

WHEN TRAUMA BECOMES INTENT: BATTERED WOMAN SYNDROME AND THE LIMITS OF SELF-DEFENCE UNDER SECTION 34 OF THE BHARATIYA NYAYA SANHITA, 2023

by

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1.INTRODUCTION

The right of private defence in Indian criminal law is not a modern construct; it is a direct descendent of the Indian Penal Code 1860 drafted under Macaulay's Law Commission, shaped and influenced by English Common Law assumptions about the violence and self defence in the mid nineteenth century. An act done in the exercise of Private defence is not an offence, provided sudden, visible danger by stranger, imminent threat to bodily harm, the utilization of reasonable force in reaction of that danger and absence of a safe opportunity to withdraw. Section 96 to 106 of the Indian Penal corresponding with Section 34 to 44 of Bharatiya Nyaya Sanhita, 2023 codified this logic. This becomes far less clean and debatable in case of Battered Women Syndrome when the "stranger" is a husband and the danger has been present for years rather than seconds where it describes a psychological reality shaped by cumulative, cyclic trauma, one in which a woman's perception of danger is calibrated not to the moment of attack but to a pattern learned over years of abuse and mental, physical trauma for women.

Empirical data underscore the scale of this doctrinal blind spot: the National Family Health Survey (2019–21) found that more than one in four Indian women aged eighteen to forty-nine has experienced some form of domestic violence, with husbands consistently identified as the most frequent perpetrators of such violence within marriage.¹ Because Battered Women Syndrome is

¹ P Anand and others, 'Domestic Violence and Women's Health: Evidence from NFHS-5 Survey Data' [2025] Discover Public Health.

theorised as a response to precisely this kind of sustained, intimate violence, the gap between the statutory imminence requirement and the lived experience of a significant proportion of Indian women is not a marginal doctrinal curiosity but a recurring feature of the criminal justice system. This tension is not a peripheral doctrinal puzzle but a structural gap in how Indian criminal Law conceives of self-defence for survivors of prolonged domestic abuse. The Bhartiya Nyaya Sanhita 2023, despite its stated ambition to modernise India's Criminal Code and bridging the gap, largely reproduces the private defence framework of Indian Penal Code 1860, without considering the substantial body of psychological and comparative legal scholarship on battered women syndrome that has developed since.

This lacuna is compounded by the fact that Indian courts have engaged with Battered Woman Syndrome in only a small number of reported decisions, and even in those cases the concept has typically been used to explain a woman's state of mind rather than to ground an independent defence in its own right.² Comparative scholarship on Indian criminal law has accordingly argued that the absence of a dedicated statutory response leaves battered women dependent on defences designed for entirely different fact patterns.

The research essay argues that private defence of Bharatiya Nyaya Sanhita, as currently framed, are doctrinally unequipped and unfamiliar to accommodate the cumulative- trauma logic of Battered Women Syndrome, and this gap produces a real risk of injustice for women who kill their abusers outside the narrow window that law currently recognises. The structure of this research essay argues that India should not follow that route instead looks to the United Kingdom's post 2009 reform trajectory, which replaced rigidity with a codified "loss of control". This reform, given effect through sections 54 to 56 of the Coroners and Justice Act 2009, deliberately removed the earlier requirement that a defendant's loss of self-control be sudden, recognising that women who kill abusive partners typically do so only after a cumulative build-up of fear rather than in an instantaneous reaction.³ English commentators have described this shift as a direct legislative response to the recognised shortcomings of the older law of provocation in accommodating cases of sustained domestic abuse.

² Aishwarya Deb, 'Battered Woman Syndrome: Prospect of Situating It Within Criminal Law in India' (2021) 8(4) BRICS Law Journal 103, 105.

³ Amanda Clough, 'Loss of Self-Control as a Defence: The Key to Replacing Provocation' (2010) 74(2) Journal of Criminal Law 118, 121.

Queensland offers a further point of comparison, having introduced in 2010 a discrete partial defence of killing for preservation in an abusive domestic relationship, which allows the cumulative history of abuse to be weighed without requiring proof of a single triggering assault.⁴ Australian legal scholarship examining the operation of this defence has nonetheless cautioned that its narrow, jurisdiction specific design offers useful drafting lessons without amounting to a model suitable for wholesale transplantation.

This thesis is deliberately narrow and does not call for Bhartiya Nyaya Sanhita section 34 to be reinterpreted, the imminence core of self-defence should remain intact for ordinary contentious cases instead the paper argues for new, discrete partial defence in Bhartiya Nyaya Sanhita to focus on battered women syndrome and survivors of domestic abuse, modelled on the UK's 'loss of control' reform with secondary comparator drawn from the Australian state law that treated psychological coercion as relevant to culpability without forcing into either self - defence or "grave" and sudden provocation.

2. The Double Exclusion: Mapping BNS ss.34, 37–38 and s.101 Exception 1

The doctrinal architecture of section 34, 37, 38 of the Bhartiya Nyaya Sanhita is built for single archetype of danger which assumes that danger is sudden and reaction must be immediate; section 34 of Bhartiya Nyaya Sanhita states that anything done in the genuine exercise of private defence exempts person from criminal liability whereas it is hedged by section 37, which strips away the right entirely in circumstances which takes that back in circumstances where there was time to have recourse to the protection of public authorities, section 38 then extends the right to killing only when the assailant's conduct would reasonably create an apprehension that death or grievous hurt will be the consequence of such assault or act. Legal commentary on Indian battered women's cases has observed that the requirement of a reasonable apprehension of imminent danger is particularly difficult for survivors of sustained abuse to satisfy, since the test presumes an ongoing confrontation rather than a fear calibrated to a recognised pattern of escalation.⁵ Practitioners have

⁴ Michele Edgely and Elena Marchetti, 'Women Who Kill Their Abusers: How Queensland's New Abusive Domestic Relationships Defence Continues to Ignore Reality' (2011) 13 Flinders Law Journal 129, 152.

⁵ Apoorva Mandhani, 'Victim or Criminal? How Law Finds Itself in Knots When a Battered Woman Kills Her Abuser' ThePrint (New Delhi, 27 February 2023).

noted that private defence has, as a result, rarely if ever been successfully pleaded in India by a woman who killed an abusive partner outside a direct physical confrontation. In contrast, a woman who has endured years of documented violence and finally acts when her abuser is asleep, unarmed or otherwise not actively attacking her cannot satisfy temporal logic of self defence as per Indian Law.

2.1 The Imminence Architecture of Private Defence (ss.34, 37, 38)

Section 34 of Bhartiya Nyaya Sanhita establishes the foundational principle of self defence that states nothing done in genuine exercise of private defence constitutes an offence but it do not highlight the cumulative psychological trauma of battered women who suffered from prolonged domestic abuse. For a Battered women, the threat may be ever present. She may recognize danger cues invisible to outsiders and an act before a blow struck because she knows what's coming. This capacity to anticipate violence before it is visibly underway has been linked in the psychological literature to a three phase cycle of tension building, acute violence and reconciliation, which repeated exposure teaches a woman to read with considerable accuracy.⁶ Scholars examining this pattern in the Indian context have argued that such anticipatory fear is not a departure from reasonableness but a rational response calibrated to a relationship's own established rhythm of violence. Section 37 strip away the rights entirely; it performs two restrictive functions relevant here. First it withdraws the right of private defence entirely in cases in which there is time to have recourse to the protection of the public authorities. Secondly it caps whatever force remains permissible to what is "necessary to inflict for the purpose of the self-defence". Section 38 then defines the narrow band of circumstances in which the right extends to killing : only where the assailant's conduct would reasonably cause the apprehension that death will otherwise be the consequence of assault. It also presumes a binary in which the defender's only options , at that point of time, is to kill or be killed.

These provisions encode what this paper terms an imminence architecture: a legal test built for a single archetype of danger, the assailant standing in front of the defender, weapon or fists raised, in a moment where escape has already been foreclosed. Every operative phrase "time to have recourse," "otherwise be the consequence," "necessary for the purpose of defence" is temporally

⁶ Deb (n 101) 106.

anchored to the present instant of confrontation. This architecture maps poorly onto the empirical reality of BWS. The doctrine has no mechanism for treating a reasonable but non-instantaneous fear as legally equivalent to an imminent one. The defect, in other words, is not that courts have applied Sections 34, 37, and 38 harshly to battered women; it is that the provisions, read as written, structurally cannot reach her case at all.

English law faced a structurally similar problem before 2009, when the requirement that provocation cause a sudden loss of self-control was repeatedly criticised for penalising women whose responses to abuse built up gradually rather than erupting in the moment.⁷ It was precisely this mismatch between doctrine and lived experience that ultimately drove the legislative shift from provocation to loss of control, offering a cautionary precedent for jurisdictions, including India, that continue to rely on temporally rigid doctrines.

2.2 The Provocation Trapdoor (s.101 Exception 1)

All three sections assume the sudden, visible danger whereas in case of battered women syndrome a woman who kills her abuser while he is asleep, unarmed, or during a calm period, technically does not fall in ambit of provisions of self defence under Bhartiya Nyaya Sanhita. The Section 101 Exception 1 reduces the offence of murder to a lesser charge ‘culpable homicide’ not amounting to murder only if the killing happened while the person was suddenly, in the moment overwhelmed and deprived of self control by grave and sudden provocation. The provocation exception is, in the mirror image of the private defence problem: it protects the person who snaps once, not the person who has been suffering repeatedly. This is precisely where it becomes a trapdoor for women rather than a route of escape for Battered women syndrome defendants. Indian courts have on occasion reached for the provocation exception to soften outcomes for women who killed prolonged abusers, developing home grown judicial approaches to accommodate cumulative suffering within the sudden and grave provocation framework.⁸ Legal commentary on these cases suggests that judges are willing to mitigate culpability informally, but that this approach remains inconsistent and offers considerably less certainty than a dedicated statutory defence would provide.

⁷ Clough (n 102) 119.

⁸ Mandhani (n 104).

Sections 34/37/38 and Section 101 Exception 1 thus operate as two doctrinally distinct but functionally aligned exclusions. The first rejects the BWS defendant because the threat, at the moment of her act, was not imminent. The second rejects her because her reaction, at the moment of her act, was not sudden. Between these two provisions, Indian criminal law currently has no statutory space in which cumulative, trauma-driven fear is cognisable as anything other than premeditated intent which is the doctrinal gap the remainder of this paper argues must be closed by a new, discrete provision rather than by judicial stretching of either existing doctrine.

The stakes of this doctrinal gap are far from trivial: National Crime Records Bureau figures show that reported crimes against women rose by over fifteen per cent in a single year, reaching more than four hundred and twenty eight thousand cases in 2021, a substantial proportion of which arise within domestic relationships.⁹ Against this backdrop, Indian legal scholarship has increasingly argued that reform of the private defence and provocation framework is not merely a matter of doctrinal tidiness but a pressing response to a well documented pattern of lethal domestic violence.¹⁰

3. Why Judicial Expansion of "Imminence" Is the Wrong Remedy

Section 34 of Bhartiya Nayay Sanhita legalizes only sudden, immediate threat in case of battered women syndrome. The judge can interpret 'imminence' generously in a sympathetic case but cannot change what imminence structurally requires under section 34 of Bhartiya Nayaya Sanhita. That is the part of legislative function therefore asking judges to just "stretch" the imminence requirement or its expansion, instead of writing a new law is the wrong fix for Battered Women Syndrome cases. Indian courts have recognized battered women syndrome in only a small number of cases, and even there, courts have used the concept to explain a woman's state of mind rather than to ground an independent defense and lack of scholarship in this particular area clearly resonates the inconsistency of Indian criminal law towards women's accounts of their experience¹¹. Law of Carolina faced the same issue in *State Norman in 1989*, drew a rigid line on

⁹ Mandhani (n 104).

¹⁰ Aman Deep Borthakur, 'The Case for Inclusion of Battered Woman Defence in Indian Law' (2018) 11(1) NUJS Law Review 1, 18.

¹¹ Aishwarya Deb, 'Battered Women Syndrome: Prospect of Situating It Within Criminal Law in India' (2021) 8(4) BRICS Law Journal 103.

self-defense law that restrained the Battered Women to kill their abuser because the threat was not "imminent". These decisions symbolize the lack of scholarships in Battered Women Syndrome¹² It creates inconsistency, not justice if one Judge is willing to stretch "imminent" to include a sleeping or unarmed abuser, but another Judge in the next courtroom isn't; in that case the two women in identical situations get opposite outcomes.

Indian courts have, on occasion, gestured toward the psychological realities that battered woman syndrome describes without ever adopting the doctrine by name. In *Manju Lakra v State of Assam*, a woman who had endured years of violence at her husband's hands and killed him during a further assault was denied the benefit of the exception for grave and sudden provocation under Section 300 of the Indian Penal Code, the court holding that stretching 'grave and sudden' to cover a pattern of sustained abuse would amount to judicial overreach into a legislative function.¹³ The Madras High Court has taken a different route in a cluster of cases addressing what commentators have termed the 'Nallathangal syndrome', named after a Tamil folk ballad, extending leniency to women who attempted suicide together with their children after prolonged domestic cruelty, most notably in *Suyambukkani v State of Tamil Nadu*, where a conviction for murder was set aside in favour of a lesser offence on the footing of sustained provocation.¹⁴ These decisions confirm the paper's argument at a granular level: where one Bench in *Manju Lakra* treats sustained abuse as falling outside the legislative language altogether, another Bench applying Nallathangal reasoning extends leniency on comparable facts, producing precisely the doctrinal unpredictability that a codified partial defence is designed to avoid.

A written statute applies the same test to everyone. It's also unpredictable that nobody can rely on it in advance. It risks distorting the doctrine for everyone else to loosen "imminence" enough to cover BWS, and you've also loosened it for ordinary self-defense cases generally including ones with no history of abuse. That weakens the imminence requirement across the board, which the paper argues should stay intact for regular cases. It quietly admits the law is missing something,

¹² *State v Norman*, 324 NC 253, 378 SE 2d 8 (1989).

¹³ Aman Deep Borthakur, 'The Case for Inclusion of "Battered Woman Defence" in Indian Law' (2018) 11 NUJS Law Review 1.

¹⁴ Aishwarya Deb, 'Battered Woman Syndrome: Prospect of Situating It Within Criminal Law in India' (2021) 8(4) BRICS Law Journal 103.

without fixing it every time a judge has to stretch a doctrine to reach a fair result, that's really a signal the legislature left a gap. Patching it through case law hides the gap instead of closing it; future survivors are still left hoping for a sympathetic judge rather than a right they can point to in the statute book.

Data from a related area of law (Section 498A dowry-cruelty prosecutions) shows how unpredictable judicial discretion around domestic violence cases can be of 787 cases decided by the Bombay High Court between 1998 and 2004, only 6% resulted in conviction where the victim survived, versus 35–39% where the victim had died or committed suicide, with conviction rates varying so sharply between judges that some acquitted in every case they heard while only two judges convicted in a third or more of their cases.¹⁵ That's not a system of consistent legal standards, it's a system where the outcome depends heavily on which judge hears the case, which is exactly the danger of relying on ad hoc judicial "expansion" rather than a codified rule .

3.1 The U.S. Judicial-Expansion Model and Its Doctrinal Costs

Battered Woman Syndrome ("BWS") entered American criminal law not through legislation but through litigation. In the late 1970s, through a case, defense lawyers representing women who had killed abusive partners began offering expert psychological testimony to help juries understand why a woman might reasonably fear imminent death from a man who was at the instant of the killing, unarmed, asleep, or otherwise not actively attacking. Courts responded unevenly and incrementally, admitting the testimony in some jurisdictions, excluding it in others, and, where admitted, cabining its legal effect. The result is what can usefully be called a judicial expansion model: a body of doctrine-built case by case, through appellate reasoning rather than statutory design, in which existing self-defense law was stretched evidentially, not substantively to accommodate the psychological reality of prolonged abuse.

In the U.S., courts have consistently allowed Battered Women Syndrome expert testimony to assist the Jury in understanding the psychological state of battered women. A seminal instance involving this is *State v. Kelly (1984)*¹⁶, in which the New Jersey Supreme Court permitted presentation to

¹⁵ . *ibid.*

¹⁶ *State v. Kelly*, 478 A.2d 364 (N.J. 1984).

support the defendant's claim for self-defense of Battered Women Syndrome. Similarly, in *Commonwealth v. Stonehouse (1989)*, BWS was applied to establish that the accused believed that lethal force was necessary even where the threat was not actual.¹⁷ Despite this, however, the use of BWS in U.S. courts is still contested, with critics claiming that it risks the perpetuation of gender stereotypes and also has a lack of standardized scientific verification¹⁸.

The scepticism noted above was not merely academic. In response to a congressional mandate under the Violence Against Women Act, the United States Department of Justice commissioned an evaluation of the scientific basis for expert testimony on battering and its effects, which concluded that 'battered woman syndrome' as a diagnostic label had been substantially overtaken by a broader and more variable body of research on the psychological, social and situational responses of women to partner violence, and recommended that courts and litigants abandon the syndrome label in favour of testimony framed around battering and its effects, precisely because the earlier framing invited the jury to expect a uniform set of symptoms that many genuine survivors do not display.¹⁹ The shift in nomenclature mattered doctrinally: expert evidence pitched as proof of a discrete syndrome could be, and was, excluded whenever a given survivor's presentation departed from Lenore Walker's original clinical profile, while evidence framed more broadly around the effects of battering proved more resilient to defence and prosecution challenges alike. For a jurisdiction such as India, which has no comparable body of institutionally validated research on battering and its effects, this history is a caution rather than a template: importing 'battered woman syndrome' as a freestanding label risks importing its narrowest and most easily impeached form, well after the American literature itself had moved away from it.

The first appellate recognition of BWS testimony came in *Ibn-Tamas v. United States*, 407 A.2d 626 (D.C. 1979).²⁰ Beverly Ibn-Tamas, convicted of murdering her husband after a documented history of violent assaults, had been barred from calling psychologist Dr. Lenore Walker testified that her fear of imminent harm matched a recognized pattern among women who had suffered

¹⁷ V.F. Nourse, Self-Defense and Subjectivity, 68 U. CHI. L. REV. 1235,1235 (Fall 2001).

¹⁸ Id

¹⁹ US Department of Justice, National Institute of Justice, The Validity and Use of Evidence Concerning Battering and Its Effects in Criminal Trials (NCJ 160972, 1996).

²⁰ *Ibn-Tamas v. United States*, 407 A.2d 626 (D.C. 1979).

sustained abuse. The D.C. The Court of Appeals held that such testimony could be relevant and was not automatically excludable as invading the jury's role, but it remanded rather than reversed, instructing the trial court to determine whether Dr. Walker's methodology met the prevailing scientific-reliability standard under *Frye v. United States (1923)*²¹. On remand, the trial court found that the methodology had not achieved general acceptance within the relevant scientific community, and in 1983 the Court of Appeals affirmed the exclusion of the very testimony it had once called potentially admissible. The case that inaugurated the expansion model therefore ended, in defeat for the defendant, an early signal that judicial recognition of BWS would be conditional, reversible, and dependent on a case-by-case scientific gatekeeping exercise rather than a settled rule.

3.2 Why India Should Not Replicate This Path

India is a democratic nation, the Bharatiya Nyaya Sanhita Sections 34-38 state the imminence and proportionality limits explicitly in the law itself, giving appellate courts far less interpretive room than the U.S. common law courts had to work around the same imminence ceiling that defeated the claim in *State v. Norman* case. A judicially built defense depends on affordable expert psychological testimony; this was already a fault line in the American cases, and the urban/rural and class gaps in India's forensic-mental-health and legal-aid capacity would likely widen it further. Medicalization risk in a skeptical evidentiary culture requiring a formal diagnosis as a gateway to credibility could raise the bar for survivors rather than lower it, particularly where courts already scrutinize women's abuse testimony closely.

The concern about affordability and access is not speculative. India's own mental health workforce data illustrate the scale of the gap that any expert-testimony-dependent defence would have to work within: the country has approximately 0.75 psychiatrists per 100,000 people against a World Health Organization benchmark of at least three per 100,000, a shortfall a 2023 Parliamentary Standing Committee on Health estimated would require roughly 36,000 additional psychiatrists to close, and the professionals who do exist are heavily concentrated in metropolitan centres, leaving rural and semi-urban litigants with little practical access to the kind of forensic psychological

²¹ *Frye v. United States (1923)*

assessment a battered woman syndrome defence would typically require.²² Forensic psychiatry itself remains an underdeveloped subspecialty in India, without a dedicated certification pathway comparable to those in the jurisdictions this paper examines, which means that even a woman with access to a psychiatrist may struggle to find one qualified to testify to the specific forensic question a court would need answered. A defence architecture that conditions relief on expert evidence therefore risks reproducing, and on current capacity figures worsening, exactly the two-tier access problem that undermined the American judicial-expansion model.²³

Because U.S. states differ on whether Battered Women Evidence bears on imminence, reasonableness, or duress, outcomes turn heavily on which state, and which judge a woman is tried before. Norman and cases like *State v. Kelly* (NJ) achieve different results on similar facts. Importing this piecemeal, case-by-case method into India rather than the codified partial defense would reproduce that same unpredictability under Section 34 *Bhartiya Nyaya Sanhita*.

4. The UK's Statutory Route: From Duffy and Ahluwalia to the Loss of Control Defense

The UK's statutory route has been through a critical and rigid pathway in the *R v. Duffy* case the court set the classic test for 'provocation': the defendant must have suffered a sudden and temporary loss of self-control at the moment of killing. Any time gap between the abuse and the killing was treated as a "cooling-off" period, fatal to the defense. A rule built around instant-reaction anger, which structurally disadvantaged abused women whose reactions typically follow a slower build-up²⁴. Again, in *Kiranjit Ahluwalia* case the Court of Appeal confirmed the Duffy "sudden and temporary" test remained good law, and the time delay still counted against her²⁵. What quashed her murder conviction was fresh psychiatric evidence, admitted exceptionally on appeal, showing she suffered from a depressive illness; on retrial she was convicted of

²² World Health Organization, *Mental Health Atlas 2020: Member State Profile, India* (WHO 2021); Department-Related Parliamentary Standing Committee on Health and Family Welfare, 139th Report (Rajya Sabha, March 2023).

²³ Rakesh K Chadda, 'Forensic Psychiatry in India: The Road Ahead' (2013) 55 *Indian Journal of Psychiatry* (Supp 2) S371.

²⁴ *R v Duffy* [1949] 1 All ER 932 (CCA)

²⁵ *R v Ahluwalia* [1992] 4 All ER 889, (1993) 96 Cr App R133 (CA)

manslaughter on grounds of diminished responsibility under section 2 of the Homicide Act 1957 a distinct defense, not provocation²⁶.

Parliament abolished the common law defense of provocation and replaced it with the statutory partial defense of loss of control under ss 54–56 of the Coroners and Justice Act 2009. The reform removed the "sudden" requirement, allowing cumulative/slow-burn reactions to qualify, and introduced a "qualifying trigger" including fear of serious violence from the victim.

4.1 The Strict Suddenness Standard: R v Duffy [1949] 1 All ER 932

Any account of how the common law of England and Wales failed battered women who killed their abusers must begin with R v Duffy. Decided in 1949, Duffy fixed the legal meaning of provocation around a single, rigid criterion: the loss of self-control had to be sudden and temporary. This essay examines the facts of the case, the direction that gave rise to the rule, the Court of Criminal Appeal's endorsement of it, and the doctrinal legacy it left a legacy that, on the account of at least few scholars who has examined the original case file, arguably amounted to a miscarriage of justice.²⁷

Mrs. Duffy's conviction was upheld by the Court of Criminal Appeal (Lord Goddard CJ, Oliver and Cassels JJ), which approved Devlin J's direction in strong terms. Lord Goddard CJ described the direction as containing about as sound a formulation of the doctrine as he had encountered, suitable to stand as a model direction for juries even in cases where sympathy plainly lay with the accused. That endorsement fixed the suddenness requirement as binding authority for decades, later carried into statutory form by section 3 of the Homicide Act 1957, which preserved the common law test while giving the jury the final say on whether a reasonable person would have acted as the accused did.²⁸

²⁶ Homicide Act 1957, s2

²⁷ Susan Edward Crime LR 2009.

²⁸ Homicide Act 1957, s3.

Duffy is the doctrinal origin point for everything that followed in this area of English law: the rigidity it imposed shaped, and ultimately doomed, the provocation defense as a workable route for battered women, setting the stage for the Court of Appeal's reluctant application of the rule in *Ahluwalia* and, eventually, for Parliament's abolition of provocation altogether in favor of the loss of control defense under the Coroners and Justice Act 2009. For a comparative project on Battered Woman Syndrome and Section 34 of the *Bharatiya Nyaya Sanhita*, Duffy therefore serves as the clearest illustration of the doctrinal cost of leaving a rigid, judicially created temporal requirement uncorrected by legislation for decades.

The doctrinal cost that Duffy imposed was ultimately diagnosed, and not merely criticised, by the Law Commission of England and Wales, whose 2004 report on partial defences to murder concluded that the requirement of a sudden and temporary loss of self-control bore no relationship to the way in which victims of prolonged abuse actually respond to violence, and recommended that the law recognise a cumulative, slow-burn reaction alongside the traditional sudden loss of control.²⁹ That recommendation was not immediately implemented; it took a further Law Commission report in 2006, followed by the Ministry of Justice's own consultation, before Parliament settled on the loss of control model eventually enacted in the Coroners and Justice Act 2009, illustrating that even a jurisdiction with an active law reform body and sustained feminist legal advocacy required more than a decade between the diagnosis of the doctrinal defect and its legislative correction. The lag between problem and remedy in a well-resourced common law system with an institutionalised law reform process such as the Law Commission is itself an argument against India relying on ad hoc judicial correction, which lacks even that institutional pathway to eventual codification.³⁰

4.2 The Pressure Point: *R v Ahluwalia* [1992] 4 All ER 889

This is the key English case linking domestic abuse and homicide defenses, and it's central to any Battered Women Syndrome arguments. Lord Taylor CJ held in this case that word "sudden" did not mean "immediate" and that there was a delay between provocation and the fatal act didn't

²⁹ Law Commission, *Partial Defences to Murder* (Law Com No 290, 2004).

³⁰ Law Commission, *Murder, Manslaughter and Infanticide* (Law Com No 304, 2006).

automatically defeat the defense, since the 'loss of control' need not be instantaneous. However, he stressed there must still be a genuine loss of self-control, not a calculated act after the "attack or fear has subsided." Fresh medical evidence also raised diminished responsibility, and on that basis the Court of Appeal quashed the murder conviction and ordered a retrial. She ultimately pleaded guilty to manslaughter on diminished responsibility grounds not provocation. Ahluwalia didn't formally recognize battered women syndrome as a defense, but the case explains how the sudden loss of control requirement structurally disadvantaged battered women, depends upon the judge interpretation whose reactions to prolonged abuse often don't fit a male-paradigm 'confrontational' model of provocation. It's usually read alongside *R v Thornton [1996]* as the doctrinal pressure point that fed into the Law Commission's critique and eventually the Coroners and Justice Act 2009, which replaced provocation with 'loss of control' and explicitly allows for a considered desire for revenge exclusion while accommodating a fear-of-serious-violence trigger much closer to accounting for cumulative abuse dynamics.

Provocation was, in its essentials, accepted by the common law as a partial defense against murder for centuries. Currently the provocation fails as partial defense to murder, especially in case of battered women. An early concern, however, was that provocation could apply too broadly. Courts are very reluctant to disallow consideration by a jury of any question reserved for the jury. The insistence on a 'sudden and temporary' loss of self-control made provocation both over and under inclusive. To the latter, of particular concern were cases known as battered woman syndrome (BWS) cases. In Ahluwalia and Thornton, the defendants, at separate trials, had been charged with murder after killing their respective husbands while these men were asleep, killings done to stop ongoing violent abuse. The BWS cases also blurred the line between provocation and diminished responsibility by allowing a psychological syndrome to be attributed to the reasonable woman.³¹

4.3 The Statutory Solution: ss.54–55 CJA 2009 — Loss of Control

The Coroners and Justice Act 2009 abolished the common law defense of provocation and replaced it with 'loss of control,' it was in force from 4 October 2010. The reform was intended to correct the gender bias inherent in provocation, which had been criticized as disproportionately favoring

³¹ Sullivan, GR, Crom bag, H & Child, J 2021, 'Loss of control in the appeal courts', The Northern Ireland Legal Quarterly, vol. 72.

defendants who killed in sudden anger, typically men over those who killed out of cumulative fear, such as battered women. The CJA 2009 test has three parts, all of which must be met: lost self-control (didn't need to be sudden). There must be 'qualifying trigger' it is something the law recognizes as valid (fear of serious violence or being seriously wronged) under s.55(4), things said or done can be a qualifying trigger if they constituted circumstances of an extremely grave character and caused to have a justifiable sense of being seriously wronged.

Under s.54(4), the defense cannot be used if the act was done out of revenge. Courts look for evidence of planning or reflection as a sign of revenge rather than genuine loss of control; if there's evidence that an attack was pre-planned, the defense is unlikely to succeed. Sexual jealousy or infidelity does not count as a qualifying trigger under s.55(6)(c). This has been genuinely controversial in the case law: *R v Clinton* interpreted this exclusion narrowly, holding it applies only where sexual infidelity is the sole cause of the loss of control meaning if infidelity is mixed in with other triggers, it can still be considered as a defense.³²

5. Designing BNS's New Partial Defense: Architecture, Secondary Comparator, and the Civil-Law Gap

The Right of Private Defense is an important legal concept under the Bhartiya Nyaya Sanhita 2023 that allows individuals to protect their life, body, and property from unlawful harm. It recognizes that in certain situations, a person may need to take immediate action to defend themselves or others when there is no time to seek help from law enforcement authorities. Under BNS, this right is not treated as an offence but as a justifiable act, provided it is exercised within the limits prescribed by law. It empowers individuals to respond to threats such as assault, robbery, trespass, or other criminal acts. The law acknowledges that self-defense is a natural and necessary right, especially in situations where delay could result in serious harm. The provisions defining the Right of Private Defense are primarily covered under Sections 34 to 44 of the BNS, 2023. These sections define the scope, limitations, and conditions under which this right can be exercised. The right extends not only to the defense of one's own body but also to the protection of others and property,

³² Amanda Clough and Alan Reed, Vol 87, Issue 2, The Journal of Criminal Law

whether movable or immovable³³. The architecture of the partial defense under BNS porting Coroners and Justice Act 2009 into BNS's general exceptions framework without importing its known flaws. It replaces 'loss of control' with the cumulative-abuse-trigger, fear of serious violence arising from a "qualifying relationship of abuse". Also, the evidential burden on the accused raises it, persuasive burden on the prosecution to disprove beyond the reasonable doubt.

UK (CJA 2009) and US (judicial expansion) sit at opposite poles: legislated codification vs. common-law doctrinal drift. A secondary comparator is useful to test whether the codification model travels to a jurisdiction structurally closer to India's common-law procedure, jury or judge-alone variation, colonial-derived evidence code.

This is the disconnect between the India's civil protective architecture, the Protection of Women from Domestic Violence Act, 2005 (civil remedies protection orders, residence orders). The absence of any formal mechanism for BWS expert evidence or a documented abuse history to carry over from civil DV proceedings into a subsequent criminal trial. The 'gap' argument would be unlike the UK, where safeguarding civil family law and criminal defense doctrine have had decades of cross-pollination (family court risk assessments feeding into criminal proceedings), India's civil, Domestic Violence framework and criminal law exist in largely separate silos so even a well-drafted BNS defense risks being under-evidenced in practice unless the civil-law documentation gap is also addressed.

5.1 Core Design Elements of the Proposed BNS Provision

The BNS has introduced significant changes to the criminal justice system, including new provisions and amendments to existing laws. The BNS consists of 20 chapters, including offenses against women and children. The law has streamlined the criminal justice system by consolidating offenses and reducing the number of sections from 511 to 358. Some of the most important and noteworthy changes as well as infractions are made such as changes have been made in children's trafficking laws by increasing the penalties. Section 95 of Bhartiya Nyaya Sanhita states the punishment for hiring, employing, or engaging a child to commit an offence. Section 113 of BNS

³³ 'Right of Private defense' under Bhartiya Nyaya Sanhita 2023, Rabi Kr.

provides for punishment for terrorist acts. It defines terrorist acts as activities intended to disrupt public order or create fear among people. The concept of irrevocable consent upon marriage has been a cornerstone of the marital rape exception, rooted in Matthew Hale's works. This ideology was codified in English common law and incorporated into the Indian Penal Code (IPC). However, it remains in place despite being abolished in the UK in 1991. The Justice Verma Committee recommended repealing this provision in 2013, but it was not implemented³⁴.

The marital rape exception has since moved from legislative inertia to active constitutional litigation. A three-judge Bench of the Supreme Court, led by then Chief Justice D Y Chandrachud, began hearing a batch of petitions challenging the exception under both Section 375 of the Indian Penal Code and its successor, Exception 2 to Section 63 of the Bharatiya Nyaya Sanhita, in October 2024, with petitioners arguing that the exception violates Articles 14, 15, 19 and 21 of the Constitution by denying married women the same protection against non-consensual sexual acts available to every other woman.³⁵ The Union government filed an affidavit in October 2024 opposing removal of the exception, and the hearings were deferred beyond the retirement of Chief Justice Chandrachud without a final ruling, leaving the exception, and by extension the BNS provision this paper's proposed defence would sit alongside, in the same unresolved posture the Justice Verma Committee criticised more than a decade earlier. The episode is instructive for the present argument: it shows that even a reform commanding wide expert and civil society support can remain suspended for years absent a final legislative or constitutional determination, reinforcing the case for building the proposed battered woman defence directly into the BNS rather than leaving it to accrete through litigation.³⁶

In the case of Battered women syndrome, the problem with the current law (BNS section 34/37-38 or IPC section 100 private defense) is that it demands an imminent threat the danger has to be happening right now or about to happen. But battered women often kill while the abuser sleeps, or after years of escalating and continuous violence, because they've learned (from repeated

³⁴Prof. Dr. Yaswant Naik 'The Bharatiya Nyaya Sanhita (BNS): A Critical Examination of India's New Penal Code'. Legal Research Paper Series 2024-26 ISSN 2943-4068

³⁵ R Sai Spandana, 'Challenges to the Marital Rape Exception, Day 1: The Law is Patriarchal and Violates the Fundamental Rights of Married Women, Argue Petitioners' (Supreme Court Observer, 17 October 2024).

³⁶ R Sai Spandana, 'Challenges to the Marital Rape Exception, Day 2: CJI Chandrachud-led Bench Defers Hearings' (Supreme Court Observer, 23 October 2024).

experience) that walking away doesn't stop the cycle. Courts then reject self-defense because there was no 'imminent' danger at that exact moment, even though the woman was still acting out of genuine fear for her life. The proposed partial defense tries to fix this by shifting the test away from imminence. Three design pieces typically make this work are: Loss of control element, when the person's action is not sudden or immediate, but they snap under the weight of accumulated fear or trauma. Trigger element, the fear of serious violence or sense of being seriously wronged, built up over a pattern of abuse. And the exclusion clause which is a safeguard so the defense can't misuse the safeguards.

5.2 Queensland's s.304B as Secondary Comparator and a Live Caution

Queensland was the last state in Australia to update its criminal defenses to reflect what victims of domestic abuse really go through when they try to claim self-defense. Section 304B was introduced to give these victims who kill their abusers out of genuine fear for their lives which was partial defense in situations that would otherwise be treated as murder. What makes these cases distinctive is that there's often no immediate or sudden attack triggering the killing; the danger the person feared wasn't happening in that exact moment. Under this provision, someone in that position would be convicted of manslaughter rather than murder, giving judges room to exercise discretion in sentencing instead of being locked into a mandatory life term.

This paper takes the position that the provision doesn't actually work the way it was intended to and may even leave abuse victims worse off, strategically, then if the law had never been changed at all. Drawing on the theoretical distinction between justification and excuse in criminal responsibility, along with broader moral reasoning, the paper argues that victims of sustained, serious abuse who kill their abuser deserve a full acquittal and not just a reduced charge even when there was no immediate triggering assault and even when the threat they faced wasn't imminent in the legal sense because the reaction of victims of domestic abuse or battered women syndrome is a result of continuous psychological trauma³⁷.

Section 304B was specifically created because ordinary self-defense kept failing battered women. Queensland's own law reform body had noted its 'extremely difficult, if not impossible, to apply

³⁷Flinders Law Journal, 13(2), p. 125-176, Flinders University, School of Law

the defense of self-defense to a woman who kills her sleeping husband' because self-defense demands the threat be immediate, and a sleeping abuser isn't an immediate threat, no matter how much fear or trauma years of abuse have built up. Section 304B creates a partial defense for victims of serious domestic violence who intentionally kill their violent abusers, believing on reasonable grounds that it was necessary for their own self-preservation. If it succeeds, the accused is convicted of manslaughter instead of murder, even though the act would otherwise legally count as murder. So, it doesn't excuse the killing entirely, it downgrades it, recognizing that a woman acting out of deeply conditioned fear, therefore it also acts as a secondary comparator and live caution for a battered woman.

This scepticism is borne out by Queensland's own review of the provision. The state's Women's Safety and Justice Taskforce, established in 2021 to examine the criminal justice system's treatment of coercive control, concluded that section 304B had been underused and had not provided an effective remedy for victim-survivors of domestic violence who resort to lethal violent resistance, noting that the defence had been successfully relied upon at trial only once since its introduction in 2010.³⁸ The Queensland Law Reform Commission's subsequent review, commissioned on the Taskforce's recommendation, has proposed replacing section 304B with a broader partial defence that removes the requirement of a 'triggering assault' altogether and asks instead whether the accused's response was a reasonable one given the abusive relationship as the accused believed it to be, rather than requiring proof that the killing was strictly necessary for self-preservation. Queensland's experience therefore doubles as a caution against complacency once a partial defence exists on the statute book: a provision drafted narrowly enough to satisfy a legislature wary of appearing to license vigilante justice risks becoming, in practice, no more accessible to the women it was designed for than the common law rules it replaced.³⁹

5.3 The Civil-Law Shadow: PWDVA 2005 and the Missing Criminal Counterpart

³⁸ Queensland Law Reform Commission, Review of Particular Criminal Defences: Information Sheet on Killing for Preservation in an Abusive Domestic Relationship (November 2023).

³⁹ Queensland Law Reform Commission, Equality and Integrity: Reforming Criminal Defences in Queensland (Consultation Paper, February 2025).

The protection of women from Domestic Violence Act, 2005 is a civil law. It does not punish the abuser with the jail as its main remedy, a women get the protection orders, monetary relief or maintenance, compensation orders under civil law for pattern of psychological, economic and physical abuse, but if a woman reacts to that same sustained abuse by using force against her abuser not necessarily immediate or sudden force the criminal law has no matching framework that treats her history of victimization as legally relevant to her culpability. The criminal law never created an offence that mirrors Protection of Women from Domestic Violence Act's broad definition of domestic violence. Section 498A IPC corresponding Section 85, 86 of Bhartiya Nyaya Sanhita states the cruelty of a husband and relatives and makes it a punishable offence. That's the gap between civil law and criminal law.

Although PWDVA reliefs are civil in nature, the process for actually getting them often borrows heavily from criminal procedure, magistrates hear these applications, and much of the CrPC / BNSS machinery gets used along the way. The Punjab & Haryana High Court captured this hybrid character well in *Roop Lal v Manpreet Kaur*⁴⁰ case describing the Act as essentially civil, but with a few penal provisions stitched in. Courts have also had to sort out how orders under the Act can be challenged. A Full Bench of the Madras High Court settled this in the *Arul Daniel v Suganya*⁴¹ case, holding that PWDVA orders should be contested through a civil revision petition under Article 227 of the Constitution not under Section 482 CrPC, which would treat them as criminal orders. This matter doctrinally reinforces that the Act's proceedings are civil at their core, even when a magistrate is running them. Separately, Section 26 lets a woman raise PWDVA reliefs within any other proceeding she's already involved in civil, family, or criminal court so she isn't forced to start a fresh case just to access protection. The one place the Act turns genuinely criminal is Section 31 of PWDV, if the respondent breaches a protection order or interim protection order, that breach itself becomes a punishable offence with imprisonment, fine, or both. Every other order under the Act is enforced through ordinary civil means, unless its breach happens to also violate Section 31.

⁴⁰ *Roop Lal v. Manpreet Kaur*, (Punjab & Haryana High Court, 2019)

⁴¹ *Arul Daniel v Suganya*, 2022 SCC OnLine Mad 5435 (Madras HC, Full Bench).

One important question the courts had to resolve was whether PWDVA could reach acts of violence that happened before the Act came into force in 2005. The Supreme Court answered yes in *V.D. Bhanot v Savita Bhanot*⁴², upholding the Delhi High Court's earlier reasoning. The Court held that as long as the domestic relationship continues and the effects of the earlier violence are still being felt, the Act's protections apply regardless of when the abuse actually occurred. This rested on a purposive reading: the harm and the relationship are ongoing, so the remedy should be too.

The civil-criminal disconnect described above is compounded by a reporting gap that limits how much the PWDVA framework can achieve even on its own civil terms. National Family Health Survey data have repeatedly shown that only a small fraction of women who report having experienced spousal violence ever seek any form of help, whether from police, health workers, or legal services, with the great majority citing shame, fear of the consequences for the family, or a belief that the violence was not serious enough to report.⁴³ Because the PWDVA depends on a woman coming forward, whether to a Protection Officer, a service provider, or directly to a Magistrate, this underreporting means that the documented abuse history the paper argues should carry over into criminal proceedings frequently does not exist in the first place, regardless of how well the civil and criminal statutes are eventually aligned. Any BNS partial defence built on the premise that a documented pattern of abuse will be available to substantiate a claim of cumulative fear must therefore reckon with the reality that, for most Indian survivors, no such documentary record is ever created, which strengthens rather than weakens the case for a defence that can be established through the accused's own testimony and corroborating circumstantial evidence rather than through institutional documentation alone.

⁴² *V.D. Bhanot v Savita Bhanot*, (2012) 3 SCC 183.

⁴³ International Institute for Population Sciences and ICF, National Family Health Survey (NFHS-5) 2019–21: India Report (IIPS 2021).