based on reasonable grounds 
(objective). A battered woman killing 
her abuser in a non-confrontational 
situation would be unable to satisfy 
the objective requirement, as the court 
will have difficulty finding that there 
were reasonable grounds for her belief 
that the sleeping abuser might suddenly 
wake up and proceed to kill her as earlier 
threatened.22 In such a case, admissibility 
of BWS evidence would be crucial as 
the history of violence would provide 
reasonable grounds for the battered 
woman to support her belief that there 
was an imminent and unlawful threat of 
death or grievous bodily injury from her 
sleeping abuser.

Imminence

Section 10223 of our Penal Code provides 
that the right of self-defence commences 
as soon as there is a reasonable 
apprehension of danger to the body 
and this right continues as long as such 
apprehension of danger continues. 
Hence, there must be a continuing 
threat for the right of private defence to 
arise. This requirement of imminence 
is probably the biggest obstacle to 
battered women successfully pleading 
self-defence. It is difficult to appreciate 
the imminence of an attack when the 
abuser is asleep or in a similar non-
confrontational condition. However, it 
is noted that our Code expressly allows 
for a ‘pre-emptive strike’,24 that is, it is 
not necessary for the accused to wait for 
an assault to begin before she is justified 
in exercising her right of private defence. 
An enlightened court could apply this 
concept of ‘pre-emptive strike’ to permit 
a battered woman to act in self-defence 
against her sleeping abuser.

This relaxation of a strict requirement 
of imminence has been judicially 
recognised in Canada.25 The Courts 
have stated that the requirement ‘that a 
battered woman wait until the physical 
assault is “underway” before the 
apprehensions can be validated in law 
would be tantamount to sentencing her 
to “murder by instalment”’.26 Canadian 
courts accept that evidence of BWS 
contributes to the imminence of the threat 
as perceived by the battered woman, 
taking into account the abusive nature 
and history of the relationship between 
herself and her abuser. Singapore courts 
can, therefore, rely on this Canadian 
approach to relax the imminence 
requirement. A broad interpretation 
given to ‘pre-emptive strike’, together 
with the admissibility of BWS evidence, 
would greatly assist in establishing the 
imminence requirement.

Nature of Force Applied in Self-
Defence

Reasonably necessary force

A battered woman pleading self-defence 
in both Singapore and Canada must show 
that she believed the force used was 
reasonably necessary to protect herself 
from the threatened harm. In addition, 
there is an objective component attached 
to this belief which differs slightly in 
these two jurisdictions.

In Singapore, the test of the defendant’s 
belief as to the necessity of the force used 
is subjected to objective appraisal by the 
court. The court will examine the possible 
options available to the defendant in 
responding to such a threat and whether 
the response was a reasonably necessary 
one. In applying this test, questions of 
good faith, absence of premeditation 
and intention to do more harm than 
necessary for the purpose of the defence, 
have to be considered.27

In Canada, the test is whether the 
accused believed, on reasonable 
grounds, that the force used was 
necessary in self-defence.28 Accordingly, 
the test is much more subjectively based 
than the Singapore approach since 
the reasonableness of the accused’s 
response is based on how the accused, 
and not the court, saw it. It may be noted 
in passing that having the same formula 
for both requirements adds considerable 
simplification of the law relating to self-
defence.29

Simplicity aside, it is submitted that the 
more subjective Canadian test better 
reflects the accused’s moral culpability,
compared to the largely objective Singaporean test. In particular, if the Canadian test was adopted by our courts, it would help the accused battered women to satisfy the requirement of reasonableness in using deadly force against their abusers.

**Exceeding Private Defence**

In Singapore, even if a battered woman is unable to satisfy all the requirements of self-defence, she may plead exception 2 to s 300 to reduce the offence charged from murder to a culpable homicide not amounting to murder.

There are various reasons why the battered woman may originally have the right of private defence but was nevertheless unable to satisfy the general defence. The court may find that the non-confrontational situation was not a reasonable ground to base a belief of apprehension of death or grievous hurt. The court may also find that she had inflicted more force than was objectively necessary for the purposes of defence, or that she had failed to resort to the protection of the authorities.

To successfully plead this partial defence under exception 2 to s 300, it must be shown that the killing was done without premeditation and without any intention of doing more harm than is necessary for the purpose of such defence. This constitutes a purely subjective test concerning the mental state of the accused when killing. This subjectivity distinguishes this special exception from the general defence, as even if the accused inflicted more harm than was objectively ‘necessary’ for the purpose of defence, she will still be able to rely on the exception as long as she did not intend to cause more harm than necessary.

This subjective test renders the admissibility of expert testimony of BWS essential to understanding the mental state of the battered woman. Such testimony would aid the court in understanding why the battered woman subjectively believed it to be necessary to kill the abuser in the non-confrontational situation when, assessed objectively, it was unreasonable to do so.

It should be noted that Canadian law does not recognise excessive private defence. This may be because, as observed earlier, the Canadian courts have taken a less objective approach to its self-defence provisions. Consequently, they have not felt the need to recognise such a strongly subjectively based partial defence to murder.

**Conclusion**

The preceding discussion has shown that the law of self-defence in Singapore can accommodate evidence of BWS, should our courts be prepared to admit such evidence. It is submitted that BWS evidence would allow our judges to arrive at a more just decision, like in Canada, because it provides a more accurate portrayal of the human reality and experience of battered women.

Cheong Yen Lin Adriene  
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Endnotes

1 Such cases include *R v Lavelle* [1990] 1 SCR 852, at 856–859, 889–890 (a battered woman shot her abusive husband in the back of his head while he was walking away from her after issuing a threat to her. BWS was held to be admissible in support of her self-defence plea, in order to dispel the myths of battered women, and to assist the jury in evaluating her ability to determine whether physical harm would occur on the present occasion); *State v Norman*, 378 SE 2d, pages 8,9–11 (after years of physical violence and psychological abuse, and several failed attempts to leave her husband, Judy Norman shot her husband while he slept); *State v Allery*, 682 SE 2d, at 312–313, 316–317 (in a violent marriage racked by beatings that only increased in severity and frequency, culminating in the initiation of divorce proceedings, the filing of several restraining orders, and a death threat, Sherrie Lynn Allery shot her husband while he lay on the couch).

2 Debbie Ong Siew Ling, ‘Violence in the Family’ [1994] SLR 193 at 194, citing a survey in *The Straits Times* on 5 July 1993, that ‘Dr Alfred Choi, a NUS Sociologist, found that 17% of 510 people interviewed said their fathers beat their mothers’.

3 Ibid, citing a survey in *The Straits Times* on 16 November 1993, reported 96 cases of women abuse recorded in four months in Tan Tock Seng Hospital, an average of 24 cases of women abuse each month at just one hospital.


5 Ibid, at 359.


11 Supra note 7, at 35.

12 Supra note 8, at 199.


15 *R v Osland* 159 ALR 170.

16 Canadian Criminal Code.

17 *R v Lavelle* (1990), 55 CCC (3d) 97 (SCC).

18 Ibid.


20 Section 47(1), Evidence Act, (Cap 97).

21 Sections 99, 100, 102, Penal Code, and s 34(2), Canadian Criminal Code.

22 Like in *State v Norman*, 378 SE 2d, at 8, 9–11.

23 Penal Code.

24 ‘The right of private defence commences as soon … though the offence may not have been committed; and it continues …’, s 102, Penal Code.

25 Supra note 18.

26 Ibid, from supra note 12, at 458.


28 Section 34(2), Canadian Criminal Code.


30 Exception 2, s 300, Penal Code.

31 Situations where it is not justified to cause death according to the categories in s 100.

32 Requirement of s 99(4), Penal Code.

33 Requirement of s 99(3), Penal Code.
