PARTIAL DEFENCES TO MURDER: ABUSED WOMEN WHO KILL

A JOINT SEMINAR BY THE LAW COMMISSION AND RIGHTS OF WOMEN

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THE SPEECHES

Ranjit Kaur, Director of Rights of Women, welcomed everyone to the joint meeting organised by the Law Commission and Rights of Women. The meeting was called to discuss the Law Commission's consultation paper *Partial Defences to Murder*, which Rights of Women welcomed as change to the law on partial defences to murder as applied to abused women who kill was long overdue.

Ranjit thanked the speakers and attendees, and passed on apologies from Hannana Siddiqui of Southall Black Sisters who had been unable to speak on the matter as planned.

Ranjit Kaur

Ranjit Kaur has been the Director of Rights of Women since February 2000. Prior to this, she was a civil servant for 15 years before becoming UNISON's Regional Women's Officer in the South East Region. Ranjit has been active in the trade union movement for over 20 years and has held various posts in the National Union of Civil and Public Servants (now Public and Commercial Services Union), including being a National Executive Council member, Chair of the National Black Members Committee, and member of the National Women's Committee.

Can I begin by welcoming the Law Commission's consultation paper on Partial Defences to Murder. A review of the law in this area is long overdue. There is no doubt that the publication of the Law Commission's paper provides a timely and unique opportunity for all of us working against violence against women to have the law reviewed, in order to provide fair and just treatment to abused women who kill. If there is one thing that case law over the years has established, it is the failure of the law to provide an adequate and fair response to cases of abused women who kill.

The gendered nature of the present partial defences available to women in this situation, means that they find themselves having to fit into a narrow interpretation based on male notions of behaviour. For example, provocation with its emphasis on a sudden and temporary loss of self control, does not acknowledge the reality of the position of women who have endured often years of violence against them, nor does it recognize physical and other power imbalances rooted in gender differences. Diminished responsibility, on the other hand, pathologises the experiences of abused women who kill. This defence thus focuses upon the so called 'abnormality of the mind' of the abused woman who has killed rather than the behaviour of the abuser.

The Law Commission's consultation paper helpfully provides us with clear and detailed arguments for and against retaining the existing partial defences and the full defence of self defence and I will leave it to our speakers this morning, to discuss with you the options for reform in more detail. What I will say to

you, is that many of us working with abused women on a daily basis recognize that the present law is inadequate and needs replacing. If nothing else, we may agree that to leave things as they stand is not an option. It is not an option for us to consider domestic violence a social evil that needs to be addressed and then not acknowledge the unfairness to abused women who kill, by retaining the status quo.

The importance of this cannot be emphasized enough. The Law Commission's paper provides a unique opportunity to participate in the reformulation of the law relating to abused women who kill. The purpose of today's event is to provide you with the opportunity to share your knowledge and experiences around the issues discussed today and to influence the recommendations the Law Commission make on this essential debate. Responses to the paper should be sent to the Law Commission by 31 January 2004.

As an organization, one of our aims at Rights of Women is to work towards making the law more responsive to the realities faced by women in society. We also want the law to deal with the few women who resort to killing violent men, with a sensitivity that allows their stories to be heard and evaluated in the context of their lives and circumstances. We are pleased to be able to organize today's meeting in conjunction with the Law Commission as a means of enabling this to happen.

I would also like to take this opportunity today to pay tribute to two organizations in particular, that have worked tirelessly despite limited resources, to campaign to change the position of abused women who kill. They have done this through direct involvement in cases such as those of Kiranjit Ahluwalia, Sara Thornton, Emma Humphries, Josephine Smith, Donna Tinker and Zoora Shah amongst others. Justice for Women and Southall Black Sisters have made an immense and important contribution to the debate on this critical issue to date and it is important that their efforts receive our full acknowledgement, appreciation and support.

Harriet Wistrich

Harriet Wistrich represents Justice for Women. She is a solicitor who has acted for a number of women convicted of murdering their violence partners at appeal and trial. This text is a transcript of a talk she gave on the day.

Thank you very much for inviting us to speak today. What I'd like to say first is that we very much welcome this consultation paper produced by the Law Commission, and I would like to comment that I think it's very clearly set out and deals with a lot of issues in a very clear way. It explores most of the issues that have exercised minds at Justice for Women over the years. There are a few things that need further exploration but I just wanted to start off by saying that.

Justice for Women is a feminist organisation that was formed right at the beginning of the 1990s. I would say that most of the people who formed the group, which has always been an unfunded campaigning and activist group, came from a background of feminist activism and involvement around issues of violence against women – domestic violence, rape, child abuse, and so on. Our concerns were really about the failure of the law to deal effectively with violence and crimes against women and that falls into two key areas.

First there is an ongoing failure to tackle the perpetrators of domestic violence, rape and child abuse. Over the years feminists have campaigned on issues around policing, the criminal justice process, and rape, and have worked to try and reform the law so that those crimes were taken seriously, and not seen as domestic incidents. The perpetrators should be punished, and a message sent out that these forms of violence against women are crimes, not simply things that take place within the home.

On the second point, and this is where Justice for Women located itself, was what seemed to be disproportionate punishment of victims of domestic violence, rape, and so on who fought back. It all came together and crystallised during the first appeal of Sara Thornton in 1991. I don't have time to go into her case in detail, but at her first appeal a group from Justice for Women demonstrated outside the court to highlight the issues we wanted to put across. One of the main slogans we used was that domestic violence is provocation. The defence that was put forward at the first appeal, which didn't succeed, was the idea that women might respond to violence in a different way from men - the notion of what was termed 'slow burn provocation'. When that appeal was lost, we'd been handing out leaflets outside the court and highlighting not simply the wrongs of this case, and that this woman wasn't a murderer but that she required understanding of the pressure that had been put on her that had led to the killing, but also contrasting her cases with cases where it seemed that men were getting away with murder of their wives and partners.

Two days after the appeal, we picked up a story about a man called Joseph McGrail who had kicked his wife to death. He received a two year suspended sentence and the judge had commented "this woman would have tried the

patience of a saint". That seemed to distil precisely the point that we were trying to make. Over the last 12 years that Justice for Women have been campaigning on this issue, we have tried to highlight the discrepancies that exist in the law between men getting away with murder and women being convicted of murder and given life sentences where there is often an extreme history of domestic violence and other forms of abuse. This is the context we come from and we've campaigned and supported the cases of a lot of women, and we've supported the work of Southall Black Sisters, including participating in the Kiranjit Ahluwalia campaign. We highlighted the cases of Amelia Rossister, Janet Gardner, Josephine Smith, and many other of those cases which are mentioned in the Law Commission paper. These cases have to some extent changed the law on provocation particularly.

In c. 2000, we became aware of a case which was going to appeal at the House of Lords called *Morgan James Smith*, which was going to basically review all the changes which had happened over the 1990s and with the possibility that it might overturn some of the judgements and gains that we felt had been made. We decided and joined with Southall Black Sisters and Liberty to do a third party intervention into that case so that we could ensure that the judges took account of and addressed the issues of abused women who kill. Though there was very little overt reference to our intervention, there certainly was some interesting commentary from Lord Hoffman which I think came from the points that we were trying to make. In particular, women often act not out of anger but out of fear and despair, which is something that we need to hold on to whichever direction we go in the future with these reforms.

In the news lately I know there has been discussion about whether we should be getting rid of the defence of provocation altogether or not, and I have some sympathy with the idea in the sense that provocation is a very old fashioned defence, based on notions of honour and having to defend one's honour. It is responsible for quite a number of the cases where we've seen men who've been violent over the years and have killed wives or partners who they've feared were adulterous and who have not received what we think would be an appropriate punishment. But certainly at this stage, although Justice for Women have not formulated our response to the paper, I would be very nervous about advocating its abolition, unless we were sure that there was something very good and concrete in its place.

What we are still seeing, despite the reforms which have changed the law to some extent over the years, is many women still being convicted of murder who have been abused by those that they've killed. What is quite depressing, despite the changes that we've seen over the years, is that we are still receiving letters from women on a fairly regular basis who've been convicted of murder where the law has not worked for those women. I personally have taken on a few such appeal cases. I'll give you an example. A woman called Joanne Cole was convicted in 2001 who was in a violent relationship. There was a big row, a fight, and she picked up a knife and in trying to get away from him stabbed him. She ran down the stairs, he chased her, and then collapsed outside. There was evidence in that case of a fight, as the whole place was upturned. There was evidence of injuries to the woman, and

evidence of his controlling behaviour, and yet this woman was convicted of murder. Why was she convicted of murder – was this a case of premeditated killing, a case of self-defence, or of provocation? One of the concerns I have is that where I'm looking at cases where women are convicted of murder, where we have the laws available, there are still problems about women's credibility and character. Often in these cases, women are being convicted because the jury finds that there is something about their account that is incredible. Alternatively, they judge them, asking why if a woman was in a violent relationship, she didn't leave that relationship.

While we have to keep working to reform the law, there are perhaps larger concerns about the whole criminal justice process, and about how these cases are presented. The reality is, as you know, that women find it very hard to talk about the abuse they've experienced, and often will hide things, even at the stage at which they are giving evidence at court, because they're too ashamed or because they think they'll be judged in a particular way. That results in their character being judged, or them being seen as lacking in credibility in some way. The jury then judges them because they haven't behaved in the way women are supposed to behave.

In the Law Commission paper there is a big discussion about whether we should abolish the mandatory life sentence. Within Justice for Women we are somewhat divided on this issue, and it is a difficult question, with pros and cons. If we did abolish it, and somebody like Joanne Cole was still convicted of murder but didn't receive a life sentence (as I imagine she wouldn't in those circumstances), the label and stigma of murder would still remain. These women haven't deliberately and premeditatedly killed – they have killed under extreme duress of circumstances and they should not be labelled as murderers, when any of us might have done what they did had we lived through what they had lived through.

I'd just like to let you know of a book you might find interesting, *The Map of my Life* by Emma Humphreys, which distils a lot of the issues. Emma was in prison for ten years, from the age of 17, until she won her appeal. To her one of the most important things was to understand that what she did was not murder. You might find it interesting to hear her personal account, which is taken from her diaries and other writings.

This may be outside the remit of the Law Commission paper, but one of the things that as a solicitor representing women in these circumstances I have found a nightmare of a situation is when the police are clearly aware that the woman who has killed has injuries, and was defending herself. It is fair enough that it should go to trial, but if they are charged with murder, somewhere along the line the prosecution may say "we'll offer you a plea to manslaughter". I know of one case and another case that a colleague of mine is dealing with at the moment where you're put in a nightmare dilemma. Do you accept that plea, and thereby avoid the mandatory life sentence that follows a conviction of murder, or should you fight it on the grounds that it was self defence with the risk of being convicted of murder? There are clear policy issues about what women should be charged with in those situations.

Finally, I don't have time to go into great detail here, but I would like to raise the issue of diminished responsibility and the whole matter of Battered Women's Syndrome. Ranjit has already raised the issue of pathologising women. One of the problems with diminished responsibility is that it's a very medical model, and what we have to do is rely on psychiatrists. Psychiatrists – although we know a few very good ones – are a very mixed profession. What would be helpful would be to think about other ways in which expert evidence could be brought in that wasn't just based solely on the psychiatric profession. This might help the jury understand the way in which a woman in a domestic violence situation might be driven to kill.

Alan Wilkie – Introduction to Partial Defences to Murder

Alan Wilkie has, since 1992, sat as a judge in the crown court. Initially he sat part time as a recorder but in 1997 he became a full time circuit judge. In 2000 he was appointed to the Law Commission as Commissioner with responsibility for criminal law projects.

INTRODUCTION

The Government as part of its work on Domestic Violence has made a reference to the Law Commission inviting it to consider certain of the partial defences to murder: provocation and diminished responsibility. We are to consider, of each of them, whether they should be abolished, or reformed, whether they should exist separately, or be subsumed within a single partial defence and whether there should be additional partial defences applying to those who kill in the expectation of serious violence whether imminent or anticipated.

The Government wishes to legislate on this issue during the current Parliamentary session. Our plan is to report in time to enable them to take into account our recommendations when deciding what form that legislation should take. In our consultation paper we have sought, in some depth, to analyse the law both in England and Wales and elsewhere in the common law world. We have set out the options as we see them and are consulting widely so as to ensure that we are as fully informed as we can be of the views of those who, in whatever way, are affected by or have a view about this important subject.

In addition we and various other parties are carrying out empirical studies to try to ascertain what actually happens in respect of murder charges and what public attitudes are to murder and the different contexts in which people kill. We are very grateful to Rights of Women for organising this event and to each of you for attending. We hope that as many of you as possible will be able, in one way or another, to give us the benefit of your experience and views either today, or by responding to our consultation paper. To assist with this each of you has been provided with a copy of the consultation questions and a very brief summary of the way we have dealt with the subject in the CP. The full CP and a shorter, summary, version are available on the Law Commission website details of which are with the hand out. Responses are invited and can be sent by e-mail or in written form to the addresses which are also in the handout.

MURDER

Murder is a wide offence. It is committed whenever a person unlawfully kills another and intends either to kill, or to cause really serious bodily harm (really serious bodily harm is, itself, a wide concept which includes harm which is not, on any view, life threatening). A person "intends" an outcome if they want it to occur or if they are aware that it is a virtually certain consequence of their conduct whether or not they want it to occur. No premeditation is required. It

can be an immediate response to an event or situation. Murder covers a wide variety of killing ranging from the terrorist bomber, or the child abductor who kills, to the bullied child who, rather than commit suicide, kills their tormentor, or the relative or medical practitioner who kills a pain wracked patient who begs to be put out of their misery.

Presently, whatever the circumstances of the killing, a person who is guilty of murder must receive the same sentence i.e. life imprisonment. Whatever period that person may initially spend in prison, every life prisoner, upon release, remains on licence for the rest of their life liable to be recalled to prison by administrative act whether or not they have committed any other offence.

Provocation and diminished responsibility are two of the ways the law has developed to remove certain categories of killer from the mandatory life sentence by re-grading their offence as manslaughter.

DIMINISHED RESPONSIBILITY

Diminished responsibility is a statutory invention borrowed from the Scottish common law. It was introduced in England and Wales in the Homicide Act 1957. The defendant, who would otherwise be guilty of murder, is guilty instead of manslaughter if they discharge the legal burden of proving that they suffered from an abnormality of mind, in practice a medically diagnosable mental condition, and that the abnormality substantially impaired their mental responsibility for the killing.

Some concerns about this provision focus on:

- The rather tortuous way the legislation is expressed;
- What is the appropriate role of the psychiatrist in addressing what may appear to be a moral question of impairment of mental responsibility;
- [Whether cases are being disposed of by means of a "benign conspiracy" which, for the purpose of relieving the defendant from a conviction for murder, requires them to acquiesce in being stigmatised as "sick" and yet may sentence them to imprisonment.]

PROVOCATION

Provocation is a long standing common law partial defence. The 1957 Act governs its availability. It provides that where there is evidence that D was provoked, by things said or done or both, to lose their self control then it is for the jury to decide whether the provocation was enough to make a reasonable person do as D did.

Thus the jury has to consider two things:

- Did the provocation in fact cause D a sudden and temporary loss of self control (a matter of fact)
- was the provocation such as may have caused a reasonable person to do what D did (a normative question – the jury is declaring the content of the law in each case).

The moral basis of the partial defence is ambivalent. One basis reflects the view that the killer was "justified" in killing the victim. "Anyone might have done it". This focuses the mind of the factfinder on the blameworthiness of the victim. The other basis reflects the desire of the law to excuse, from the full consequences of their conduct, a person who was in fact so overcome with anger that they lost their self-control and killed. This focuses attention on the state of mind of the killer and the impact upon that state of mind of what it was that enraged them. Since 1957, the defence has drifted a long way from its moorings in three crucial respects.

There is now little, if any, limit to what may count as provoking conduct. It does not have to be rooted in wrongful or unlawful conduct of the victim. For example, the conduct of a court officer in serving an enforcement notice on behalf of a local authority has been held capable of amounting to provocation,. The words or conduct do not need to have been aimed at D: for example, the crying of a baby has been held to be enough. All that seems now to be necessary is to establish a causative link between something done and the loss of self-control.

There is no longer any need for the response to the provocation to be immediate. As long as it can be described as "sudden" and not planned. This has emerged to accommodate certain "slow burn" cases which others will be addressing. In a wider social context, however, this change in emphasis has resulted in provocation being raised in a case where D was provoked by the fact of V supplying his son with drugs. D armed himself with a firearm, drove himself across town, parked his car approached V's address and shot him. If this is a case in which provocation has to be left to the jury then how, it may be asked, does the law distinguish provocation from revenge?

The requirement that D's response must be how a reasonable person might have reacted has now been so diluted that the House of Lords has said it is unhelpful for the jury to be referred to the concept of the reasonable person at all. The jury is to be told that they must consider whether the circumstances were such as to make the defendant's loss of self-control sufficiently excusable to reduce murder to manslaughter. They are permitted to consider D's individual characteristics, but should not treat defects of character as an excuse for failing to exercise the degree of self control society expects of people. It might be thought that the distinction between characteristics (good) and character defects (bad) is illusory and leaves the jury no guidance at all. This may have the effect of reducing such trials into a popularity contest between the D and the V (or between the prosecution and defence barristers).

No common law jurisdiction has managed satisfactorily to capture the essence of provocation so as to remove its flaws. One, Tasmania, has abolished it. The New Zealand Law Commission and, in Australia, the Model Criminal Code officers committee of the standing committee of Attorneys General have recommended its abolition.

This unhappy state of affairs raises a number of questions:

- Is it any longer appropriate to relieve from a murder conviction a person who kills when out of control caused by anger?
- If not should it be replaced by other partial defences which accommodate a range of emotions ?
- If it is, is it feasible or permissible to limit the operation of such a defence? For example should we exclude from the defence those killings prompted by out of control anger arising out of: racist views, homophobia, moral outrage, obsessive jealousy, religious conviction, personal humiliation, personal attack, or insult or attack on family. How do we identify the limits?
- Should we simply do away with partial defences and, if so, what does that mean for the mandatory life sentence for all murders?
- Should we do any of this before considering whether the present offence of murder is too widely drawn, or could be reconfigured so as to re-grade the offences and the punishments in a more logical way?

These questions amongst others are the subject of our consultative report. I look forward to receiving your views and responses.

Jayne Astley – Abused Women who Kill

Jayne Astley is a lawyer in the Criminal Law Team of the Law Commission.

My aim is to summarise for you, in ten minutes, the section of the Law Commission's Consultation Paper on the defences available to an abused woman who kills her partner.

I want to address three issues with you:

- Firstly, the relevance of 'battered women syndrome'
- Secondly, the problems with the existing defences to murder for an abused woman who kills.
- Thirdly, the options for reform of the law in this area.

Taking 'battered woman syndrome' first. It appears to us, from our research, that this term is sometimes misunderstood. So, to start with I would like to emphasize that it is not a legal defence to murder, and it is not a classified mental disorder. What it is, is simply an explanation of how some women are affected by being in an abusive relationship. The term 'battered women syndrome' encompasses a description of the characteristic psychological responses to abuse by a victim plus a description of the nature of the abusive relationship.

One expert on 'battered women syndrome', Donald Downs, has suggested that the syndrome has been politicised in order to fill the gaps in traditional defences for abused women who kill. And indeed, in the 1990s, defence counsel in cases of abused women who kill, have convinced the English courts that 'battered women syndrome' is a species of post traumatic stress disorder, thereby stretching to its limits a diminished responsibility defence. Contrast this stance with that of Leonore Walker, the pioneer proponent of battered women syndrome, Walker strongly advocates the view that 'battered women syndrome' is a psychologically healthy response to what is a dangerous and abnormal situation.

In its Consultation Paper the Law Commission recognises that women abused by their partners face problems of an extremely serious nature and that the criminal law does not always deal fairly with abused women who kill. However, the Law Commission believes that the 'battered woman syndrome' connection is a problematic way to accomplish justice for abused women who kill.

That leads me to the second issue - the existing defences of provocation, diminished responsibility and self-defence. Unfortunately, for abused women who kill, these defences all have certain failings.

In relation to provocation, one of its problems is that it requires a 'sudden and temporary loss of self-control' on the part of the defendant. It is a defence intended for a defendant who acts with sudden violence in acute circumstances. But this doesn't reflect the circumstances of many abused women who kill, as such women are generally responding to a chronic

problem. Therefore, even where, having suffered gross abuse from her partner and in fear of further violence, an abused woman kills that partner, she may be unable to rely on the defence of provocation if at the time of killing she was not acting under the requisite loss of self-control.

In relation to diminished responsibility, this requires medical evidence that the abused woman was suffering from an 'abnormality of mind' when the killing took place. This defence has been criticised because it shifts the focus towards the woman's state of mind, away from the man's violence and the woman's right to be free from harm inflicted upon her by another. There is medical consensus that women suffering from repeated domestic abuse may develop a range of health disorders, such as depression, anxiety or post traumatic stress disorder. In those cases, diminished responsibility may be the appropriate defence. However, the abused woman does not always suffer from a mental disorder. So, one issue is how proper is it to artificially pathologise the defendant in order to provide her with a defence.

Moving on to self-defence, an abused woman can only rely upon this defence, if the force she has used in defending herself against an imminent attack was 'necessary' and 'reasonable'. If an abused woman knows that there is a safe alternative available to her, the law expects her to take it. Therefore, self-defence is not available to an abused woman who kills her abuser when, for example, he is asleep, drunk and inert, or has his back to her. Firstly, because it would be hard to prove that she was defending herself against an imminent attack from her abuser; and secondly, because arguably she could have escaped from the house and sought protection.

I now come to the third issue - options for reform. One approach would be to abolish the mandatory life sentence. A judge would then have discretion in sentencing a woman who has killed her abusive partner. The other approach, which I want to look at more closely, would be to alter the boundaries of an existing defence or by creating a new defence.

In relation to both provocation and diminished responsibility, the Law Commission considers that, even if the defences are reformulated, they may not be appropriate defences for many abused women who kill.

On the other hand, we do not consider that there should be a tailor-made defence for abused women who kill. There are sound reasons for this conclusion. Firstly, in this country we have a criminal law system whereby the provision of defences are a matter of rule rather than discretion. Were the criminal law to allow a defence based exclusively on an abused woman's situation, the law would then be committed to entertaining many other narratives/excuses of how life had dealt harshly with the defendant. Secondly, our research to date has shown that there is not one single and simple reason why abused women kill their partners, so it may prove impossible to reflect the complexity and variety of each defendant's specific circumstances. We believe that defences to murder ought to be based on principles of general application. Any reform of the law needs to take into account not only its application to abused women who kill but also its wider potential effect.

Therefore, the Law Commission has raised the prospect of two distinct partial defences related to self-defence, applicable on a general basis, which would reduce the offence from murder to manslaughter.

The first is excessive force in self-defence in circumstances where some force would have been reasonable. Such a defence could be available where the defendant acts in response to an immediate threat, but reacts in a disproportionate manner to the threat. For example, where a woman's partner begins to slap her and push her about, she grabs the bread knife to defend herself and fatally stabs him. But this new defence would still not help those abused women who kill their partners when they are asleep, drunk and inert or have their backs to them.

This raises the concept of a partial defence of pre-emptive use of force in self-defence, which would not depend on there being an actual or imminent attack. In the context of an abused woman who kills, it is strongly arguable that what ultimately matters is not how immediate was the threat, but whether the abused woman had a fair and reasonable opportunity to do other than she did in meeting the threat.

We think it would be wrong in principle for the law to permit the use of pre-emptive force in protection of oneself against a perceived threat if there are other means of protection available.

There is however, a case to be considered for the introduction of a partial defence to murder in circumstances where the defendant kills another in the honest belief that it is the only way to prevent grave future violence to him or her self. For an abused woman who kills, the key to the availability of this defence would be that the defendant kills in the belief that she will be attacked again by her abuser.

By way of example, to show you how this defence would work, we can take the facts of the 1993 Court of Appeal case of Kiranjit Ahluwalia. As you may know, in that case, Kiranjit's husband had, during the ten years of their arranged marriage, subjected her to repeated and severe physical, sexual and emotional violence. On one particular evening, Kiranjit's husband demanded £200 from her and threatened to beat her if she did not produce it by the morning. He then began to iron and threatened that if she did not leave him alone he would burn her face. When her husband was asleep in bed that night, Kiranjit collected a bucket of petrol, a lit candle, an oven glove for self-protection and a stick. She went to her husband's bed room, threw in some petrol, lit the stick and tossed it into the room. Her husband sustained serious burns and died six days later. Kiranjit's defence of provocation was rejected both at her trial and by the Court of Appeal. In the end, the Court of Appeal allowed a defence of diminished responsibility on the basis that she was suffering from a major depressive disorder at the time of the killing.

But it would appear that what the facts of the case actually spell out is that Kiranjit Ahluwalia killed in the honest belief that it was the only way to prevent

grave future violence to herself. This is how we envisage a partial defence of pre-emptive use of force in self defence operating.

It is important to stress that such a defence would not be limited to women in an abusive relationship. Consider, for example, the case of a man from a minority ethnic group who is the victim of repeated racist verbal abuse and physical violence by a local gang. Suffering fear, despair and desperation, the man eventually kills the gang leader, and he kills in the honest belief that it was the only way to prevent grave future violence to himself.

However, we would not want a partial defence of pre-emptive use of force in self defence to be available in the context of Saturday night pub violence or gangland feuds. We would very much welcome suggestions on how it might be developed to exclude those cases. Thank you for your attention, I look forward to hearing your views on these issues.

Harriet Harman

Harriet Harman QC MP is the Solicitor General. She worked as a lawyer and then at the National Council for Civil Liberties, before becoming an MP in 1982. She was the Secretary of State for Social Security before returning to the backbenches in 1998. This text is a transcript of a talk she gave on the day.

Thanks for inviting me to speak today. It gives me the opportunity, once again, to pay tribute to the work that Rights of Women has done over the years, indeed over the decades, in assisting women experiencing domestic violence. It also allows me to give you an overview of the Government's work on domestic violence, and to invite you to contribute to the debate on how we treat domestic homicide and how we should change the law in this very difficult area. Rights of Women has a long and honourable record of drawing attention to the terrible toll that domestic violence takes on the lives of women and children and demanding that action be taken against it.

We are all well aware that Rights of Women is no Jenny-come-lately to this issue, and I was reminded of this with an article that was sent to me by Bethan from Jill Radford from 1992, which really sets out all the issues the Law Commission has been addressing. It seems to me that when there are arguments that women want to change you have to add a decade on before you get there. However, we have achieved that moment – but let's recognise how long everyone has toiled on this and what a long struggle it has been to get where we are. We have glinting in this early article by Jill the very clear principles set out: there can be no excuse for domestic violence, that this is a major problem affecting women, that it always damages children, and that the law too easily excuses violent men while being too harsh on women who kill after years of domestic violence.

The Government agrees with those things, and has given domestic violence a new priority. We're working through a ministerial group on domestic violence to back up the efforts that are made on the ground by prosecutors, courts, health and social services, and the voluntary sector. This conference is particularly focussing on domestic homicide, but I want to say a few words about prevention of domestic homicide before I come to the difficult issue of what should be done about men who kill their wives and partners, and women who kill their husbands. Homicide is only the most extreme end of the daily beatings that are mostly inflicted on women up and down the country.

Of course, our criminal law is gender neutral, but domestic violence is a profoundly gendered issue. Most domestic violence is inflicted by men on women, and the homicide figures bear that out. When I get letters from people, after I've been on the radio or television, saying that actually domestic violence is far worse by women against men, I send them the homicide figures because they bear this out. As do the experiences of those working in accident and emergency wards and GP surgeries – when you are talking about serious injuries, you are overwhelmingly talking about men and women. The gender breakdown is clear, and is not subject to the problem of

underreporting in the homicide statistics – approximately 20 men a year are killed by their wife or partner, and approximately 120 women are killed by their husband or partner. When it comes to homicide, the circumstances in which men and women kill their partners are very different. This is made very clear in the work of Kate Paradine. Men characteristically kill out of anger and women characteristically kill out of fear.

I'd like to say something about prevention and early intervention. What is of great importance is to tackle domestic violence before it starts by challenging the attitude that in some cases it is justifiable, or that even if it's not justifiable it's a fact of life. It's never acceptable, no woman should have to put up with it, and no man should get away with it. If it does start you need to tackle it early, before it escalates – this is key to preventing domestic homicide. Most domestic homicides are not the first occasion, or a bolt out of the blue. They are the culmination of a long series of assaults. We need to learn to identify risk earlier, and to work together, sharing information. We need to intervene earlier to protect a woman from violence escalating up to serious injury or death of her and her children.

There are a number of ways to do this. Firstly, a clear message that there are no excuses – nothing justifies domestic violence. When we are thinking about the importance of that message in preventing domestic violence, we then have to look at how the continued existence of the provocation defence interferes with our ability to get that message across.

Secondly, homicide reviews, identifying risk. The domestic violence Bill which starts in Parliament next Monday proposes a statutory power to order domestic homicide reviews after any domestic homicide. Instead of just a criminal trial dealing with the narrow issue of criminal responsibility, or an inquest which also looks quite narrowly, the idea of a domestic homicide review is that all the agencies in the local area will sit down, and together will look at the circumstances. Did the children tell their teachers in school what was going on at home? Had there been reports to social services? Had the police ever been called? Had cases ever been taken to the Crown Prosecution Service? Had she been to her GP – did A & E know, what about the health visitor?

The idea of this is not to blame, name and shame, but to learn lessons and to make sure that people can work together locally, closely, and for us all to be able to identify risk. I would like to pay tribute to the work of the Metropolitan Police here, where they've done this without statutory backing, and have faced a bit of a struggle getting some people to the table on it. They've looked and tried to do reviews of all these homicides and they have drawn up six risk factors as a result of their work. They will be very familiar to you all. This enables people to really focus on those cases – they include pregnancy and arrival of a new baby; her separating and wanting to live apart from him; him oppressively stalking her; honour killings. We're going to build on the work of the Metropolitan Police, put it into statute, so that everyone can come together, and we can all learn lessons. We need more information sharing. All of you who also know about these debates in relation to child protection

know that we've got to have the same process of discussion, about how everyone keeps confidentiality appropriately, but everyone shares information where it is necessary for the prevention of harm or the administration of justice. We're going to be working with the President of the Family Division, Dame Elizabeth Butler-Sloss, on the sharing of information between the civil and the criminal courts. The ministerial group on domestic violence, headed by Baroness Patricia Scotland is doing a lot of work trying to bring together all the different protocols on information sharing, so that we can have a common view on where it's appropriate to share information and where it's appropriate not to.

We also want the law to intervene earlier. We often talk about diverting child offenders out of the criminal justice system. What we want to do with domestic violence is to divert people into the criminal justice system earlier, and to make it clear so that everyone understands that this is serious, and it has got to stop. We hope that early protection and intervention will be afforded through the two themes of our consultation paper on domestic violence, safety and justice. What we have done in the domestic violence bill is built on the non-molestation orders, criminalizing breaches so that we can prosecute for a breach of a non-molestation order. We've built on the restraining orders that are available to protect from harassment to make them available for all offences, and to make them available on acquittal of a conviction. What you will then have is when a woman is in the family court, whether a situation is in the criminal court, whether there is going to be a conviction or not, the court will be able to do a yellow card, a stay-away order. If that order is breached it is not necessarily for the woman to go back to the family court – it will not all be on her shoulders, because at that point the criminal justice system will step in and say "you have had a yellow card, a warning, and you are now on the red card, you're in court and you're being prosecuted".

These measures will feature in the domestic violence bill. Many of the homicides I see on my desk, from England, Wales and Northern Ireland, start with breaches of non-molestation orders and end with very serious cases in the Crown court or end up with her dead. The idea of us stepping in earlier is very important indeed. We need to encourage women to come forward. Some women don't want the sense that their whole family life is going to be exposed, their teenage children's privacy invaded by everyone knowing what's going on in the house. Some women need anonymity in court proceedings, even where there is not a sexual offence. This is why we're bringing in section 46 of the Youth Justice and Criminal Evidence Act 1999, to enable more women to feel that if they need that anonymity then they can have it. If they give their statement to the police and it comes up in court, it won't be all over the local papers. The point is to stop the violence before it starts, but if it does happen to intervene early and decisively.

The point of this morning's meeting is to consider how to treat men who kill their wife or partner, and women who kill their husband or partner. I have, like you, concerns about the defence of provocation. When I became Solicitor General in 2001, the cases on my desk convinced me that we must act.

Heartbroken relatives told me not only had they to bear the loss of their beloved daughter or sister, but the pain of sitting in court, hearing her blamed for her own death. "Yes I killed her; yes I intended to kill her; but it was her fault". It has also become very circular – "I must have been provoked, otherwise she wouldn't be dead". The evidence of provocation is that she is there dead on the kitchen floor. So we need to take action. But this is a complex area of law which has been developing over the centuries, so in considering the law we referred provocation and other matters to the Law Commission. The Law Commission under Alan Wilkie has done the most brilliant job on this report. Most of you won't be able to afford it, but it is on the website and it is well worth looking at. I feel very motivated in looking at this area, and I can say that there is not a stone left unturned – they have found many stones round the world that others haven't turned up, and have done the most excellent job. I'd like to pay a warm tribute to Alan and what I think we should now call the Wilkie report rather than the Law Commission report!

In a nutshell, the problem is this. The law is too ready to excuse a man who kills his wife out of sexual jealousy, or because she has left him, but is not ready to understand a woman who kills her husband after years of his violence against her. In the 18th century, saying "I'm leaving you" was not enough to reduce a charge of murder to manslaughter, but it is now. It is not that we've slipped backwards, we've come to a place where we weren't before. In 1946, catching your wife in bed with another man was not enough to reduce the charge from murder to manslaughter. There's no question about that now. In the case of Les Humes the solicitor who killed his wife in front of their four children, the charge of murder was reduced to manslaughter because his wife had said she had feelings for her Karate instructor. In the case of the killing of Maureen Faulkner he was found not guilty of killing his wife and his son on the grounds that she was having an affair, and this defence extended even to the killing of his son. I think the Law Commission has set out with devastating clarity the problem. They don't believe the law on provocation should stay as it is. While the law is willing to offer an excuse to a man who kills his wife women who kill their husbands struggle to fit into the partial defence of provocation. Clearly the provocation defence in its current form is no longer acceptable.

The Law Commission has set out a number of options to change the current law. They want to hear from you, and so does the Government about the solution. It is not easy. For years you've been talking about the problem, and asking the problem to be recognised. I am here to tell you that that has now happened, and we need to move decisively to the next stage, which is what we do about it. I hope that you will all work together – this is a very important gathering that has been brought together by Rights of Women – to set out your preference. Give the Law Commission your clear view, and give us the ability to see how you think changes should be made.

I'd like to offer some principles to think about. We need to have a system that reflects the value we place on human rights, that recognises that a man does not have sexual ownership of his wife and cannot resort to violence when that is threatened, and it must apply to all families, applying across different

cultural backgrounds. With regard to honour killing, that should not be regarded as an issue of provocation. The system must reinforce the message that violence is never acceptable in a relationship, and recognise that self defence may be a response to a sudden threat, or it may be a response to persistent violence. We need a law that is clear and understandable so that judges can consistently and confidently direct juries, and juries can understand what their responsibility is.

It's very easy to set out the principles, and very easy to set out the problems, but what we need to do is move to the solution. We want you to be clear, not just about what is not acceptable about the current law (and you should underline that because it is important), but also what you want in place of the current law. Beyond our critique of the current law, which I have shared with you, the Government has no hidden agenda. We need to be effective in cutting down the terrible toll of domestic homicide, and prevention is better than cure. We must make sure that when it comes to homicide, that the law is fair. You who have so long highlighted the problem will, I hope, contribute to the solution.

Questions from the floor

Q. Tania Pouwhare of the Women's Resource Centre asked Harriet Wistrich about the problem of factfinders regarding women's evidence as incredible, and making judgements about women's characters. She asked if Harriet agreed that women who fell outside of a rigid and prescriptive model of abused women's behaviour (such as Battered Women's Syndrome) faced particular difficulties with the justice system in this context.

Harriet Wistrich agreed that this was a particular problem, and said that this was one reason why Justice for Women opposed the use of Battered Women's Syndrome, as it excluded as many as it included. Harriet reported that in every such case she had worked on, the judge and the first set of solicitors involved had formed the opinion that this was not 'a battered women's case'. It is argued that maybe she wasn't in a married relationship with the deceased, or that her injuries were not physical injuries but were sexual in nature, which is problematic where the public perception is not that sexual violence can be part of domestic violence. Harriet argued that the perception of what a battered woman is is very narrow – an image of a woman with a bruised eye and her arm in a sling, for example – but that the reality was much more complex.

Harriet also stressed the need for a different model of understanding violence against women. She said that a useful model currently in use was the 'Power and Control Wheel', and that Justice for Women in the case of Josephine Smith were able use this. While it was not directly used in the appeal, it was subsequently adopted by Nigel Eastman, a psychiatrist whose evidence was used at the appeal. She argued that this model was a much better way of understanding women's responses to domestic violence, as instead of just talking about 'learned helplessness' but about a whole methodology of control over a woman's behaviour in that sort of relationship.

Q. Hannana Siddiqui from Southall Black Sisters asked the panel how they would define the concept of 'honest belief'. She also said that while Southall Black Sisters were still formulating their overall response to the document, she would have concerns about self defence as a partial defence. She understood the problems involved in having self defence as a full defence, not least of the defence being unsuccessful and an abused woman then facing a murder sentence, and argued that for this reason and others that the mandatory life sentence should be abolished. She also raised the issue of the stigma attached to a murder conviction, even if a life sentence could be avoided.

Hannana said that diminished responsibility had been more successfully used as a defence than provocation by abused women who kill, but that this was problematic as it medicalised and pathologised those women. She said that it was clear that women in arguing diminished responsibility had to adduce twice

the amount of evidence that men did, as had happened in the case of Zoora Shah. She highlighted the need for those involved in the criminal justice system to have a better understanding not only of domestic violence, but of cultural and religious issues impacting on women from minority communities. An understanding of the pressures acting on women and preventing them from escaping violent situations was required. Hannana said that the issue of women's character and how women were viewed by the courts had not been fully appreciated so far.

Finally, she highlighted that the Crown Prosecution Service did have the discretion to pursue a charge of manslaughter rather than murder, and that reform was needed to prevent abused women being tried for murder.

Jayne Astley thanked Hannana for her contribution, and said that Hannana had isolated a key issue for resolution, namely the question of honest belief. Jayne reported that the Law Commission had considered suggesting an objective test to find out whether the defendant had a reasonable belief about the situation. At this stage, the Commission had not made any recommendations on this point, and welcomed ideas on it. Jayne highlighted particular problems with this concept for abused women who kill, as such women may accept after the event that they did not act in a reasonable way. If a woman is acting out of fear, despair or desperation, she may not have an objective sense of what was reasonable at the key moment. It might therefore be better for the defendant to have to prove that she had an honest belief that she was at risk of grave future violence. One problem with this approach however was to keep it out of the hands of those who might abuse it, for example people involved in pub fights.

Alan Wilkie said that as had been found in other jurisdictions, one of the problems with creating a partial defence of excessive force in self defence then it may lead to more people being convicted of manslaughter who would otherwise have been acquitted. This was because the jury was more likely to be tempted to split the difference and come to a compromise verdict. This problem does not feature in the defence of the pre-emptive use of self defence, as this currently does not exist in UK law. Alan found that Harriet's earlier use of the phrase 'duress of circumstances' had struck a chord, although the defence of duress was not available in a murder case. This was because there are moral questions involved, of how you value one person's life as opposed to another.

On diminished responsibility, Alan said that it was the case where it was a contested trial it can often become a battle of the experts, and that where the ground of dispute was whether the defendant had a medically diagnosable condition the key issue was whether such a condition had substantially impaired the defendant's mental responsibility for her actions. This is a question that needs to be addressed by both the psychiatric and legal professions. Alan agreed that cultural and religious issues were particularly concerning in this context. The Australian courts are quite a way in advance

of the English courts in recognising the importance of cultural diversity in the context of provocation, and in addressing what standard of self control society should expect from people in particular situations. Alan reported that the Australian High Court has cited cultural factors as being potentially relevant. However this leads to a debate about how far the law should reflect a perception about universal standards and how far it should be sensitive to cultural differences within that society. He felt that there was no easy answer to this. The current leading judgement in *Morgan James Smith* emphasised that relativity should be the key feature, but even in that judgement, Lord Hoffman attempted to identify no-go areas. The question is whether such areas will remain constant, and whether the law should attempt to operate in a more neutral way. This may be an irresolvable conflict within the defence of provocation, and the Law Commission would welcome views on this.

Q. Ann Jeffries, a lawyer, expressed concern that the paper did not include a discussion of duress, and a broader discussion of self defence. She argued that abused women who kill should have the full defence of self defence open to them, and regretted that this was not included in the consultation paper. She argued that it was difficult for those working with women to comment on the abolition of provocation when it was not clear what the alternative was. She argued that it needed to be understood that self defence was traditionally a male defence, and that a key commentator on this was Professor Elizabeth Schneider.

Q. Jill Page of Justice for Women argued that to use diminished responsibility was to medicalise women, and that this was a serious problem particularly when they were seeking custody of children after release from prison.

Alan Wilkie said that the points made by the delegates were important, but emphasised that the government had a particular legislative agenda it needed information about, and that this had set the terms of reference for the consultation. However, he said that these terms of reference did not constrain those responding to the consultation, and that submissions could express dissatisfaction with the terms of reference.

Jayne Astley thanked the delegates for their contributions, and agreed that diminished responsibility might lead to women being artificially pathologised.

Q. Lisa Gormley, the Legal Advisor on women's rights and international law at Amnesty International, welcomed the initiative from the Law Commission and the meeting itself. Experiences of similar laws being introduced internationally led her to ask how effective implementation would be assured. She pointed out that potentially useful laws could be undermined for example by lack of training for judges, lawyers, and police, and asked Harriet Harman whether relevant training would be given to all officers within the criminal justice system.

Harriet Harman agreed that while the domestic violence bill would be important, it would only be of any use if it was implemented effectively. She said that there had been progress made, for example the Crown Prosecution Service's network of specialist prosecutors being established, and work done by the Association of Chief Police Officers and the courts. She said that it was a slower process than we would like as it involved culture change, especially as it was well within living memory that it was perfectly acceptable to say that you'd beaten your wife. There were organisational issues to overcome – for example, if it was very difficult to bring a domestic violence case to court because police or prosecutors feared that a woman would retract her evidence and therefore decided that such cases were unlikely to succeed, this would be a major problem. Harriet reported that the domestic violence ministerial group was very focussed on implementation, not just the bill, and were looking at ways to monitor the impact on the ground.

> **Q. Hannana Siddiqui of Southall Black Sisters pointed out that the criminal justice system frequently failed to distinguish between honour killings (where men may use honour and religious or cultural arguments to justify murder in a domestic violence situation) and the situation of women who have been driven to kill as they have been unable to escape their circumstances due to cultural pressures. She cited the case of Zoora Shah, who was unable to raise the issue of domestic violence within her community, and is now serving life for murder while there are men walking free who have used the provocation defence. Hannana wanted to know how this issue would be addressed in any reforms made.**
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> **Hannana also reported that many people felt that in sentencing, domestic violence should be used as a mitigating factor, and asked whether this would be incorporated in the final domestic violence bill.**

Harriet Harman recognised that there was particular discrimination and injustice in cases of honour killing, and said that she'd like to throw that back to Hannana, asking that she report what was currently going on and how the law and practice should be changed, and assuring her that this would receive serious attention.

She also reported that the Sentencing Advisory Panel would be reporting on sentencing in domestic violence cases, including domestic homicide. The recommendations made would then be picked up by the Court of Appeal in the next relevant case, and this would then become a guideline case. This had been done with rape in late 2002. Such cases need to be taken on board by magistrates courts as well as crown courts. Harriet said that where sentencing in a crown court case appeared unduly lenient, she and the Attorney General would refer it to the Court of Appeal, as she had already done in four cases.

THE WORKSHOPS

WORKSHOP 1

1. The relevance of Battered Woman Syndrome – is the concept of "battered woman syndrome" useful to abused women who kill or is it counterproductive?

There was a general consensus within the group that there was a danger that BWS pathologises women and that it may lead to women treated as though mentally ill.

It was also commented that as a framework BWS may be too rigid and that there would be women who fall outside the definition leaving them to be treated as "sane" and therefore possibly treated more harshly in the criminal justice system.

Members of the group were concerned about BWS being a "tag" and felt that it should not be demonised as such. Rather it was commented that it should be considered in the same way as conditions such as diabetes or heart conditions.

There was also a concern about expert evidence in such cases and who was an authority on the syndrome. Concern was raised about possible "beauty parades" of experts in court.

It was felt that for BWS to be used successfully there would need to be expert evidence given taking into account the specific circumstances and characteristics of the individual woman. Evidence should include not only psychological reports but also evidence on the impact of other factors such as religion and culture. This may mean a panel of experts which would be different in each case. In this way it was felt that all relevant factors could be put to the jurors for consideration.

It was commented that there needed to be a raising of awareness in the very different ways domestic violence affects women to ensure that attitudes towards provocation as a defence could change. There was real concern that only relatively recently provocation was accepted as a defence where a man claimed he had been "nagged" by his wife.

It was felt that BWS placed blame on the woman. It would be seen as "her problem" rather than focusing on the perpetrator's behaviour towards her.

Generally it was concluded that in its present, very rigid and medicalised form, BWS was not helpful.

2. The shortcomings of the defences of provocation, diminished responsibility and self defence for abused women who kill.

What are the problems with the partial defence of provocation for abused women who kill?

It was noted that provocation is an anger based defence which requires a loss of control which is generally not the way in which abused women react. A member of the group commented that such women are reacting out of fear and desperation not anger so as it stands provocation does not work as a defence for these women.

Comment was made that a killing may be the result of cumulative provocative and may have been triggered by one seemingly minor incident. Seen in isolation the woman's reaction may appear disproportionate but when considered against the background less so.

It was agreed that because of this at present the defence was biased in favour of a male pattern of anger and that this was wholly unacceptable.

What are the problems with the partial defence of diminished responsibility for abused women who kill?

Concern again was raised about women being medicalised and labelled with a mental illness creating ongoing problems after release particularly in resuming care of children.

It was felt that in choosing between the defences of diminished responsibility and provocation women had to choose between being labelled either "mad" or "bad".

What are the problems with the defence of self defence for abused women who kill?

It was agreed that self defence should continue to be available to abused women who kill but that there needed to be greater recognition that these women may find themselves with no other means of defending themselves and that therefore may react in a way which does not fit the defence as it stands. The group felt that there needed to be further consideration of including excessive force in the definition in certain circumstances.

3. What are the options for reform?

It was felt very strongly by many in the group that there could not be proper discussion about partial defences without considering the defences of duress and self defence within the debate and that all of the issues identified by the different agencies working with abused women should be considered.

In relation to provocation it was felt that opening up the defence by taking away the "sudden and temporary loss of self control" would make the defence available to others acting out of revenge. The group favoured the concept of "honest belief" but that the belief would have to be reasonable taking into

account all of the circumstances of the defendant and including the different types of expert evidence identified as of relevance to abused women who kill.

WORKSHOP 2

1. The relevance of Battered Woman Syndrome – is the concept of "battered woman syndrome" useful to abused women who kill or is it counterproductive?

It was unanimously thought that the Battered Woman Syndrome construct was outmoded, outdated and no longer of any use. It may have been a useful starting point to the debate several decades ago, but it is not appropriate for contemporary society. It was thought to be too rigid and exclusive.

Duluth's wheel model was considered by those who were familiar with it (approximately half the group), to be a much more apt representation of the abusive relationship. The fact that it incorporates non-physical violence was seen by some as a particularly important aspect, as was the fact that it is non-gender specific.

2. The shortcomings of the defences of provocation, diminished responsibility and self defence for abused women who kill.

The law in relation to provocation was thought to be highly unsatisfactory by the majority of the group. A minority expressed the opinion that it was too widely drawn at present, to the extent that it was no longer reflective of the true nature of the defence. It was repeatedly stated that whilst reform was clearly needed, it was much more difficult to ascertain how the defence should henceforth be delimited. Abolition of provocation was only favoured in the event that a new defence would be created to replace the void left.

The main concern regarding diminished responsibility was that it seeks to pathologise in an inappropriate manner abused women who kill. To better reflect the nature of the abused woman's situation, it was suggested that there should not necessarily be the need for psychiatric evidence to support the plea of diminished responsibility. Instead it was countenanced that evidence from a person who has considerable sociological experience of the battered woman's situation should be encouraged. This proposal received considerable support.

3. What are the options for reform?

When discussing options for reforming the law, the focal point was what was the basis of any defence for a battered woman who kills her abuser? Was it to be premised upon the fact that she had been provoked and was acting out of anger, or was she acting out of fear and despair and thus in self defence, or was it that she had become mentally impaired due to the situation she found herself in?

The overwhelming opinion was that the woman killed whilst exhibiting a psychologically healthy response, that was nonetheless a psychological response, to an abnormal situation. As such, it was appropriate that any defence recognised this element, and especially the violence being perpetrated upon the woman. It was thought that the current legal system seems to ignore the previous acts of the deceased partner after they have been killed, treating the act of homicide as the only wrongful act to have occurred, this overlooking the reality of the situation. It was for this reason that it was suggested that a modified form of diminished responsibility with less emphasis on psychiatric evidence may be appropriate.

WORKSHOP 3

1. The relevance of Battered Woman Syndrome – is the concept of "battered woman syndrome" useful to abused women who kill or is it counterproductive?

Out of 10 people present 8 felt that it was counterproductive and it was suggested that the power and control wheel was a more effective model.

Those who did not think it was counter productive were concerned that if BWS was not used women who did suffer psychiatric harm as a result of domestic violence may be left without a defence adequately reflecting their situation. In this regard, problems connected to the fact women suffering from BWS have had to present twice as much evidence was mentioned.

It was suggested that a move away from relying solely on psychiatric evidence should be considered and experts from different fields, such as domestic violence experts and sociological experts could be called to give evidence - Liz Kelly was mentioned.

However, it was felt that even if the law was changed this may not ultimately achieve the justice sought due to problems with jury attitudes and a lack of especially trained legal counsel and judiciary. In this regard it was suggested that there should be an approved panel of (especially trained/qualified) lawyers to take domestic violence case, much as is the case with child cases.

2. The shortcomings of the defences of provocation, diminished responsibility and self defence for abused women who kill.

The group preferred not to spend the precious time we had discussing the problems. There was broad agreement with the restatement of the problems in C.P. 173, and it was not felt to be helpful to re-hash the problems once again.

3. What are the options for reform?

The whole group was in agreement that provocation should not continue in its present form.

There was also wide support for a change in the law relating to Diminished Responsibility (DR), although the response was less unanimous and none of the alternative options from C.P. 173 were favoured. They were criticised for being too linked with the mental health act.

Some members of group 3 favoured a less medical approach, stating that something short of an abnormality of mind should suffice. This led to a discussion of how the defence could be broadened, while still having acceptable limits.

In this light the group felt that it is important for the defence not to be based on purely psychiatric evidence, but that non-psychiatric evidence should also be capable of evidencing DR. As well as the sociological and domestic violence experts already suggested, the group thought that experts on cultural factors and religious factors may be helpful here.

Alternative Defences

There was wide agreement that a defence based on fear and duress would more adequately address the situation of homicides resulting from domestic violence.

There was a suggestion that a defence could be informed by the idea of a reaction (justifiable?) to an abuse of power – this could be an abuse of power over the person who killed as a response, or over a third party (i.e. children).

Five of the 10 people in the group voted for a specific defence for persons who have killed in response to domestic violence.

There was a negative reaction to any kind of partial defence based on self-defence, as it was felt that self-defence should really be a full defence, but should be expanded to include the excessive and pre-emptive elements.

However, pragmatically, it was suggested that as juries do not like granting a full defence of self-defence it would be worth investigating partial defences. Also, some members of the group again preferred the option of training the prosecution so that manslaughter was charged in domestic violence homicides where it would be otherwise offered as a plea.

When asked for other suggestions it was suggested that rather than limiting the defence of provocation, it could just be taken away from the jury. This was because it was thought to be easier to train judges as to the realities of domestic violence so that they could justly apply the defence than it was to change the perceptions of the whole country and therefore juries.

The group was also strongly in favour of investigating the possibility of a defence based on duress of circumstances.

WORKSHOP 4

General Observations

There is a need for greater awareness and expertise by lawyers and judges, in relation to domestic violence issues. Additionally, some of the delegates felt that refuges for domestic violence victims could be more efficient in relation to the collation of evidence of domestic violence, i.e., by taking photographs of the injuries suffered by the woman.

1. The relevance of Battered Woman Syndrome – is the concept of "battered woman syndrome" useful to abused women who kill or is it counterproductive?

It was felt that BWS is not a helpful concept. It inappropriately labels the woman. And indeed can be counterproductive, i.e., a court may decide that if the woman has no bruises to show then this is not a case of a battered woman.

There is a need to look more intelligently at the circumstances the woman finds herself in, and the reasons for her sense of entrapment.

These reasons differ according to each individual but may include her staying put for the sake of the children; language and cultural difficulties; or simply her long term and emotional investment in family life.

If adequate defences were available to abused women who kill, then there may be no need for a label such as BWS or any other substitute label, at all.

2. The shortcomings of the defences of provocation, diminished responsibility and self defence for abused women who kill.

The group agreed that there was a need for defences other than provocation and diminished responsibility to be available to an abused woman who kills.

3. What are the options for reform?

All the group was strongly in favour of law reform in order to provide additional defences to an abused woman who kills.

Some delegates opined that 'Reactive use of force in self-defence' would be a more appropriate title since the woman is reacting against the violence she has previously experienced. Others felt that 'Pre-emptive use of force in self-defence' adequately conveyed the circumstances.

There was general agreement that the defence of provocation should not be abolished. However, it was felt that it should be made more restrictive, and should certainly not be available where the alleged provocation was purely of a verbal nature.

There was a general dislike of the pathologising involved in applying the diminished responsibility defence. It was agreed that diminished responsibility led to undesirable long term consequences of a defendant being labelled as mentally ill, and that this could lead to problems for the woman where she is seeking custody of her children.

THE PLENARY

Delegates reported back from their workshops, and these reports are detailed above. Ranjit Kaur in closing the meeting reiterated the importance of women's organisations in particular responding to the consultation paper, given this unique opportunity to significantly influence law reform.

Ranjit thanked everyone at the Law Commission and at Rights of Women for their assistance and commitment in organising the event, including Rights of Women's volunteers. She thanked the speakers and delegates for their participation, and gave particular thanks to Elizabeth Finlason of the Law Commission and Bethan Rigby of Rights of Women for their work in organising the event. The event finished at 1pm.

COMMENTS AND SUBMISSIONS FROM ATTENDEES

From the Association of Greater London Older Women:

ABOLITION OF THE MANDATORY LIFE SENTENCE

In yesterday's consultation meeting there was no debate in the small groups about the proposal to abolish the mandatory life sentence.

In addition to what was said by Harriet Wistrich about how important it has been for women whose convictions for murder were overturned to be rid of the label "murderer", I would like to demonstrate why abolishing the mandatory life sentence would not help "abused women who kill".

We have sat through many murder trials of abused women who killed their abusers. Typically the defence is arguing that she was abused, feared further abuse of herself and or her children. The prosecution is arguing there was no abuse or it was minimal or they were a warring couple and in any case this was not the reason for the killing. The prosecution argue that the reason was financial, or because he was breaking off the relationship, or because she is simply evil.

If the jury accept the defence and acquit or convict of manslaughter fine. If they find her guilty of murder then the judge has to sentence *on the basis that they accepted the prosecution arguments.* Such women do not currently receive any mercy in terms of tariff nor would they receive any mercy if the mandatory life sentence were abolished. Look at the current treatment of Jane Andrews! In the cases we have supported which succeeded, the women were only perceived as abused women who killed after the conviction was overturned.

Rights of Women is a well established and expanding not-for-profit organisation committed to informing, educating and empowering women on the law and their legal rights. The organisation runs a free telephone legal advice for women, and produces publications on women's rights. Rights of Women's areas of expertise include family law, relationship breakdown and domestic violence, and it frequently runs conferences and training on these issues. The organisation is funded by grants from the Association of London Government and the Community Fund.

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