

considering the facts of the individual case against the background of factors held to be relevant in earlier cases.

The exact limits of the "right of protection" given to children are impossible to define. There is no hard and fast rule for determining what factors will ultimately assure the welfare of the child. Each case must be considered in the light of all the facts and circumstances obtaining. Courts should fashion all orders depending on the presence or absence of a rather wide variety of factors, and around the so-called best interest of the child. Generally, the child must at least be provided with his "minimum needs" – food, clothing, shelter, education, freedom from physical abuse – and to a certain extent, the child's emotional and psychological needs are also beginning to be recognized as basic.

As Gabriela Mistral, Nobel prize winning poet, said:

We are guilty of many errors and many faults;  
But our worst crime is abandoning the children;  
neglecting the fountain of life;

Many of the things we need can wait;  
the child cannot.

Right now is the time his bones are being formed,  
his blood is being made and  
his senses being developed.

To him we cannot answer 'Tomorrow'  
his name is 'Today!'

## SELF-DEFENSE FOR BATTERED WOMEN: FOCUS ON THE ADMISSIBILITY OF THE BATTERED WOMAN SYNDROME IN PHILIPPINE LAW AND JURISPRUDENCE

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*Equality before the law is a constitutional mandate and a basic principle of democracy but this principle remains largely unrealized in the Philippine setting. Nowhere is this inequity more dramatically evident than in the social ill of domestic violence so prevalent in this country.*

*The husbands cannot take all the blame in this regard because the Filipino family itself is a male-dominated and patriarchal structure that perpetuates itself through the succeeding generations of men and women, victims both of this anachronism in the face of advances in legal thought and the law. Worse still, the violence in the home is certain to leave emotional scars in the children who will, in turn, translate these into abusive relationships of their own.*

*Society also condones, if not encourages, domestic violence. Prosecutors and the police give wife-beating cases short shrift, legislators are insufficient or unable to provide them ample protection at law, and the Courts are excessively austere and entirely too conservative when extending the self-defense doctrine to these women. All these in spite of much publicized legal and government policies of promoting a level playing field and of empowering the dispossessed.*

*To help address the existing problem of domestic violence in the country, this thesis proposes a revision of the Supreme Court's interpretation of the self-defense doctrine to accommodate the circumstances of battered women. It suggests the admission of expert testimony on the "battered woman syndrome" in order to support their plea of self-defense. Justice will be fully served only if these victims are absolved on grounds of justification and not on mere exemption or mitigation.*

*The thesis also evaluates pending legislation, reveals their inadequacies, and suggests more effective legal solutions to the problem confronting battered women. Finally, the author emphasizes that change must come soon and within the lifetime of these women who are trapped in their private sufferings. Each moment wasted in senseless rhetoric and debate could be another life lost to torment and despair.*

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## INTRODUCTION

### A. Proposition

Self-defense is a viable defense for battered women who injure or kill their batterers.

### B. Problem and Objective

Existing data on domestic violence, specifically wife battering, are barely sufficient. Incidents of spouse beating were not documented until the late 1980s when feminist groups in the country started to study and monitor the problem and brought it to the public's attention. At present, the information on the subject still remains limited and unconsolidated. However, the data that do exist prove rather than negate the prevalence of the problem. As discussed in the following chapter, current reports on wife battering are alarming both in severity and extent. Moreover, no segment of society is immune from this violence. Studies conclusively show that the problem cuts across all socio-economic classes as well as national borders.

Despite its prevalence and seriousness, the majority remains indifferent to domestic violence. Such social apathy is responsible for the inadequate institutional support given to battered women. The police generally dismiss reports of battering as domestic matters and document the cases improperly. Community and family members trivialize the issue as an altercation between husband and wife and discourage the wife from seeking outside help. Prosecutors also discourage victims from filing the criminal complaints against the batterer to avoid social embarrassment. Additionally, as illustrated in one case, the Court fails to recognize the significance of the charge and metes out a lower penalty for the accused.

Furthermore, because of this persistent societal apathy, victims of domestic violence are largely left on their own to cope with the problem. And for those beaten wives who, in desperation, injure or kill their batterers, the legal defenses available to them are few and hardly equitable. This thesis, therefore, explores the viability of adopting self-defense as a defense for battered women who hit back.

### C. Scope and Limitations

Under the present criminal law system, battered women prosecuted for injuring or killing their batterers may avail of mitigating or exempting circumstances enumerated in the Revised Penal Code. Although this thesis does not eliminate the feasibility of these defenses, it argues that these defenses do not give full justice to battered women. In both mitigating and exempting circumstances, it is presumed that a crime has been committed. To the contrary, an abused woman's act of defending herself against her abuser cannot be considered a crime. Instead, it should be regarded as a justified act, not punishable under the law. In a larger context, battering is a complex phenomenon and battered women who injure or kill their batterers should not take sole blame for their acts. Society, with its structures that condone and even propagate domestic violence, cannot singularly point an accusing finger at the victims and exculpate itself from liability.

Including self-defense among the defense strategies available to battered women will substantially rectify this existing injustice in the legal system. On the premise that a battered woman acquires the "battered woman syndrome" after prolonged, repeated, and severe beatings, she can convincingly argue that she was defending herself when she injured or killed her batterer. The two components of the syndrome, i.e. the cycle theory of violence and the theory of learned helplessness, can justify her repulsive reaction.

Research, however, does not conclude that all battered women who injure or kill their batterers act in self-defense. Neither does it resolve that proof of battering is in itself sufficient to merit a self-defense claim. Whether a woman has been battered and whether she acted in self-defense as a result of the abuses are matters of evidence which still need to be proven in court.

The desired outcome of this study is not to seek special treatment for abused women nor gain more acquittals for them. It does not suggest that a woman has a right to kill because she is a battered woman. It only asserts that she is entitled to the same self-defense plea available to other defendants trapped in the same situation. Neither does this paper propose to establish a novel defense for abused women. Rather, it argues that the admission of evidence of battering, particularly of the battered woman syndrome, will support the critical elements within the present concept of self-defense. After a perusal of the Supreme Court's interpretation of said elements, this thesis

observes that the Court does not have to radically alter the standards of a self-defense plea to apply it to the claim of abused women. The Court only has to extend interpretation of the elements to include the women's perspective.

Likewise, developing a special criminal defense may not be necessary and may in fact adversely affect the claims of some battered women. Proposals to create a different standard, such as a "reasonable battered woman standard", will eventually result in another stereotype that may further restrict rather than extend the defenses available to battered women.

This thesis is limited to a particular area of legal reform. It only surveys the existing legal defenses available to abused women and explores the possibility of including self-defense among these defenses. This focus, however, should not be taken to mean that the writer excludes the necessity of other legal reforms, such as the imposition of heavier legal penalties for batterers.

Lastly, an inherent limitation of this research is the scarcity of foreign materials as well as local studies on the subject. Only two of the foreign articles used in this paper can be found in local libraries, as the rest were procured directly from the U.S.. Additionally, aside from the fact that data on battered women remain unconsolidated, no formal study on this topic has been conducted in the country. These constraints on primary sources and references account for the reliance of this study on secondary sources.

#### D. Significance of the Study

This proposal has a definite feminist bias. Such slant, however, is not intended to discriminate against men. It simply reflects the statistical reality of domestic violence. Although husbands also get battered, there are far more female than male victims of domestic violence. Compared to battered husbands, battered wives are greatly disadvantaged because society upholds a system of male dominance and its patriarchal structures promote this system. In fact, wife beating is a manifestation of this societal belief in the superiority of men. Male dominance is one of the primary reasons why women are battered and why more women are battered compared to men.

Male superiority not only invades the family sphere but also permeates the legal system. The laws, particularly the very provision

of self-defense, were formulated and interpreted from with a male perspective. This paper attempts to contribute to the eradication of this sexual disparity before the law. Such effort, however, does not intend to completely destroy the existing concept of self-defense. Subverting the present law and jurisprudence on self-defense would only create chaos in the legal system. This thesis, therefore, only pushes for legal reform by calling for a wider court interpretation of the self-defense elements, one which covers the predicament of battered women. However, this proposal for reform through judicial reinterpretation should not impress a reluctance to deconstruct the legal system which supports gender bias. Since Supreme Court doctrines also have the force of law, the proposal is in effect asking for an amendment of the law to ensure more valid acquittals for battered women and ultimately advance the feminist cause.

#### E. Definition of Terms

**BATTERED WOMAN SYNDROME** – "a post-traumatic stress disorder that develops after the experiences of a distressing event not within the range of common experiences."<sup>1</sup> It is a cluster of psychological characteristics acquired by women battered over a prolonged period.

The syndrome has two component theories: the cycle theory of violence and the theory of learned helplessness. According to Dr. Leonore Walker, a US-based psychologist who conducted extensive research on battered women, the victim must have gone through the cycle of violence twice before she can be adjudged to have acquired the syndrome.<sup>2</sup>

**CYCLE THEORY OF VIOLENCE** – Walker's theory which posits that battering relationships occur in a cycle, composed of three phases: first, the tension – building period where minor injuries are inflicted on the woman, this period may last for as long as 10 years; second, the acute battering period where the abuses become more frequent and severe, this lasts for a period of two to twenty-four hours; and third, the loving-contrition period during which the batterer shows remorse and showers the woman with love and affection.<sup>3</sup>

<sup>1</sup> JOAN M. SCHROEDER, *Using Battered Women Syndrome Evidence in the Prosecution of the Batterer*, 76 IOWA L. REV. 566, (March 1991), citing AMERICAN PSYCHIATRIC ASSOCIATION DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL HEALTH DISORDERS III, R 247 (1987).

<sup>2</sup> See generally LEONORE E. WALKER, *THE BATTERED WOMAN* (1979); *THE BATTERED WOMAN SYNDROME* (1984).

<sup>3</sup> L. E. WALKER, *THE BATTERED WOMAN SYNDROME* 35, cf. 18-22 (1884).

THEORY OF LEARNED HELPLESSNESS – first described by psychologist Martin Seligman, Walker adopted this theory to explain the “apparent emotional, cognitive and behavioral deficits observed in the battered woman which negatively influence her from leaving a relationship after the battering occurs.” It is a psychological condition which causes the woman to lose positive control over her life and improve or alter her situation.<sup>4</sup>

NON-CONFRONTATIONAL SITUATION – as opposed to a confrontational situation where the defendant is under actual attack by her aggressor, a non-confrontational situation covers those instances when the battered woman is not under imminent or actual attack by the batterer, i.e., a temporary respite in the abuses or when the batterer is attacked while asleep or resting.<sup>5</sup>

PATRIARCHAL SOCIETY – a social organization marked by the supremacy of men, a concentration of power and authority in their gender thereby causing the insubordination or discrimination against the women.

SEX ROLE STEREOTYPING – a process whereby members of a group or society are conditioned to ascribe oversimplified characteristics to distinguish males from females and vice-versa; these predetermined characteristics eventually define the relationships between the sexes, prescribe the expected behavior of men and women, and indicate the positions allotted to men and women in the social hierarchy.<sup>6</sup>

WIFE BATTERING – also referred to in this paper as “domestic violence”, “wife abuse”, “woman battering” and other similar terms; this pertains to repeated or sustained physical or psychological abuse committed against the woman by her male partner. The physical abuse may be manifested by acts such as pushing, pinching, spitting, kicking, hitting, punching, choking, burning, clubbing, stabbing, throwing objects, pouring water or acid, setting on fire, sexual coercion, and other related physical or sexual violations. On the other hand, psychological abuse may consist of repeated verbal abuse, harassment, confinement, and deprivation of physical, financial, and personal resources.

<sup>4</sup> *Id.* at 2, cf. 86-94.

<sup>5</sup> Kit Kinsports, *Defending Battered Women's Self Defense Claims*, OREGON L. REV. Spring 1989, at 382.

<sup>6</sup> Elizabeth U. Eviola, *Sex as a Differentiating Variable in Work and Power Relations*, THE FILIPINO WOMAN IN FOCUS 126, 126-127.

Wife battering or domestic violence as used in this thesis is limited to those abuses committed against the woman in an intimate relationship, making the batterer either the husband or lover of the battered woman.

## I. WIFE BATTERING AS A WOMAN'S ISSUE

### A. Extent of Wife Battering in the Philippines

At present, no systematic effort has been exerted to determine the extent of wife beating in the Philippines. Data on the subject remain scarce and scattered. Statistics have not been consolidated at a national level and research has been limited to case studies of battering in selected communities, polls of police stations where partner assaults may have been reported, or surveys conducted by non-governmental organizations (NGO's) servicing battered women.

However, the scarcity of empirical data does not imply that domestic violence, particularly wife battering, does not occur. The Women's Crisis Center (WCC), the country's first crisis intervention institution for raped and battered women, reported in 1990 that it had handled 44 cases of battering<sup>7</sup> and over 100 cases of violence against women since it opened in February 1989;<sup>8</sup> in 1992, the Center claimed that it received “an average of 100 phone calls per week from raped or battered women.”<sup>9</sup> In a survey among neighborhoods in Metro Manila the previous year, WCC revealed that all fifteen of the women interviewed said “they had been emotionally and/or physically abused by their husbands at one time or another.”<sup>10</sup>

Abuse of women takes various forms. Physical aggression takes the form of beating, kicking, mauling, and hair pulling. “Hitting tops the list which includes hitting with bare fist, with rings causing the severest bruises, with belts and ropes, with house furniture and equipment, or with sharp objects such as a knife, razor blade, pieces of a broken glass.”<sup>11</sup> In one case, a husband tied his wife to a banana

<sup>7</sup> *When Men Beat Their Wives*, Philippine Daily Inquirer, March 4, 1991, at 10.

<sup>8</sup> *Wife Battering Not Just A Private Crime*, Manila Chronicle, November 7, 1990, at 5.

<sup>9</sup> Lynn Lee, *Kalakasan: Perspective on Domestic Violence*, at 2 (July 1992 unpublished document).

<sup>10</sup> *Enough is Enough: More Women Are Speaking Up About Violence in the Home*, AS:AWEEK, October 30, 1992, at 31.

<sup>11</sup> Josephine Pasricha, *Rich and Much Abused*, Manila Chronicle, July 4, 1989, at 8.

plant, slapped and boxed her and nailed her feet like the crucifixion of Jesus Christ.<sup>12</sup>

Other injuries are inflicted by means of lit cigarettes, electric appliances, acid, or pouring boiling water on the wife.<sup>13</sup> Petra arrived at the WCC "in a state of shock and covered with contusions, wounds and third degree burns. Her husband had beaten her severely with a stick and poured boiling water on her head".<sup>14</sup>

A review of police records from January to June, 1987 in four main police districts in Metro Manila revealed 43 cases of wife battering. Seventeen of these reported cases involved physical injuries, five of which needed hospital treatment; three cases involved parricide through arson (the husband tried to burn his wife).<sup>15</sup> In another case, the husband attempted to shoot his wife's genitalia, but she managed to evade the shot and was hit on her thigh instead. Despite her charge of attempted homicide, the judge dismissed the case as grave threats.<sup>16</sup>

Psychological abuse is also committed. Some husbands subject their wives to verbal tirades, threats, blackmail, or public humiliation. Some withhold money, attention, conversation, or even confine the woman in the house preventing her from going out or seeing her friends.<sup>17</sup>

Records show that most battered women report the incidents when the situation has become severe, generally when the batterers have made attempts on their lives. Among the reported cases, however, the alarming frequency of the battering is patent. In a study conducted by the GABRIELA National Office in four urban poor communities in Metro Manila, the 20 wives interviewed asserted that they had been assaulted by their husbands, four claiming that the physical abuse had taken place almost every day with the rest saying that they had been manhandled from once to thrice a week.<sup>18</sup> The WCC also affirmed

<sup>12</sup> Esther C. Vilorio, *Wife Battering: Selected Notes*, 4 REVIEW OF WOMEN'S STUDIES 91 (1991)

<sup>13</sup> Pasricha, *supra* note 11.

<sup>14</sup> *Enough is Enough: More Women are Speaking Up About Violence in the Home*, *supra* note 11, at 32.

<sup>15</sup> Ma. Christina O. Nagot, *Preliminary Investigation On Domestic Violence Against Women*, in ESSAYS ON WOMEN 116-118 (Sr. Mary John Mananzan, OSB, ed., 1991).

<sup>16</sup> *Wife Beating: Not Just a Private Crime*, Manila Chronicle, November 7, 1990, at 5.

<sup>17</sup> Pasricha, *supra* note 11.

<sup>18</sup> GABRIELA, *Wife Battering: An Invisible Philippine Reality*, WOMEN'S UPDATE, Aug.-Sept. 1987, at 1-3.

that their clients had been battered for periods ranging from 2 to 25 years.<sup>19</sup>

Aside from the frequency and severity of its occurrence, wife battering also cuts across classes. An informal study showed that out of 10 battered wives, only three came from the low-income bracket.<sup>20</sup> The WCC also reported that from 1989 to 1990, 18% of the battered women who contacted the Center were professionals, 15% were skilled workers and 25% were unemployed.<sup>21</sup> Janet, educated abroad and a former employee of the World Bank, endured 120 stitches on her chest when her husband repeatedly attacked her with a bladed weapon. She recounted:

He was a Dr. Jekyll and Mr. Hyde, sober first hours of the day, then he'd drink x x x. (It was when Pete was inebriated that he got violent) x x x. After that he'd be sorry but then I'd already be black and blue. He pampered me when he was sober, but when he was drunk any little thing could trigger it. Once every couple of months I'd really get it bad. Once he beat me with a fire hose x x x. (At another time), Pete took out the cleaver and ran after me x x x. His family wouldn't believe he needed psychiatric help x x x.<sup>22</sup>

Thus, although poor women may be beaten more regularly because of the frustration of poverty and other related factors, women from the middle and upper classes are not spared from the violence.

Therefore, despite the insufficient reports on incidents of wife battering, the seriousness of the problem cannot be ignored. The scant information that does exist indicates that women are indeed assaulted and in some instances murdered in their homes. The available data clearly reflect the grave abuses committed by husbands against their partners and hint at a prevalent practice of violence against women.

The actual extent of wife battering may never be known accurately. In fact, surveys disclose that only one of 300 cases of wife abuse is reported.<sup>23</sup> Most of the abuses are unreported for a variety of reasons.

<sup>19</sup> Lee, *supra* note 9, at 3.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> Ma. Ceres P. Doyo, *Battered Wives Shattered Lives*, SUNDAY INQUIRER, March 5, 1989, at 11-13.

<sup>23</sup> Pasricha, *supra* note 11.

Generally, the battered wives are either hesitant to seek help or reluctant to report the incidents. During the early stages of battering, the victim will try to stem the violence by pacifying the batterer or attempting to resolve the quarrel amicably. Some wives, believing that the beatings are part of the risk of getting married, will try to find numerous ways of pleasing their husbands. Rather than recognize the systemic nature of the problem and the urgency of seeking institutional assistance, the women look to themselves for solutions.<sup>24</sup> Sometimes the incessant abuses inflicted despite all their efforts to abate them lead them to believe that the violence is commonplace.

Shame and the danger of ruining the reputation of the family also hinder the victims from informing friends and authorities. The tradition of upholding the husband's and the family's honor is very strong among Filipino women. Therefore, the likelihood is greater that they will be persecuted socially for disclosing the violence than their husbands will be punished for perpetrating it. They censure themselves and suffer the pain rather than risk the integrity of their husbands or their families or shame themselves in public. As one victim said, "I wanted out, but so many things prevented me. I never told anyone about the beatings – not my parents, nor my best friends. I didn't want to air my dirty linen in public. *Nakakahiya* (It's shameful)".<sup>25</sup> Moreover, family and community members may discourage victims from reporting the incidents and instead advise them to resolve the matter with their partners. Worse, their stories are dismissed as incredulous because their husbands behave differently outside the house. They may even be blamed for provoking the abuses.<sup>26</sup>

Even if assaults are reported to the police, the latter inevitably trivialize the issue or underrepresent the problem. They dismiss the cases as private and assert that the most that they can do is "to take the date, time, and place of occurrence" or sometimes refer the matter to the barangay officials. Rather than be sympathetic to the victims, sometimes they even justify the violence of the husbands.<sup>27</sup> Moreover, the police records do not accurately represent the cases on wife assaults. The police either lump the offenses under "physical injuries"<sup>28</sup> or fail

<sup>24</sup> JOCELYN M. ROSARIO, RESEARCH FOR KALAKASAN, (unpublished document, 1993).

<sup>25</sup> Margie Logarta, *Battered Wives (And a Few Battered Husbands Too)*, Manila Chronicle, March 6, 1988, at 18.

<sup>26</sup> ROSARIO, *supra* note 24.

<sup>27</sup> Lee, *supra* note 9, at 5.

<sup>28</sup> *Id.* at 2.

to note the sex of the victim or the relationship of the victim and the assailant.<sup>29</sup>

The insufficient statistics on domestic violence may also be attributed to the limited methods employed to estimate the number of battered women. The figures are based mostly on reported cases from police, welfare and hospital records, and phone-in and field surveys. The field surveys are not extensive while the phone-ins are restricted to women who have access to telephones and who are willing to trust the stranger at the other end of the line with intimate information regarding their predicament. The data obtained from welfare institutions, hospitals and emergency shelters only reflect the number of battered women who sought the aid of these institutions. The figures do not include those who did not ask for help and those who can afford expensive but more private medical assistance.<sup>30</sup> As Raquel Edralin-Tiglaio, Executive Director of WCC, explained, the rich may have the resources to hide the violence<sup>31</sup> – partly accounting for the frequent overrepresentation of wife abuses among the underprivileged.

#### B. Wife Battering as a Manifestation of Oppression of Women

Confusing causes cited to justify the acts of the batterers complicate the problem of domestic violence. The husbands' impulse to hurt their partners has been linked with various psychological, socio-cultural, even economic factors.

Dr. Leonore Walker, a prominent psychologist who advanced the cycle of violence theory, maintains that batterers have a "violence-prone personality." According to her, violence does not come from the interaction of partners in the relationship nor from the provocation of the wives but from the batterers' learned behavioral responses. In her study of battered women, she gathered that compared to non-batterers, abusive husbands lived in a general atmosphere of violence in the family, had more arrests and convictions, and rendered longer periods in military service where violent behavior is tolerated if not accepted. She theorized that abusive husbands have a history of violence

<sup>29</sup> *Id.*

<sup>30</sup> UNITED NATIONS CENTER FOR SOCIAL DEVELOPMENT AND HUMANITARIAN AFFAIRS, STRATEGIES FOR CONFRONTING DOMESTIC VIOLENCE: A RESEARCH MANUAL 8 (1993).

<sup>31</sup> ROSARIO, *supra* note 24.

such as witnessing, receiving and/or committing hostile acts during their childhood, previous criminal records, prolonged service in the military, or previous expression of violence towards inanimate objects, animals, women, and other people.<sup>32</sup>

Conclusively, Dr. Walker's propositions negate the beliefs that male aggression is innate or that it is brought about by previous irritating conduct of wives, like nagging. As she stressed, violence is a learned behavior.<sup>33</sup> The batterers have acquired a wrathful character after birth but prior to the abusive relationship. The acquired violent personality, reinforced by the societal notion of male dominance and female subordination, may only be provoked but not caused by nagging or other imperfections of the wives.

Neither can the aggression be traced to lack of education of the batterers. Lack of education does not justify the husbands' harshness. Assuming that batterers who are less educated resort to violent acts to compete with the superior abilities of their partners, the abusive relationship is not created *per se* by the intellectual superiority of the wives over their husbands. What triggers the assaults is the sex role stereotype men are supposed to outmatch women, in all respects.<sup>34</sup> Thus, men whose egos are threatened when their wives excel may resort to violence to retain control over their wives and further propagate the socio-cultural stereotype of superiority.

For similar reasons, unemployment is likewise not a cause of battering. "If abuse is a result of stress due to frustration from unemployment or poverty, then women should commit them too, more so battered women who live more stressful lives."<sup>35</sup> But factual accounts reveal that it is the husbands who zero in on hurting their wives, seldom the reverse. This is not only because the wives are immediate targets but also because the socio-cultural conditioning of male dominance leads to a conception of women as less powerful and more vulnerable. Largely, this also explains why the husbands sometimes hit the children too.

Neither alcohol nor drugs is the root of abuse. Studies have maintained that drinking or taking prohibited drugs increase the

<sup>32</sup> *Supra* note 3.

<sup>33</sup> *Id.* at 10.

<sup>34</sup> *Id.* at 16.

<sup>35</sup> Lee, *supra* note 9, at 16; cf. WALKER, *supra* note 32, at 15.

predictability of the men's violent behavior or worsen their blows.<sup>36</sup> However, these do not explain why men abuse their partners.

Some batterers attribute the phenomenon to spousal infidelity. As one husband said, "I wouldn't go after her lover. I'd cut my wife's face for acting so cheap. Guys can play the field, get drunk, go out with 15 women. A woman does that and she's finished, especially if she's my wife."<sup>37</sup> Such a chauvinistic attitude is a manifestation of how society emboldens male promiscuity but expects women to remain faithful to their mates.

The reasons for battering are indeed varied. But inescapably, socio-cultural conditioning between the sexes or "sex role socialization" plays an indispensable role in inciting and generating violence.

Just as the batterers learn their violent behavior, they also learn the sex role stereotypes which prop up male dominance and reinforce their hostile acts. A majority of behavioral scientists maintain that gender-based norms are not primarily determined by biological traits but are derived from contact with society and the environs.<sup>38</sup> Children acquire gender bias as a result of sex role differentiation in child-rearing practices. Daughters are taught values which are different from those inculcated among sons. Their upbringing centers on their motherhood functions and generally they are taught to obey while boys learn to dominate. Continuous reinforcement of this sex discriminating attitude leads to sex roles highly resistant to change.

According to psychologists, sex roles, like social roles, have three aspects: they indicate the positions allotted to men and women in the social hierarchy; they prescribe the expected behavior of men and women; and they define the relationships between the roles.<sup>39</sup>

Therefore, as an outcome of gender differentiated learning, male and female sex roles develop with the corresponding attitudinal differences between the sexes. The women now possess a set of traits different from those of men and exhibit different attitudes from that of their counterparts.

<sup>36</sup> WALKER, *supra* note 3, at 12-13, 67-71.

<sup>37</sup> Melissa M. Reyes, *Battered Woman Syndrome*, MOD, June 5, 1992, at 9.

<sup>38</sup> E. U. Eviola, *supra* note 6, at 127.

<sup>39</sup> *Id.*

In the Philippines, as elsewhere, most sex role stereotypes, which resulted from socio-cultural conditioning, are highly prejudicial to women.

As mentioned, apart from the natural differences created by sex, social and cultural differences have been added. For her dissertation, Dr. Carmen Jimenez, psychologist, made a comprehensive compilation of male and female stereotypes of respondents from various sectors. She concluded that most of her respondents stated that the man is viewed as the provider in the family<sup>40</sup> and most of his desirable traits revolve around his respected role as the breadwinner.<sup>41</sup> He is perceived as strong, confident, independent, ambitious and aggressive; types of work associated with him are those which require use of physical strength.<sup>42</sup>

On the other hand, Jimenez narrated that the Filipino woman is typecast as affectionate, persevering, dependent, delicate, self-sacrificing, and generally weak and passive.<sup>43</sup> These traits, particularly those which enhance their value as homemaker and mother, are stressed as her most desirable characteristics. The researcher further noted that more desirable traits were attributed to the male, not the female, by both male and female respondents.<sup>44</sup>

Furthermore, Jimenez concluded that the woman has been criticized as being weak, physically and emotionally. Because of such weakness, the performance of household work, presumed to entail less physical strength, has been designated as her exclusive domain, mostly by male rather than female respondents. Because domestic chores are viewed as feminine tasks, men are discouraged from performing them.<sup>45</sup> As to gaining employment, work opportunities for her have also been limited to light work which do not require considerable physical exertion.<sup>46</sup> The study further affirmed that the woman's income is considered supplemental and she is expected to give priority to the family over a career.<sup>47</sup> These stereotypes, therefore, foster the erroneous

<sup>40</sup> *Id.* at 128.

<sup>41</sup> *Id.* at 145.

<sup>42</sup> *Id.* at 49.

<sup>43</sup> *Id.* at 49-50.

<sup>44</sup> *Id.* at 148.

<sup>45</sup> *Id.* at 32.

<sup>46</sup> *Id.* at 101-102.

<sup>47</sup> Luz Lopez-Rodriguez, *Patriarchy and the Woman's Subordination in the Philippines*, 1 REVIEW OF WOMEN'S STUDIES 22 (1990).

belief that the differences in the biological make up of sexes account for their differing roles and positions in society, otherwise known as "biological determinism."<sup>48</sup> More importantly, they emphasize the unquestionable acceptance of male dominance and female subordination.

The obstinate dominance of men over women is the cornerstone of a patriarchal society. Such society legitimizes and institutionalizes the sex role stereotypes which maintain the inferior position of women and, at the same time, uphold the violence committed against them.

The gender roles responsible for the low societal regard for women were introduced during the Spanish regime. The education of women at that time was limited to the fundamentals of reading, arithmetic, home crafts and Christian doctrine. The girls were taught to be obedient and subservient to male figures such as the priest, officials, husband, father or brothers. They were tutored to be demure in conduct, to value chastity, and to master household skills. Through the Catholic Church, the Spaniards fostered an ideology of female domesticity oppressive to women. The female sphere has been confined to the home and family and the social worth of women has been pegged on their role as mothers and housewives.<sup>49</sup>

Rather than liberate the Filipino women, the American colonization continued the patriarchal practices. The school system maintained the patterns of sexual division of labor and encouraged women to pursue careers like teaching and nursing, compatible with their "feminine" qualities. The expansion of commercial agriculture and export industry burdened the women not only as homemakers but also as co-workers of men in the production line of cheap goods for the US and other western markets.<sup>50</sup>

Today, the patriarchal influences of the colonizers have been ingrained in the consciousness of men and women and institutionalized as structures of society, creating an integrated system of male dominance.

<sup>48</sup> *Id.* at 130-131.

<sup>49</sup> Carolyn Israel-Sobritchea, *The Ideology of female Domesticity: Its Impact on the Status of Filipino Women*, in 1 REVIEW OF WOMEN'S STUDIES 28-29 (1990).

<sup>50</sup> *Id.*

Aside from its manifestations in labor and politics, male superiority is particularly evident in the family. The belief in the primacy of the female reproductive role over the other roles ascribed to women coerce them to give priority to family interest over their other concerns.<sup>51</sup> This belief negates the more practical proposition that, although childbearing will always fall on the females, the activities generally associated with it, such as housekeeping and child rearing, need not. Thus, surveys indicate that a majority of married Filipino women regard housekeeping as their main job and that housekeepers represent the largest single category of "working" women in Philippine labor statistics,<sup>52</sup> although more men, than women, argue that "a woman's place is in the home."<sup>53</sup>

In spite of their objections, society continues to expect women to forego their personal needs in favor of household needs. Their increased participation in the labor force did not effect a corresponding decrease in their household responsibilities. Instead, it created a "double burden"<sup>54</sup> of compelling the women to both maintain a job and manage the family.

Thus, it is obvious that the family significantly contributes to the perpetuation of patriarchy. It doubles the women's burden, encroaches on the fulfillment of their personal needs, and restricts their mobility. Aside from the family, education also promotes patriarchal attitudes. Female students are still trained in domestic sciences especially at the primary and secondary levels while negligible efforts have been exerted to teach household tasks to males.<sup>55</sup> The media also impedes the full liberation of Filipino women. Media treat them as sex objects, obviously inferior to men and subliminally impart the notion that the females' sole preoccupation is to attract males.<sup>56</sup> Significantly, the laws in the country codify these discriminating attitudes. In her survey of Philippine civil and criminal laws, Atty. Dawn Flores evaluated the legal provisions which work against the interests of women.<sup>57</sup>

<sup>51</sup> *Id.* at 30.

<sup>52</sup> Eviola, *supra* note 6, at 128.

<sup>53</sup> UPS-CE-NCRFW *Research on Value of Rural Women in Different Cultural Settings: Implications for Education National Policy*, SOCIAL ACTION 196 (1984).

<sup>54</sup> *Id.* at 35.

<sup>55</sup> E.V. Eviola, *supra* note 6, at 132.

<sup>56</sup> Lopez-Rodriguez, *supra* note 47, at 24.

<sup>57</sup> Dawn Aimee Flores, *Discrimination Against Women in Philippine Civil and Criminal Laws*, 1 ATENEO HUMAN RIGHTS L.J. 196-221 (1992).

Male dominance, therefore, is a *structural fact*, not just a myth or an exaggeration. Its frightening manifestation is the senseless battering of wives by their husbands.

### C. Psycho-Social Characteristics of Battered Women

Walker theorized that women repeatedly battered over a prolonged period develop a cluster of psychological characteristics she called the "battered woman syndrome." She stated that battering in relationships tend to occur in a cycle, composed of three phases: in the first phase, the "tension-building" stage, the batterer expresses hostility, but not in an extreme or explosive form. Minor physical and/or verbal abuse are committed by the husband and the wife attempts to pacify him to avoid further injury. During the second phase, the "acute battering incident," the tension escalates and she can no longer control her husband's temper and violent acts. She is subjected to severe verbal or physical aggression often resulting in injuries. When the battering momentarily stops, "loving-contrition," the third phase, sets in. The husband apologizes, shows kindness and remorse, and showers his wife with love and affection. He promises his wife, even himself, that he will never hurt her again. Over time, the frequency and severity of the abuses increase as the loving - contrite behavior decreases.<sup>58</sup>

Although battered women come from different classes and educational backgrounds, based on Walker's study, they have several common socio-psychological characteristics. They are more rigidly socialized into the female stereotypes and adhere to the traditional views on male roles. They are usually passive and generally desire to please. Due to the battering, they become anxious and agitated and feel "paralyzing terror" characterized by "chronic apprehension of imminent doom, of something terrible always to happen." Recent findings have rejected the perception that they are masochists.<sup>59</sup>

As a result of the cycle of violence, Walker further postulated that the battered women develop a psychological condition called "learned helplessness."<sup>60</sup> According to her, battered women eventually accept

<sup>58</sup> WALKER, *supra* note 3, at 95-97.

<sup>59</sup> *Id.* at 398-400.

<sup>60</sup> *Id.* at 86-94.

that they are powerless and no longer retain control over their lives. The tension-battering-contrition cycle aggravated by psychological, economic, and social variables reinforce their helplessness and prevent them from escaping the abusive relationship.

Assault victims who have acquired the battered woman syndrome, instead of escaping, try to cope through denial, silence, and withdrawal. Walker observed that because they are sometimes successful in pacifying their husbands and minimizing injuries, they imagine that they are still in control of the situation and can change the batterers.<sup>61</sup> These coping skills are developed in lieu of "escaping techniques," such as becoming angry, rather than depressed or self-blaming; being active rather than passive; being realistic that their batterers, not they, are in control of their lives; and recognizing that the situation will likely get worse rather than improve.<sup>62</sup>

In addition to their helplessness, abused women hesitate to leave the relationship because they fear their husbands. They are threatened that they will be hurt or killed and their children or relatives injured if they attempt to leave. "Even if the threats are empty, they appear real to the women who have witnessed the hostility of the batterers."<sup>63</sup>

The victim's traditional dependency on their husbands also hinders their escape. Some women still love their batterers and continue to believe that they will change as promised during each loving-contrition stage. Some even blame themselves for the beatings and rationalize that their husbands have problems so they must be more understanding. GABRIELA's study of battered women disclosed that when the respondents were asked how they feel about their husbands' violence, all except one said they felt "guilty" for having made their husbands angry. The single respondent who denied the guilt, however, qualified that because the man is her husband, she tries to understand and forgive him.<sup>64</sup> On the other hand, other victims are scared of being stigmatized as battered women and ostracized by society.

A number of abused wives are also financially dependent on their husbands. Since a woman's income is considered supplemental, most

<sup>61</sup> *Id.* at 79.

<sup>62</sup> *Id.* at 87.

<sup>63</sup> ROSARIO, *supra* note 24, at 3.

<sup>64</sup> GABRIELA, *supra* note 18.

women do not have the opportunity or the desire to pursue a career. With no sufficient income on their own, they cannot support themselves or their children so they cannot immediately separate from their husbands. Nagot's study disclosed that except for three who left home but returned for the children's sake, all the respondents claimed they opted to keep quiet and put up with the abuses. Nagot's research affirmed that most of the battered women she interviewed said they do not leave their husbands because they cannot support themselves or the children.<sup>65</sup>

Socially, the women are burdened by the duty to hold the family together. Thus, she might not want to terminate the marriage to spare the children from the consequences of a broken home. Sobritchea noted that women in the community are willing victims of violence for the sake of maintaining the family.<sup>66</sup> Moreover, popular wisdom holds that husbands have the prerogative to discipline their wives. Thus the men, and eventually the women, accept the necessity that wives must be reprimanded or beaten occasionally. In fact, Sobritchea's findings confirmed that more women are in favor of being beaten rather than beating their husbands.<sup>67</sup> Such belief makes it difficult for battered women to decide whether or not to leave the relationship.

When the abusive acts become life-threatening or when the children are also beaten, the victims may seek help, usually from the police. However, as explained earlier, the police refuse to intervene in domestic disputes and underestimate the seriousness of the plea for help. Similarly, prosecutors and the courts have discouraged battered women from pursuing criminal complaints against their partners to avoid social embarrassment. Like the police, they fail to recognize the significance of the charges. In a case previously mentioned, the judge merely convicted the husband of grave threats for attempting to shoot his wife's genitalia.<sup>68</sup>

As hostility escalates, psychological, social, and economic handicaps have kept the women trapped in violent relationships. Lack of institutional support, such as temporary shelters, or inadequacy of actual legal remedies paralyze them in a state of cumulative terror. They relinquish

<sup>65</sup> Nagot, *supra* note 15, at 122.

<sup>66</sup> Lee, *supra* note 9, at 11.

<sup>67</sup> Vilorio, *supra* note 12, at 98.

<sup>68</sup> *Supra* note 16.

control over their lives and stop searching for solutions to their problems. Eventually, even if options for escape exist, they may fail to see them.

#### *D. Reactions of the Battered Women to the Aggression*

Walker tabulated in her study that 8% of the battered women reported some kind of offensive action against the abusers after the first incident and 15% did so only after the third incident.<sup>69</sup> She noted that 26% said they did not show any anger, 73% remained passive or quiet, 52% shouted or cursed, and 35% directed their anger at objects.<sup>70</sup>

Generally, the life-threatening reactions of the women toward their batterers are minimal. Of Walker's respondents, none tried to drown or burn the aggressor; instead, their hostile acts were limited to pushing, shoving, clawing, scratching and verbal abuse.<sup>71</sup> Their actions were mostly defensive rather than offensive, aimed at thwarting some of the physical aggression directed against them. Theories that women are equally combatant – that both the men and the women commit equal number of violent acts – were disproved by subsequent findings.<sup>72</sup> In fact, like their batterers, the violent responses of the women are learned, not innate. Their violent reactions, to a large extent, are instigated by the hostilities committed against them.

As stated, the battering occurs in cycles and the frequency and severity of the attacks increase over time with declining contrition phases. Applying Patterson's theory of the "chaining and fogging effect," Walker concluded that during the acute battering incident stage, the battered women chain the successive brutal acts, creating a "fogging effect" by virtue of which the victims could no longer choose an effective response to stop the aggression. Control techniques, developed during the tension-building periods, cannot successfully abate the more dangerous abuses inflicted during the acute battering incident phase.<sup>73</sup> When the effectivity of their coping mechanisms decline and they feel terrified, overwhelmed, angry, trapped, and sense intense danger in the behavior of the batterers, the battered women could respond defensively by killing their partners.<sup>74</sup>

<sup>69</sup> WALKER, *supra* note 3, at 32.

<sup>70</sup> *Id.* at 29.

<sup>71</sup> *Id.* at 26-27.

<sup>72</sup> *Id.* at 30-31.

<sup>73</sup> *Id.* at 32.

<sup>74</sup> *Id.* at 41.

Based on Walker's research, most of the women who kill their batterers have little memory of any cognitive processes other than the overriding concern to survive the battering.<sup>75</sup> They perceive the threat of death as so imminent that they have to defend themselves against their abusers successfully; otherwise, the latter might kill them. Weighing their chances of success against their batterers' physical size, strength, weapons and combative skills, most of them strike during the "cooling down" periods in the violent cycle, anticipating that their batterers will repeat the hostilities shortly. Thus, the classic case of a woman killing her abusive partner while asleep.

Although the reasons for killing their spouses may vary, studies show that the battered wives kill their partners as a last resort. All the women interviewed by Walker in her study said they resorted to such violence as a desperate attempt to protect themselves from further physical and psychological aggression.<sup>76</sup> In fact, half of the respondents said that under no circumstances could they kill their husbands, while the other half said they could.<sup>77</sup> Moreover, Walker noted that, in each case, there were several instances when some intervention would have prevented the killing. However, because help failed to reach them, the women felt they were alone in protecting themselves from the brutal attacks.<sup>78</sup>

Similar reasons given for the insufficiency of information on battered women explain the unavailability of data on Filipino battered wives who injure or kill their abusers. Since the women will most probably admit their guilt, no appeal may have been filed if they were convicted of parricide in the lower courts. This makes research more difficult because no record of the cases will appear in the Supreme Court, entailing the more tedious task of going through the records of Regional Trial Courts or correctional institutions. Moreover, although a few cases where women killed their batterers were reported, efforts to locate the women proved futile.

However, the lack of statistics on the subject does not imply that Filipino women do not or will not kill their spouses in a desperate attempt to defend themselves. Even assuming that they are more subservient and less aggressive or violent, there is no guarantee

<sup>75</sup> *Id.* at 27.

<sup>76</sup> *Id.* at 40.

<sup>77</sup> *Id.* at 41.

<sup>78</sup> *Id.* at 39.

that the increasingly violent abuses committed against them will not provoke the commission of parricide in self-defense. Like their foreign counterparts, they are subjected to incessant hostilities. They are trapped in the same patriarchal society which structurally reinforces male violence and, at the same time, cancels any viable alternatives by means of which they can escape the abusive relationship. In fact, such alarming nature of domestic violence has now become a national concern. Senator Ernesto Maceda recently filed Senate Bill 541 in an attempt to provide a legal defense for women who kill their batterers.

## II. REVIEW OF DEFENSES FOR BATTERED WOMEN UNDER THE REVISED PENAL CODE

### A. Crimes Committed Under the Revised Penal Code

As stressed in the previous chapter, battered women injure or kill their batterers only as a last resort, mostly to defend themselves against their abusers. However, in these rare instances that they strike back, they may be liable criminally under the Revised Penal Code.

For injuries not resulting in death, they may be charged with physical injuries under Title VIII, Chapter 2 of the Code. Physical injuries include mutilation under Article 262, serious physical injuries under Articles 263 and 264, and less serious and slight physical injuries under Articles 265 and 266, respectively. Since battered women also resort to verbal abuse aside from minor physical hostilities they inflict on their aggressors, they may be charged with slander under Article 358 of the Code as well.

If, in a desperate effort to save themselves, the battered women kill their partners, they may be charged with parricide under Article 246 of the Revised Penal Code. The latter provides that:

Any person who shall kill his father, mother or child, whether legitimate or illegitimate or any of his ascendants, or descendants, or his spouse, shall be guilty of parricide and shall be punished by the penalty of *reclusion perpetua* to death.

### B. Defenses Available for Battered Women Under the Revised Penal Code

To counter the criminal charges filed against them, the battered women can successfully invoke several mitigating circumstances.

They can plead incomplete self-defense under Article 13, paragraph 1 of the Code. Incomplete self-defense is considered if the element of unlawful aggression is present but either or both of the two other elements of self-defense are absent, namely, reasonable necessity of the means employed to prevent or repel the aggression and lack of sufficient provocation on the part of the person defending himself/herself. However, as will be argued later, battered women are entitled to an acquittal in most cases. Their peculiar circumstances lead to no other conclusion but that they employed reasonable means to repel the attack of their aggressors and that they did not provoke the aggression.

They can also claim that they had no intention to commit so grave a wrong under paragraph 3 of the same Article, if they killed their batterers while trying to fend off the abuses. Passion and obfuscation under paragraph 6 may mitigate the offense, and proof that they have developed the battered woman syndrome may reduce the penalty under paragraph 9. Under said paragraph, the battered woman syndrome may be considered as an "illness which would diminish the exercise of the will power of the offender without however depriving him (or her) of the consciousness of his (her) acts." If the wives injure their partners in vindication of the abuses committed against them or their children, paragraph 5, immediate vindication of a grave offense, may be considered in their favor. Other circumstances analogous to those mentioned are also mitigating under Article 13, paragraph 10 of the Code.

However, proving one or several of the mitigating circumstances under Article 13 will not acquit the battered women of any of the crimes charged against them. The court will, at most, impose lesser penalties and will not exempt the offenders from punishment. Thus, although the mitigating circumstances are feasible defenses, only exempting or justifying circumstances will free them from criminal liability.

Under exempting circumstances, the offender is not punished for the crimes he committed because of absence of intelligence, freedom and/or intent, or negligence.

The exempting circumstances of compulsion of irresistible force or impulse of uncontrollable fear of an equal or greater injury under paragraphs 5 and 6 of Article 12 cannot apply to crimes committed by battered women against their batterers. Jurisprudence has interpreted the provisions to cover crimes other than the killing or injuring

of an aggressor in order to defend one's life or limb.<sup>79</sup> If the wrong was committed in order to protect oneself, as in the case of an abused woman, the offense is not exempted but justified under the law.

There is skepticism that insanity, another exempting circumstance under paragraph 1 of the same Article, can be invoked successfully in favor of battered women. The Supreme Court has cautioned that "courts should be careful to distinguish insanity in law from passion or eccentricity, mental weakness or mere depression resulting from physical ailment."<sup>80</sup> Such directive reduces the possibility that a woman suffering from the battered woman syndrome may be exempt from criminal liability. Principally, the syndrome, as previously defined, is not a form of mental illness or psychosis but a "post-traumatic stress disorder that develops after experiencing a distressing event that is not within the range of common experiences."<sup>81</sup> It is a cluster of symptoms that describe the emotions, reactions and behavior of any woman who has experienced spousal abuse over an extended period of time. As US jurisprudence states, "it is a mixture of both psychological and physiological symptoms but is not a mental disease in the context of insanity."

In addition, insanity under the law is defined as "any degree of mental unsoundness resulting in inability to distinguish between right or wrong, to control one's will or foresee the consequences of an act x x x."<sup>82</sup> It includes mental aberrations such as dementia praecox,<sup>83</sup> somnambulism<sup>84</sup> or malignant malaria<sup>85</sup> which completely deprive a person of intelligence. In contrast, a battered woman who has developed the syndrome is conscious of the wrongfulness of her act but can demonstrate its reasonableness. Her perception is not distorted by any impaired mental state because she can distinctly discern that under her circumstance of continued battering, the only option is to inflict injury upon or kill her batterer to protect herself.

<sup>79</sup> See *US v. Exaltacion*, 3 Phil. 339; *People v. Quilog*, 88 Phil. 53; *People v. Parulan*, 88 Phil. 623; *People v. Rogado*, et. al., 106 Phil. 816; *People v. Bagalawis*, 78 Phil. 184; *People v. Moreno*, 77 Phil. 549; *People v. Palencia*, 71 Phil. 679; *US v. Elicanal*, 35 Phil. 201; *US v. Caballeros*, et. al. 4 Phil. 350.

<sup>80</sup> *People v. Bonoan*, 64 Phil. 94.

<sup>81</sup> SCHROEDER, *supra* note 1.

<sup>82</sup> WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1168 (1986).

<sup>83</sup> *Bonoan*, 64 Phil. 94.

<sup>84</sup> See *People v. Gimena*, 25 Phil. 604.

<sup>85</sup> See *People v. Lacerna*, 69 Phil. 350.

Moreover, it is difficult to prove insanity. The defense is viewed generally with suspicion and the burden of proving it rests on the defendant.<sup>86</sup> Unless she has been adjudged insane, the presumption is always in favor of sanity;<sup>87</sup> and even if she is insane, the presumption remains that the offense was committed during a lucid interval;<sup>88</sup> or if her insanity is intermittent or occasional, there is no presumption of its continuance thus, she has to prove that she was insane at the time of the commission of the crime.<sup>89</sup>

The law also provides that a defendant who successfully proves self-defense is entitled to acquittal. In contrast, the provision on insanity states that the insane defendant must be confined in an asylum or hospital and cannot be released without prior permission from the court.<sup>90</sup>

The more significant argument against invoking any of the exempting circumstances under Article 12 of the Code is such an invocation's implications as regards the culpability of battered women. As stressed, battered women generally do not strike back except to defend themselves from their batterers. Therefore, to exempt them from punishment but consider their acts felonious is to subvert the legal principle that self-defense is not a crime but a justified and lawful act.

### C. Evaluation of the Self-Defense Doctrine

Aside from the inadequacy of the existing defenses under the Revised Penal Code, some battered women may refuse to invoke any of the mitigating or exempting circumstances as a defense. They may insist that the offenses charged against them resulted from their attempt to protect themselves from their batterers, thus entitling them to a self-defense plea. In order to carefully consider the possibility of adopting such justifying circumstance as a defense for battered women, this section reviews the Supreme Court decisions on self-defense from 1948 to 1992.

<sup>86</sup> See *US v. Martinez*, 34 Phil. 305; *US v. Hontiveros*, 18 Phil. 62; *People v. Bascos*, 44 Phil. 204; *People v. Fausto*, 3 SCRA 863.

<sup>87</sup> *Fausto*, 3 SCRA 863.

<sup>88</sup> *Bonoan*, 64 Phil. 94.

<sup>89</sup> *Id.*

<sup>90</sup> Revised Penal Code, Act No. 3815, art. 12 (1932) [hereinafter Revised Penal Code].

Self-defense is classified as a justifying circumstance under Article 11, paragraph 1 of the Revised Civil Code. The provision states:

Justifying circumstances. The following do not incur any criminal liability.

1. Any one who acts in defense of his person or rights, provided that the following circumstances concur:

First. Unlawful aggression; Second. Reasonable necessity of the means employed; Third. Lack of sufficient provocation on the part of the person defending herself.

Since it is a justifying circumstance, any offender who successfully proves self-defense does not incur any criminal or civil liability. No crime is committed because under the Positivist theory, such action is an exercise of a right to defend oneself against an unwarranted aggression; under the Classical theory, on the other hand, the fact that it is impossible for the State to come to the aid of all its citizens justifies an innocent individual in resisting an unlawful aggression and his/her act will not be considered a legal infraction.<sup>91</sup>

Aside from its application as a defense of honor or property, paragraph 1 of Article 11 may also apply as a defense against the crimes against persons enumerated under Book II, Title 8 of the Revised Penal Code. In the cases decided by the Supreme Court, it was sustained against charges of parricide,<sup>92</sup> homicide,<sup>93</sup> murder<sup>94</sup> and physical injuries.<sup>95</sup> Specifically, therefore, battered women may invoke this defense if charged with either parricide or physical injuries.

Generally, the Supreme Court upheld the self-defense claim when the defendant was under actual or imminent attack because the aggressor had already drawn a weapon or dealt the initial blow. In non-confrontational situations where there was no actual or imminent attack on the defendant, particularly when the battered woman killed her husband while asleep, the Court negated the plea.<sup>96</sup> Moreover, in contrast with

<sup>91</sup> *People v. Castanares*, 92 SCRA 571.

<sup>92</sup> *People v. Boholst-Caballero*, 61 SCRA 181.

<sup>93</sup> *Castanares v. CA*, 92 SCRA 571; *People v. Encomienda*, 46 SCRA 523; *People v. Lara*, 48 Phil. 153; *People v. Sumicad*, 56 Phil. 643.

<sup>94</sup> *People v. Gavino, Sr.*, 155 SCRA 627; *People v. Aquino*, 54 SCRA 411; *People v. Maliwanag*, 58 SCRA 325.

<sup>95</sup> *Lacson v. CA*, 94 SCRA 467.

<sup>96</sup> *People v. Canja*, 86 Phil. 518 (1950).

the cases of battered women, in most of the cases there was no intimate relationship between the aggressor and the victim. Usually, the altercation was between strangers,<sup>97</sup> neighbors,<sup>98</sup> or co-workers.<sup>99</sup> Additionally, the aggression was not over a prolonged period but occurred at the instance the offense was committed or shortly thereafter, as a consequence of a previous dispute or grudge between the parties.<sup>100</sup>

The peculiar circumstances of battered wives were considered by the Supreme Court only in the cases of *People v. Boholst-Caballero*<sup>101</sup> and *People v. Canja*.<sup>102</sup> In the former, the court acquitted the defendant of parricide; in the latter, the defendant was convicted of the same crime.

In the *Boholst-Caballero* case the defendant, Cunigunda, was married to Francisco Caballero in 1956 but the couple separated by the end of the following year. Prior to their separation, they frequently quarreled because of the husband's "gambling, drinking and serenading." There were instances when the husband maltreated or beat Cunigunda. Moreover, on several occasions he refused to support her and their child, so she left him and returned to live with her parents.<sup>103</sup>

In the morning of January 2, 1958, Cunigunda went out caroling with a friend and several other men. When she was about to go home around midnight, she met her husband who held her by the collar of her dress and asked her "where (she) has been prostituting." Thereafter, he threatened to kill her, held her by the hair, slapped her face until her nose bled, and pushed her toward the ground. To keep herself from falling, she held on to his waist and her right hand clasped the knife tucked inside his beltline. Her husband continued to push her until she fell to the ground. Then he held her neck and choked her saying: "Now is the time I can do whatever I want. I will kill you."

<sup>97</sup> *People v. Lara*, 48 Phil. 153; *People v. Sumicad*, 56 Phil. 643; *People v. Maliwanag*, 58 SCRA 325; *People v. Aquino*, 54 SCRA 410; *People v. Gavino, Sr.*, 155 SCRA 626; *Castanares v. CA*, 12 SCRA 570.

<sup>98</sup> *Lacson*, 94 SCRA 467.

<sup>99</sup> *People v. Encomienda*, 46 SCRA 523.

<sup>100</sup> *People v. Lara*, 48 Phil. 153; *People v. Sumicad*, 56 Phil. 643; *Lacson v. CA*, 94 SCRA 466; *People v. Maliwanag*, 58 SCRA 324; *People v. Aquino*, 54 SCRA 410; *People v. Gavino, Sr.*, 155 SCRA 626; *People v. Encomienda*, 46 SCRA 523; *Castanares v. CA*, 12 SCRA 570.

<sup>101</sup> *Boholst-Caballero*, 61 SCRA 181.

<sup>102</sup> *Canja*, 86 Phil. 518.

<sup>103</sup> *Boholst-Caballero*, 61 SCRA at 184.

Because she had no other recourse, she pulled out the knife of her husband and stabbed him. The following morning, she surrendered to the police.<sup>104</sup>

The Supreme Court held that all the elements of self-defense were present in this case. According to the Court, there was no doubt that there was unlawful aggression from the deceased based on the narrated facts. The means employed to repel it was reasonably necessary because Cunigunda was being strangled by a furious aggressor and almost rendered unconscious by the strong pressure on her throat. With the impending threat to her life, she got hold of the only weapon and stabbed her aggressor to save herself. Lastly, she did not give sufficient provocation to warrant the attack on her person.<sup>105</sup>

The Court also rejected the notion that Cunigunda had motive to kill her husband because he abandoned her and failed to support her and their child. The Court inferred that she appeared to have accepted this reality. Cunigunda, in fact, declared that she still loved her husband despite her separation. Moreover, the Court noted that there was no record of any event prior to the incident that could have provoked her to contemplate killing her husband.<sup>106</sup>

On the other hand, in *People v. Canja*,<sup>107</sup> the Court sustained Teopista Canja's conviction of parricide. Like Cunigunda's husband, Teopista's spouse also gambled and drank which sometimes led him to maltreat or beat her. Teopista was also aware that he kept a paramour.

On the fateful evening of May 25, 1948, Teopista narrated that her husband arrived very drunk and boxed her on the stomach upon entering the house. She fainted and when she regained consciousness, her husband said he would box her again if she resisted. Hurriedly, she then prepared their supper. The husband, however, did not eat. Instead, he threw away the rice from the plate. He left, but came back shortly and boxed her again, accusing her of always being jealous of him.<sup>108</sup>

<sup>104</sup> *Id.* at 184-185.

<sup>105</sup> *Id.* at 194-195.

<sup>106</sup> *Id.* at 192.

<sup>107</sup> *Canja*, 86 Phil. 518.

<sup>108</sup> *Id.* at 520.

Teopista admitted in her confession that she struck her husband to death with a hammer and chisel while he was asleep. However, she retracted her statement and declared that that night she was being strangled by a man, so she grabbed a piece of wood and struck two blows on her assailant's face. When she freed herself, she lit a lamp and discovered she had killed her husband.<sup>109</sup>

When asked why she killed her husband, Teopista answered, that "because of his maltreatment of me, I felt as though the Evil Spirit has possessed me and lost control of myself, and I forgot my children who are still small."<sup>110</sup> While expressing resentment towards her mother for killing her father, Teopista's eldest daughter sustained her mother's testimony when she stated that her parents quarreled that night and that they often quarreled before. She said that later that evening, her mother woke her up and told her that she had killed her father. Otherwise the latter would have killed her.<sup>111</sup>

Considering that her husband was asleep when she killed him, the Court rejected her claim of self-defense maintaining that there was no actual or imminent threat from which she had to protect herself.<sup>112</sup>

The Court further stated that her husband "may have been unworthy, x x x a rascal and a bully; but that is no excuse for murdering him. His badness is not even a mitigating circumstance."<sup>113</sup> On the other hand, Justice Montemayor expressed compassion in his concurring opinion. He recommended clemency because the circumstances of the husband's provocations and the wife's conduct of "sacrifice in the extreme x x x speaks volumes for her." He stressed that "the violence with which the accused killed her husband reveals the pent-up righteous anger and rebellion against the years of abuse, insult, and tyranny seldom heard of."<sup>114</sup>

As in all cases, therefore, the opinions of the Justices relied on their selection and appreciation of the crucial circumstances of the case and their interpretation of the applicable criminal law principles. Thus,

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> *Id.* at 519.

<sup>112</sup> *Id.* at 520-521.

<sup>113</sup> *Id.* at 521.

<sup>114</sup> *Id.* at 522.

an evaluation of the Court's interpretation of the elements of self-defense is in order.

Unlawful aggression is an indispensable requisite of self-defense. There can be no self-defense, complete or incomplete, unless there has been an unwarranted aggression against the person claiming self-defense.<sup>115</sup> More importantly, the Supreme Court pointed out that the defendant bears the burden of proving the aggressor's intent to cause injury.<sup>116</sup>

Primarily, the aggression, to be appreciated, must come from the victim of the accused.<sup>117</sup> It must be unlawful. It must not be committed in defense of one's self, honor or property<sup>118</sup> nor in the lawful performance of one's duty.<sup>119</sup>

According to the Court, the aggression must be revealed by some external, offensive act positively proving the commencement of actual and material unlawful aggression.<sup>120</sup> It must be of such degree as to put in real peril the life or personal safety of the person defending himself/herself.<sup>121</sup> Thus, a kick as a form of greeting,<sup>122</sup> a light push on the head,<sup>123</sup> a tirade, or insulting words<sup>124</sup> without any physical assault does not constitute unlawful aggression. On the other hand, the Court considered a slap in the face as unlawful aggression. In the cases of *People v. Roxas*<sup>125</sup> and *People v. Sabio*<sup>126</sup> the Court stated that a slap is a serious physical attack on the person and on his/her dignity.

However, it is not necessary that the attack must already have started before a person should act defensively because otherwise, the

<sup>115</sup> *US v. Carrero*, 9 Phil. 544, *People v. Malazzab*, 160 SCRA 131, citing *People v. Apolinario*, 58 Phil. 586.

<sup>116</sup> *People v. Perez*, 56 SCRA 609, citing *US v. Guysayco*, 13 Phil. 292.

<sup>117</sup> *People v. Gutierrez*, 53 Phil. 609.

<sup>118</sup> *People v. Merced*, 39 Phil. 198.

<sup>119</sup> *People v. Gayrama*, 60 Phil. 796.

<sup>120</sup> *People v. Calatoc*, 55 SCRA 459, citing *US v. Carrero*, 9 Phil. 544; *Castañares v. CA*, 92 SCRA 576, citing *US v. Guysayco*, 13 Phil. 292; *US v. Bauzuela*, 31 Phil. 565, and *US v. Santos*, 17 Phil. 87.

<sup>121</sup> *People v. Bausing*, 199 SCRA 362.

<sup>122</sup> *People v. Sabio*, 19 SCRA 901.

<sup>123</sup> *People v. Yuman*, 61 Phil. 789.

<sup>124</sup> *US v. Carrero*, 9 Phil. 544.

<sup>125</sup> 58 Phil. 733.

<sup>126</sup> 19 SCRA 901.

defense might be too late.<sup>127</sup> The only thing required is that the aggression must be material, not a mere threatening or intimidating attitude nor an imagined threat.<sup>128</sup>

The defendant is considered in imminent danger of death or bodily harm sufficient to justify self-defense only in cases where the victim attacked him or provoked the aggression. Thus, if the victim was unarmed, the Court denied a defendant's plea of self-defense for absence of unlawful aggression.<sup>129</sup> However, it qualified that even if the victim was armed, if he did not provoke the fight, the defendant cannot invoke self-defense.<sup>130</sup> It also maintained that a mere threat from the victim such as a curse or a vague reference to a future fight is not considered an unlawful aggression.<sup>131</sup> According to the Court, if the victim only admonished the defendant, the latter cannot be justified in killing him.<sup>132</sup> If the victim simply placed his hand in his pocket, as if he was going to draw something, such cannot be characterized as unlawful aggression.<sup>133</sup> Likewise, if he was armed but had not yet brandished his gun, there was no physically evident assault to warrant self-defense.<sup>134</sup>

To distinguish between retaliation and self-defense, it is also essential that the attack upon the defendant be simultaneous with the killing or preceded the latter without any appreciable interval of time.<sup>135</sup> In *Castanares v. CA*,<sup>136</sup> although there was an interval of only 10 minutes between the encounters of the victim and his assailants, the Court ruled that even if the victim may have been the aggressor in the first stage, the aggression he provoked ceased when the first stage of the fight was terminated. According to the Court, the first stage ended when the victim and his aggressors were pacified; in the second stage, the

<sup>127</sup> *People v. Cabungcal*, 51 Phil. 803.

<sup>128</sup> *Araneta, Jr. v. CA*, 187 SCRA 129; *People v. Encomienda*, 46 SCRA 532, citing *People v. Alconga*, et. al., 76 Phil. 366; *People v. Pasco, Jr.*, 137 SCRA 145.

<sup>129</sup> *People v. Tac-an*, 182 SCRA 615; *Montanez v. People*, 179 SCRA 671; *People v. Tingson*, 47 SCRA 252; *People v. Ordiales*, 42 SCRA 241.

<sup>130</sup> *People v. Buensuceso*, 132 SCRA 154; *People v. Perez*, 56 SCRA 611.

<sup>131</sup> *Pacificador v. CA*, 125 SCRA 720; *People v. Pasco, Jr.*, 137 SCRA 143-144.

<sup>132</sup> *Bausing*, 199 SCRA 362.

<sup>133</sup> *People v. Calantoc*, 55 SCRA 460-461.

<sup>134</sup> *Araneta, Jr., v. CA*, 187 SCRA 130.

<sup>135</sup> *People v. Ferrer*, 1 Phil. 56; *People v. Alconga*, et. al., 78 Phil. 369.

<sup>136</sup> 92 SCRA 573-575.

aggressor was no longer the victim but his opponent, who returned with a knife accompanied by his brother armed with a gun. Additionally, the Court held in two other cases that when the initial aggression caused by the deceased had ceased after he was disarmed or disabled by the defendant, the subsequent injury or death caused by the defendant can no longer be justified.<sup>137</sup> It established that in self-defense, the aggression must still be existing when the aggressor was injured or attacked by the person making a defense. If the aggression commenced by the injured party ceased to exist when the accused attacked him, the act of the latter is not defensive but retaliatory.<sup>138</sup> In considering the time lapse between the aggression and the defensive act, the Court essentially reasoned that the accused must have neither time nor opportunity to think coolly or deliberate upon his/her acts.

The Supreme Court also took note of the disparity in the size, strength, and age of the aggressor and his/her victim in determining unlawful aggression. In *People v. Ardisa*,<sup>139</sup> it rejected the defense's theory that the victim, 55 years old and sick with ulcer, pursued his attack and continued hacking the defendant after he was seriously injured. Neither did it believe the defendant's allegation that a 60 year-old grandfather would have gone to the extent of assaulting a 24-year old male armed with a gun and a bolo. In another case, the Court held that it was unlikely that the victim, younger than the defendant, and who limped because of polio, would assume the role of an aggressor.<sup>140</sup>

However, even if the victim was bigger in size, the Supreme Court denied the self-defense plea when the defendant did not sustain any injury during the fight.<sup>141</sup> Thus, the number, location, and nature of the wounds are also significant in determining who is the lawful aggressor.<sup>142</sup> If the wounds of the victim were more severe and the defendant sustained only minor injuries, the former cannot be considered the aggressor.<sup>143</sup>

<sup>137</sup> *Andal v. Sandiganbayan*, 179 SCRA 31; *People v. Malazzab*, 160 SCRA 131-132.

<sup>138</sup> I LUIS B. REYES, THE REVISED PENAL CODE 160 (12th ed., 1981).

<sup>139</sup> 55 SCRA 253-254.

<sup>140</sup> *People v. de la Cruz*, 85 SCRA 292.

<sup>141</sup> *People v. Lopez*, 132 SCRA 195.

<sup>142</sup> See also *People v. Ardisa*, 55 SCRA 249; *People v. Batas*, 176 SCRA 49; *People v. Badco*, 204 SCRA 125; *People v. Estocada*, 75 SCRA 301; *People v. Quiban*, 131 SCRA 461; *People v. Martin*, 11 SCRA 13; *People v. Reyes*, 17 SCRA 309; *People v. Lebunfacil, Jr.*, 96 SCRA 585; *People v. Manlapaz*, 55 SCRA 599; *People v. Gato*, 143 SCRA 195; *People v. Rosario*, 134 SCRA 501.

<sup>143</sup> *People v. Delgado*, 182 SCRA 350; *People v. Dorico*, 54 SCRA 184; *People v. Flores*, 43 SCRA 349; *People v. Tapeno*, 164 SCRA 702; *People v. Salcedo*, 151 SCRA 225; *People v. Orongan*, 68 SCRA 597.

According to the Court, the presence of several wounds on the victim was also inconsistent with the defendant's plea of self-defense.<sup>144</sup> Furthermore, in several cases, the Court held that the location of the wounds revealed that the defendant was in a more advantageous position so he could not allege that he was defending himself.<sup>145</sup>

In the light of the factors considered by the Court to determine unlawful aggression, only the defense of Cunigunda Boholst-Caballero was validated; Teopista Canja's claim failed because of the absence of the first element of self-defense.

The Supreme Court maintained that the indispensable requisite of unlawful aggression is present only if there were external and offensive acts, which posed an actual or imminent threat to the life of the defendant. Thus, it ruled that there was unlawful aggression in Cunigunda's case because she was being strangled by her husband when she killed him. Her husband's threat to kill her was accompanied by the act of actually choking her to death. On the other hand, Teopista killed her husband while the latter was asleep, leading the Court to rule that there was no unlawful aggression present. Although the Court maintained in another case that it is not necessary for the attack to commence before a person may act in self-defense,<sup>146</sup> in Teopista's situation it ruled that there was no impending material threat to cause her to believe that she was about to be attacked.

Moreover, applying the principle that there should be no time lapse between the aggression and the defensive reaction, the Court affirmed Cunigunda's self-defense claim because she killed her husband while he was attacking her. In contrast, the aggression against Teopista had already ceased when she killed her husband. Even if her husband had repeatedly boxed her that night, she inflicted the fatal wounds only after her husband had gone to bed and the violence had stopped.

In the other cases mentioned, the Court also noted the disparity in the size, strength and age of the aggressor and the victim to determine unlawful aggression. However, these factors were not considered in Teopista's case because the Court believed that she was the obvious

<sup>144</sup> *People v. Perez*, 56 SCRA 610; *People v. Peñenos*, 200 SCRA 632.

<sup>145</sup> *People v. Cuadra*, 85 SCRA 593; *People v. Llamera*, 51 SCRA 56; *People v. Peñones* 200 SCRA 632.

<sup>146</sup> *Cabungcal*, 51 CRA 803.

aggressor. Instead, it stressed that the presence of 11 incise wounds on her husband's body while she was unharmed contradicted her retraction that she mistook her husband as an assailant when she inflicted two blows on his face. On the other hand, the Court asserted in Cunigunda's case that her self-defense plea was not defeated by the fact that she was not injured when she attacked her husband because there was actual aggression against her.

As regards the second element, the Supreme Court laid down the principle that when a person's life is threatened or in imminent danger, he/she "does not act upon processes of formal reason but in obedience to the instinct of self-preservation," so he/she cannot be held accountable in law for the consequences of his/her acts.<sup>147</sup> Explicitly, the Court maintained that:

x x x the reasonable necessity of the means employed does not imply material commensurability between the means of attack and defense. What the law requires is rational equivalence in the consideration of which will enter as principal factors the emergency, the imminent danger to which the person attacked is exposed, the instinct, more than the reason, that moves or impels the defense, and the proportionates thereof do not depend on the harm done, but rest upon the imminent danger of such injury.<sup>148</sup>

Therefore, when a person acted according to his/her instinct of self-preservation, the Supreme Court ruled that it is the duty of the courts to sanction the act and exculpate the defendant from liability.

The second requisite pertains both to the reasonable necessity of the defendant's course of action and of the means he/she used to repel the attack. The Court established that the "reasonableness of either or both such necessity depend on the existence, nature and extent of unlawful aggression. If there was no aggression or if it ceased to exist, there is no need for any course of action because there is nothing to repel or prevent."<sup>149</sup> Thus, since the first and second requisites are intricately connected, the Supreme Court adopted the same evidentiary considerations for both.

<sup>147</sup> *People v. Lara*, 48 Phil. 160.

<sup>148</sup> *Lacson v. CA*, 94 SCRA 469; also cited in *People v. Encomienda*, 46 SCRA 535.

<sup>149</sup> *Supra* note 138, at 178.

In *People v. Garachico*,<sup>150</sup> *People v. Manlapaz*,<sup>151</sup> *Pacificador v. CA*,<sup>152</sup> the Court noted that the nature, character, location, and number of wounds on the body of the deceased proved the absence of the second requisite. In those cases, the deceased sustained several injuries while the assailant was unharmed. However, the Court qualified in *People v. Boholst-Caballero*<sup>153</sup> that the mere absence of any visible injury on the body of the defendant is not a ground for discrediting self-defense. It stressed that what is vital is the presence of imminent peril to the defendant's life caused by the unlawful aggression of the victim. In this case, the Court followed the principle established in earlier jurisprudence that "the reasonable necessity of the means employed in self-defense does not depend upon the harm done but rests upon the imminent danger of such injury."<sup>154</sup>

Similar to its rulings under unlawful aggression, the Court rejected the self-defense plea when the victim was unarmed and the defendant attacked him with a weapon,<sup>155</sup> or even if the victim was armed, if he drew the pistol only after the defendant assaulted him.<sup>156</sup> The Court, however, qualified in several cases that even if the victim only wielded a knife, the defendant may be justified in using a gun if it was the only means available to defend himself.<sup>157</sup> Significantly, it ruled in a number of cases that the necessity of the means employed does not imply that the means of attack and the defense be equal.<sup>158</sup> According to the Court, "perfect equity between the weapon used by the one defending himself and that of the aggressor is not required because the person assaulted does not have sufficient tranquility of mind to think, to calculate, and to choose which weapon to use."<sup>159</sup> The test, therefore, is whether the defendant had other means to defend himself/herself and if such other means were available, if he/she had the

<sup>150</sup> 113 SCRA 151.

<sup>151</sup> 55 SCRA 603.

<sup>152</sup> 125 SCRA 721.

<sup>153</sup> *Boholst-Caballero*, 61 SCRA at 195.

<sup>154</sup> *Id.*

<sup>155</sup> *People v. Pasco, Jr.*, 137 SCRA 143; *People v. Guiyab*, 139 SCRA 454-455.

<sup>156</sup> *People v. De Leon*, 41 SCRA 123.

<sup>157</sup> *Lacson v. CA*, 94 SCRA 469; *People v. Maliwanag*, 58 SCRA 331.

<sup>158</sup> *Lacson*, 94 SCRA 469.

<sup>159</sup> *Id.*, see also REYES, *supra* note 138, at 184 citing *People v. Padua, CA*, 40 O.G. 998.

opportunity to deliberately choose the less deadly weapon to repel the assault.<sup>160</sup>

According to the Court, the person defending himself is not expected to control his blow. The fact that the accused struck a blow more than what was necessary to save his life or that he failed to hold his hand to avoid inflicting a fatal wound when a less severe blow would have served the purpose does not negate self-defense.<sup>161</sup> It said that the defendant acting in self-defense cannot be expected to take deliberate and careful aim at a less vulnerable point in his assailant's body. He is not in a position to reflect coolly or to wait after each blow to determine its effect.<sup>162</sup> Significantly, the Court said in *People v. Artuz*<sup>163</sup> that "the test of rationality is not what a man should do under normal circumstances and with time for cool reflection present, but how an individual in such dire situation, with the grim prospect of the loss of life, would react."

In further negation of the equal force rule, the Supreme Court also considered the circumstances surrounding the fight. The Court held that although the defendant threatened the victim with a less deadly weapon, he could not invoke self-defense because the victim was justified in using a gun if the latter was already beaten prior to the killing,<sup>164</sup> or if the victim was trapped and the defendant had more freedom of movement to ensure that he would win the fight.<sup>165</sup>

Aside from considering the circumstances surrounding the incident, the Court likewise took notice of the characteristics or personality traits of the victim or the aggressor. In *People v. Vicente*,<sup>166</sup> the Court held that an intelligent man such as the victim would not face an assailant armed with a shotgun with only a bolo to ward off an impending assault. According to the Court, he should have known that a bolo is an inadequate weapon against a shotgun. In *People v. Sumicad*,<sup>167</sup> a bolo was considered as a reasonable means of repelling an attack

<sup>160</sup> *Id.*

<sup>161</sup> *US v. Macasaet*, 35 Phil. 229.

<sup>162</sup> *US v. Mack*, 8 Phil. 701.

<sup>163</sup> 71 SCRA 124.

<sup>164</sup> *People v. Tapeno*, 164 SCRA 703.

<sup>165</sup> *People v. Aquino*, 54 SCRA 412, 416; *Castañares v. CA*, 92 SCRA 583.

<sup>166</sup> 141 SCRA 349-350.

<sup>167</sup> 56 Phil. 647.

by a bully bigger and stronger than the accused and of known violent disposition. Similarly, in upholding the self-defense claim in *People v. Gavino Sr.*,<sup>168</sup> the Court noted that the deceased had other enemies and was a person of violent temper, especially when he was drunk; on the other hand, the defendant "is a simple man who calls people by their nicknames and a hardworking man x x x."

Under the second element, therefore, Cunigunda was justified in using a weapon to kill her husband although the latter was unarmed. Based on the Court's evaluation of this element, Cunigunda's instinct of self-preservation could validly explain why she stabbed her husband with a knife, the only weapon available to defend herself at that moment. Because of the imminence of danger to her life, she had no time to deliberately choose or look for a less deadly weapon to repel the attack.

On the other hand, Teopista's use of a hammer and chisel to kill her husband was dismissed as excessive use of force by the Supreme Court. The Court asserted that she could not claim reasonable necessity both of the means she employed to defend herself and her course of action because there was no unlawful aggression to resist in the first place. The eleven incised wounds found on her husband's body belied the presence of the second element in her case.

Compared to other self-defense cases where the Court looked into other circumstances immediately surrounding the incident, in Teopista's case, the Court did not consider the fact that Teopista's husband quarreled and boxed her thrice prior to the killing. It ignored the fact that before she killed him, she endured her husband's abuses over the years.

Moreover, contrary to its rulings in other cases, the Court failed to consider the personality of Teopista's husband. Only Justice Montemayor noted the violent character of the husband and the history of abuse committed against Teopista. He recommended clemency for the latter.

The third requisite of self-defense is present when the person defending himself does not in any way, provoke the aggressor; or even if provocation was given, it was not sufficient; or even if sufficient, it was not given by the person defending himself; or even if the latter

<sup>168</sup> 155 SCRA 627.

gave it, it was not proximate and immediate to the act of aggression.<sup>169</sup> According to the Court, provocation is sufficient when it is proportionate to the aggression, that is, enough to impel one to attack.<sup>170</sup> Thus, there was no provocation when a victim merely gave a mild retort or a calm response,<sup>171</sup> or a curse preceded the victim's reply.<sup>172</sup> Neither was an annoying answer sufficient provocation. The test, as laid down by the Court in an earlier case, is: "considering the situation of the person defending himself, would a reasonable man, placed in the same circumstance, act in the same way?"<sup>173</sup>

As regards this third requisite, there is not much controversy because the Supreme Court held that both Cunigunda and Teopista did not give sufficient provocation to warrant the assault against them.

Finally, aside from its extensive interpretation of the elements of self-defense, the Supreme Court further established that self-defense is an exculpatory defense which the defendant must prove on the strength of his own evidence. He cannot rely on the weakness of the prosecutor's case.<sup>174</sup> The defendant, according to the Court, "must prove his theory of self-defense with certainty by sufficient, satisfactory, and convincing evidence."<sup>175</sup>

In determining the adequacy of overcoming the burden of proof, the Court also looked into the conduct of the accused after the incident. Generally, in those cases where self-defense was sustained, it observed that the defendant surrendered right after the incident.<sup>176</sup> On the other hand, if the accused failed to surrender or did not admit the killing at the first opportunity,<sup>177</sup> or tried to conceal the effects of the crime,<sup>178</sup> such behavioral lapses were considered against him. In addition, or

<sup>169</sup> *Supra* note 138, at 188; see also *People v. Balmaceda*, 148 SCRA 199, *People v. Aquino*, 54 SCRA 416; *Lacson v. CA*, 94 SCRA 468.

<sup>170</sup> *People v. Alconga*, et. al., 78 Phil. 372.

<sup>171</sup> *People v. Encomienda*, 46 SCRA 537; *People v. Gavino, Sr.*, 155 SCRA 633.

<sup>172</sup> *People v. Riduca*, 55 SCRA 199.

<sup>173</sup> *Supra* note 138, at 191-192.

<sup>174</sup> *People v. Manlapaz*, 55 SCRA 602, citing other cases.

<sup>175</sup> *Ebajan v. CA*, 170 SCRA 186; *People v. Quilaton*, 205 SCRA 284; *People v. Libardo*, 127 SCRA 550; *People v. Mercado*, 159 SCRA 458; *People v. Tesorero*, 71 SCRA 590; cf. cases cited in *People v. Manlapaz*, 55 SCRA 602.

<sup>176</sup> *Canja*, 86 Phil. 518; *People v. Aquino*, 54 SCRA 413.

<sup>177</sup> *People v. U-bistondo*, 132 SCRA 272.

<sup>178</sup> *People v. Garachico*, 113 SCRA 151.

sometimes in absence of concrete proofs of self-defense, the Court also considered the victim's possible motive for unlawful aggression and other circumstantial evidence.<sup>179</sup> However, in all the cases, the Supreme Court maintained that the defendant, having admitted the killing, bears the burden of proving that he is not liable.

Although both Cunigunda and Teopista surrendered immediately after the incident, the Court ignored Teopista's admission of guilt but considered it in Cunigunda case. Additionally, it did not look into Teopista's possible motive for killing her husband - that the act might have been a defense against the attacks of her husband. As far as the Court was concerned, she could not invoke self-defense because there was no unlawful aggression when she killed her husband while the latter was asleep.

For battered women like Teopista, therefore, there is a need to review the Supreme Court's interpretation of the self-defense doctrine. The Court's failure to appreciate several crucial factors underlying Teopista's violent reaction to the aggression was the main reason for conviction.

### III. BATTERED WOMAN SYNDROME AND SELF-DEFENSE

The survey of Supreme Court decisions on self-defense shows that the Court has had little opportunity to consider the case of battered women, or even of female defendants. As a result, the self-defense doctrine developed by the Court evolved from a male perspective. Most of the cases dealt with disputes between or among men and instances when a male defendant, trapped and facing imminent death, struck out at the last moment and killed the attacker.<sup>180</sup> Likewise, the cases only pertained to one-time attacks from a person or persons not related to the defendant.<sup>181</sup>

The rulings, as illustrated in the *Canja* case, reflect prevailing misconceptions about battered women. They indicate that the Court did not address the marked difference between a person's response to a singular attack by a stranger and the response of a battered woman

<sup>179</sup> *People v. Acejo*, 97 SCRA 229; *People v. Alquizar*, 92 SCRA 702.

<sup>180</sup> See discussions and cases cited in chapter II (C) *supra*.

<sup>181</sup> *Id.*

repeatedly abused over time by a single perpetrator intimately related to her. The Court failed to contemplate the fact that for a battered woman, immobilized from leaving her abusive partner by psychological, social, and economic factors, unlawful aggression continues as long as she remains trapped in the relationship; and that her attack on her batterer during a non-confrontational situation, such as when the beatings have temporarily ceased, is a desperate attempt to try to defend herself successfully. It did not consider the particular circumstances of women who are substantially smaller and deemed weaker than men and who generally lack experience or training in physical combat. Based on the cases, the Court expects any defendant invoking self-defense, whether male or female, to respond in the same manner, to the aggression. In effect, this denies the battered women their Constitutional right to a fair trial.

This discrepancy between the present application of self-defense and the realities of battered women demands a modification of the existing concept of self-defense to include the predicament of abused women. Such a change in the self-defense doctrine is necessary to correct the misconceptions reflected in the Court rulings and eradicate the effects of a history of discrimination against females.

#### A. Definition of the Battered Woman Syndrome

A battered woman prosecuted for injuring or killing her batterer may invoke the battered woman syndrome primarily to prove her claim of self-defense. The American Psychiatric Association defined the syndrome as "a post-traumatic stress disorder that develops after the experiencing of a distressing event not within the range of common experiences."<sup>182</sup> It is not a mental illness but a group of symptoms which characterizes the battered woman's reactions to extreme stress similar to those experienced after combat or natural disasters.<sup>183</sup> In *State v. Kelly*, the New Jersey Supreme Court defined it as "a series of common characteristics that appear in women who are abused physically and psychologically over an extended period of time by the dominant male figure in their lives."<sup>184</sup>

<sup>182</sup> *Supra* note 1.

<sup>183</sup> *Id.*

<sup>184</sup> *State v. Kelly*, 478 A.2d 364, 371.

Most of the psychological effects of battering included in the definition of the battered woman syndrome were gleaned from Walker's findings based on her extensive study of battered women. From her research, Walker developed two theories on domestic violence – the cycle theory of violence and the theory of learned helplessness.<sup>185</sup>

The cycle theory of violence, as earlier discussed, suggests that battering follows a pattern of violence which worsens over time. The cycle consists of three stages: the tension building period, which is characterized by minor injuries inflicted on the women; the acute battering period, in which the severity of the abuse and attacks escalates; and the loving-contrition period, in which the batterer shows remorse and showers the woman with love and affection. While the first phase may last for as long as 10 years, while the second phase only lasts for two to twenty-four hours. The third phase, on the other hand, varies in length and may persist for several months. In some relationships, the third phase does not exist at all and in others, it disappears over time. The frequency of the cycle and the degree of violence escalate while the last stage may disappear over time.<sup>186</sup>

The theory of learned helplessness posits that as a result of the battering relationship, a battered woman may eventually feel demoralized and paralyzed by fear; thus, she "learns" that she is incapable of improving or altering her situation.<sup>187</sup>

Both the theory of learned helplessness and the cycle theory of violence attempt to explain why battered women do not leave their abusers and the reasonable necessity of their course of action. The loving-contrition phase in the cycle revives and reinforces a battered woman's hope that her mate will reform; thus, keeping her bound to the relationship. As the violence escalates and gets out of control, she becomes more submissive and passive, and eventually acquires the psychological condition of learned helplessness. Trapped in this cycle and with the knowledge of her abuser's history of violence, the battered woman may then resort to injurious but reasonable force to defend herself.

Criticisms on the theories abound. In particular, David Faigman wrote an extensive dissent on Walker's premises. He questioned the

<sup>185</sup> WALKER, *supra* note 2.

<sup>186</sup> *Supra* note 3.

<sup>187</sup> *Supra* note 4.

scientific soundness of Walker's conclusions and doubted that battered women will acquire common psychological characteristics which can be lumped together as the battered woman syndrome.<sup>188</sup> Such skepticisms, however, even if proven, will not totally destroy Walker's theories because independent studies conducted by other researchers reached similar conclusions.<sup>189</sup> In fact, the American Psychological Association endorsed the scientific merits of the battered woman syndrome. In a brief amicus curiae in the case *State v. Kelly*, the Association stated:

x x x not only the techniques used by those in the field of battered women, but also their theories, are generally accepted by the relevant scientific community. Often the underlying theories used by these experts are well-developed, well-recognized theories previously applied in other contexts and simply adopted to the study of battered women.<sup>190</sup>

Moreover, a majority of the courts in over 30 states in the US have recognized the admissibility of expert testimony on the battered woman syndrome in relation to self-defense claims. The psychologists testifying as expert witnesses in most of the cases affirmed Walker's description of the syndrome and the defendants generally manifested Walker's characterizations of the disorder as testified to by the expert witnesses.<sup>191</sup>

<sup>188</sup> David L. Faigman, *The Battered Woman Syndrome and Self-Defense: A Legal and Empirical Dissent*, VIRGINIA L. REV. 213-220 (April 1986).

<sup>189</sup> Kinsports, *supra* note 6, at 407.

<sup>190</sup> 478 A.2d at 364.

<sup>191</sup> See *Ex-parte Hill*, 507 So.2d 558 (1987); *People v. Aris*, 264 Ca. Rptr. 167 (1989); *People v. Hare*, 782 P.2d 831 (1989); *Hawthorne v. State*, 470 So.2d 770 (1985); *Borders v. State*, 433 So.2d 1325 (1983); *Terry v. State*, 467 So.2d (1985); *Smith v. State* 277 S.E.2d 678 (1981); *Chapman v. State* 367 S.E.2d 541 (1988); *Motes v. State* 384 S.E.2d 463 (1989); *People v. Minnis*, 455 N.E.2d 209 (1983); *State v. Nunn*, 356 N.W.2d 601 (1984); *State v. Hundley*, 236 P.2d 475 (1985); *State v. Hodges*, 716 P.2d 563 (1986); *State v. Stewart*, 763 P.2d 572 (1988); *State v. Dunn*, 758 P.2d 218 (1988); *State v. Clements*, 770 P.2d 447 (1989); *Commonwealth v. Rose*, 725 S.W. 2d 588 (1987); *State v. Burton*, 464 So.2d 421 (1985); *State v. Anaya*, 438 A.2d 892 (1981); *Commonwealth v. Moore*, 514 N.E.2d 1342 (1987); *State v. Hennum*, 441 N.W.2d 793 (1989); *State v. Clay*, 779 S.W.2d 673 (1989); *State v. Anderson*, 785 S.W.2d 596 (1990); *State v. Williams*, 787 S.W.2d 308 (1990); *May v. State*, 460 So.2d 778 (1984); *State v. Jackson*, 435 N.W.2d 893 (1989); *State v. Briand*, 547 A.2d 235 (1985); *State v. Kelly*, 478 A.2d 364 (1984); *State v. Gallegos*, 719 P.2d 1268 (1986); *People v. Torres*, 488 N.Y.S.2d 358 (1985); *State v. Clark*, 377 S.E. 2d 54-(1989); *State v. Norman*, 378 S.E.2d 8 (1989); *State v. Leidholm*, 334 N.W.2d 811 (1983); *State v. Koss*, 551 N.E.2d 970 (1990); *Commonwealth v. Stonehouse*, 555 A.2d 772 (1989); *State v. Hill*, 339 S.E.2d 121 (1986); *State v. Devita*, 1989 WL 34130; *State v. Furlough*, 797 S.W.2d 631 (1990); *Fielder v. State*, 756 S.W.2d 309 (1988); *Blair v. Blair*, 575 A.2d 191 (1990); *State v. Allery*, 682 P.2d 312 (1984); *State v. Ciskie*, 751 P.2d 1165 (1988); *State v. Hanson*, 793 P.2d 1001 (1990); *State v. Dozier*, 255 S.E.2d 552 (1979); *State v. Lambert*, 312 S.E.2d 31 (1984); *State v. Steele*, 359 S.E.2d 558 (1987); *State*

Since the beginning of 1990, nine states in the US have passed legislation which now mandate the admission in court of expert evidence on the syndrome. These states include California, Louisiana, Maryland, Missouri, Ohio and Wyoming.<sup>192</sup>

Recently, the Canadian Supreme Court ruled in favor of an accused who shot her common-law spouse at the back of the head while leaving the bedroom after a physical quarrel with her. It considered the history of abuse committed against the accused and opinion evidence that she was a victim of the battered woman syndrome. The Court maintained that the battered woman syndrome is admissible evidence to counter some of the myths surrounding the violence towards women and to place the situation in the proper legal perspective.<sup>193</sup>

A final argument for admitting the battered woman syndrome as evidence is the fact that the opposing party would be given the opportunity to rebut the expert's testimony and may present its own expert witness. Any further doubt on the scientific reliability of Walker's conclusions or the accuracy of the expert's conclusions may be presented in court to assist the judge in determining the proper weight to be given to the defendant's proof of the syndrome. The uncertainty may affect the weight of the evidence but not its admissibility.<sup>194</sup>

### B. Coverage of the Defense

The defense, as decided in several US cases, would significantly cover non-confrontational situations or instances when the battered woman is not under attack, i.e., a lull in the beatings or when the batterer is asleep or resting.<sup>195</sup> Under such circumstances, admission

*v. Duell*, 332 S.E.2d 246 (1985); *State v. Felton*, 329 N.W.2d 161 (1983) cited in *Bechtel v. State*, 840 P.2d 7-8; *Bechtel v. State*, 840 P.2d 1 (1992); *Commonwealth v. Miller*, 1993 WL 13066; *McMaugh v. State*, 612 A.2d 725 (1992); *State v. Burtzloff*, 493 N.W.2d 1 (1992); *People v. Romero*, 846 P.2d 702 (1993); *People v. Wilson*, 487 N.W.2d 822 (1992); *People v. Yaklich*, 833 P.2d 758 (1991); *State v. Baker*, 424 A. 2d 171 (1980) cited in *Rogers v. State*, 616 So.2d 1099.

<sup>192</sup> *Developments in the Law - Legal Responses to Domestic Violence*, HARVARD L. REV. 1585 (May 1993).

<sup>193</sup> 1 SCRA 871.

<sup>194</sup> *Supra* note 5.

<sup>195</sup> *State v. Wanrow*, 559 P. 548; *Betchel v. State*, 840 P. 2d 1; *Ibn-Tamas v. US*, 407 A2d 626; *Robinson v. State*, 417 S.E.2d 88; *State v. Kelly*, 478 A. 2d 364; *People v. Wilson*, 487 N.W.2d 822; *State v. Caskie*, 751 P.2d 1165; *Rogers v. State* 616 So. 2d 1098; *Ex-parte Hancy*, 603 So. 2d 412.

of expert testimony on the battered woman syndrome may prove that the abused defendant justifiably acted in self-defense even if the unlawful aggression against her was not apparent.

Furthermore, the defense may apply to battered women charged with either physical injuries or parricide for injuring or killing their batterers. A charge of parricide, even if accompanied by the aggravating circumstance of evident premeditation, does not automatically discount the possibility of a successful self-defense plea based on the battered woman syndrome. In the U.S., a number of state courts allowed testimony on the syndrome even if it appeared that the victim's killing her batterer was premeditated.<sup>196</sup> Similarly, as earlier cited, Philippine Supreme Court decisions sustained pleas of self-defense both against charges of parricide and physical injuries.<sup>197</sup>

Therefore, a mere inconsistency between the nature of the crime charged and the defense is not conclusive proof that the defendant is not a battered woman who killed in self-defense. A battered woman prosecuted for parricide should still be allowed to proffer testimony on the syndrome to explain why she committed the crime. The Court, in its discretion, may accept such testimony and uphold the defendant's self-defense claim, or it may discredit the same and render a conviction if the battered woman fails to prove her defense despite admission of testimony on the syndrome.

To avail of the defense, the woman must first prove that she had been subjected to some form of repeated, forceful, physical or psychological behavior by her batterer. "Repeated" is defined as "more than once" while "forceful" suggests some form of coercive, vigorous, or severe action, or harsh and derogatory comments or verbal tirades. Since it is difficult to characterize every single form of battering, the court should make the final determination of each claim of battering based on the initial definition of wife battering in this thesis.<sup>198</sup>

In addition, an intimate relationship must exist or must have existed between the battered woman and her batterer, making the

<sup>196</sup> 787 S.W.2d 311-312, see also *State v. Anaya*, 438 A.2d 892; *Smith v. State*, 277 S.E.2d 698; *State v. Hill*, 339 S.E.2d 121; *Terry v. State*, 467 So.2d 761; *People v. Torres*, 488 N.Y.S.2d 358, cited in *State v. Ciskie*, 751 P.2d 1172.

<sup>197</sup> *Boholst-Caballero*, 61 SCRA 181; *Lacson*, 94 SCRA 467

<sup>198</sup> See INTRODUCTION, *supra*.

latter either the spouse or lover of the woman. In *State v. Williams*, the Missouri Court of Appeals stated that:

x x x neither Walker nor other courts and commentators have drawn a distinction between married and unmarried women as being subject to the syndrome x x x. There (is) no legitimate basis for concluding that the need of the battered woman to respond to deadly force to her perceived danger is dependent upon her marital status.<sup>199</sup>

However, contrary to Walker's proposal that intimate relationship only connotes "having a romantic, affectionate, sexual component,"<sup>200</sup> the intimate relationship pertained to in this paper implies that there exists or existed a sustained contact between the battered woman and her abuser for some period of time. The absence of any form of continuous abuse within a relatively prolonged relationship between the battered woman and her abuser will negate a woman's claim that the cumulative effects of battering can justify her act of injuring or killing her abuser. In fact, for a battered woman to be able to invoke the battered woman syndrome in support of her self-defense plea, Walker maintained that she must go through the cycle twice.<sup>201</sup>

Although time is a main pillar of the proposed defense, it is difficult to identify specific time frames for the relationship of the parties as well as for the cycle and its phases. A relationship may last only for a few months yet the severity and frequency of the beatings may ultimately cause the battered woman to develop the syndrome; similarly, she may not go through all phases of the cycle, especially since the last phase may not be present in some relationships, yet be able to prove that she went through the cycle twice. Therefore, it would be wise for the Court to rely on psychological experts whose testimonies should be admitted during the trial of battered women precisely to settle such issues.

### C. Purpose of the Testimony

The primary purpose of admitting expert testimony on the battered woman syndrome is to support the battered woman's claim of self-defense. The syndrome is not a defense in itself; rather,

<sup>199</sup> WALKER, *supra* note 32, at 203.

<sup>200</sup> *Supra* note 2.

<sup>201</sup> RICARDO J. FRANCISCO, BASIC EVIDENCE 10 (1991).

self-defense is the specific defense. Testimony on the syndrome will only help the trier of facts appreciate the predicament of the abused defendant in relation to her self-defense plea.

Expert opinion on the battered woman syndrome would explain the behavioral pattern of the battered woman which might otherwise appear unreasonable to the court. The expert witness can explain why the defendant may not have reported the beatings or why she did not leave the relationship. Additionally, the expert can explain how the defendant's experiences as a battered woman affected her perceptions of danger and her honest belief in its imminence. Admission of the expert's opinion would focus the court's attention on the psychological characteristics common to women who are victims in abusive relationships and aid it in contemplating a possible acquittal for the battered defendant.

Evidence on the battered woman syndrome would deflect the prosecutor's challenge to the abused defendant's credibility by dispelling existing misconceptions about battered women. The expert can shed light on the defendant's perplexing behavior and prove that her conduct is not inconsistent with her self-defense claim. For instance, by explaining the theory of learned helplessness, the expert can justify why the accused resorted to force against her batterer instead of simply leaving the relationship.

#### *D. Admissibility of the Defense*

Evidence, as stated in the Rules of Court, is admissible when it is relevant and competent.<sup>202</sup> More particularly, the opinion of a witness is generally considered not competent and thus, not admissible, unless the Rules provide otherwise.<sup>203</sup> Section 49 of Rule 128 provides for such an exception in cases of expert testimony. The provision states that "the opinion of a witness on a matter requiring special knowledge, skill, experience or training which he is shown to possess may be received in evidence."

For expert testimony to be admissible, three requisites must concur: first, the subject matter under examination must be one that requires

<sup>202</sup> Rules of Court, Rule 128, § 3, as amended.

<sup>203</sup> FRANCISCO, *supra* note 200, at 198.

special knowledge or experience which cannot be obtained from ordinary witnesses; second, the witness called as an expert must possess the knowledge, skill, or experience needed to shed light on the matter; and third, the testimony is not admissible as to a matter not in issue.<sup>204</sup>

To allow expert testimony on the battered woman syndrome, the woman must first prove her relationship with the batterer. In addition, she must offer either oral or documentary evidence to prove the abuser's threats or violent acts committed against her or against other persons. If she cannot establish that she was physically or psychologically abused by the victim, the Court can exclude the testimony on the syndrome on the ground of irrelevancy or lack of foundation. More importantly, she should not deny the killing or injury she committed against her abuser; rather, she should assert that she committed the act in self-defense.

After proving her relationship with the batterer and the latter's history of violence, expert testimony on the battered woman syndrome may now be presented. The expert can testify either on his medical findings on the battered woman, on the syndrome, its effects and manifestations and explain or infer through hypothetical questions the perplexing behavior of the woman. However, in the absence of any examination, an expert opinion that the woman's claim as a battered woman is truthful based on his knowledge of battered women is not admissible for any purpose. Likewise, a generalization that the defendant suffered or is suffering from battered woman syndrome is inadmissible. These matters must be proven first as facts before the expert witness may be allowed to infer that the defendant's disconcerting conduct is a consequence of the syndrome.

The expert witness, as a general rule, may testify based on his personal knowledge of the facts or answer hypothetical questions based on facts already proven. He/she may testify not only on facts known to him/her but also to his/her conclusions from the facts because the court may not have sufficient knowledge to render its own conclusions without the aid of the expert.<sup>205</sup> However, the fact that such testimony is admissible does not mean that it would automatically be accepted by the Court. Its weight is still dependent on the discretion of the judge conducting the hearing.<sup>206</sup> Ultimately, the Court has the

<sup>204</sup> *Id.* at 199.

<sup>205</sup> *Id.* at 202.

<sup>206</sup> *Id.*

prerogative to decide whether or not the battered woman was justified in injuring or killing her abuser.

The broad purpose of the testimony of the battered woman syndrome is simply to explain the defendant's state of mind and behavior. Its aim is to help prove the validity of her self-defense claim and to bolster the credibility of evidence presented to justify her defensive acts. Since it does not outrightly rule that the battered woman is free from criminal liability, testimony on the syndrome must be admitted as a matter of course if presented by a battered woman claiming self-defense.

#### *E. Applicability within the Self-Defense Doctrine*

Admission of testimony on the battered woman syndrome would support the critical elements in the battered woman's claim of self-defense, whether U.S. or Philippine laws on self-defense are applied. As U.S. jurisprudence maintains, "the syndrome creates a perception in the battered woman so that as to her, the requirements (of self-defense) have been met."<sup>207</sup>

In most states in the U.S., an accused claiming self-defense must establish that: (1) she reasonably believed herself to be in imminent danger of death or great bodily harm at the time of the offense; (2) she used no more than the amount of force necessary in order to save herself from the perceived imminent danger; (3) she was not the aggressor; and (4) she did not violate any duty to retreat from or avoid the danger.<sup>208</sup> Although some states only require an honest belief that the victim intended unlawful harm, most state jurisdictions require that the defendant must honestly and reasonably fear the unlawful aggression at the time the offense was committed. U.S. jurisprudence also mandates the use of reasonable means to repel the aggression and lack of sufficient provocation from the defendant. The duty to retreat which compels a defendant to retreat from the assailant before employing deadly force is required only in a minority of jurisdictions.<sup>209</sup>

On the other hand, under the Revised Penal Code, the first element of self-defense is unlawful aggression. For the Court to

appreciate this element, it is crucial that there is actual or imminent aggression of such degree as to endanger the life or safety of the person defending himself/herself. There must be no time interval between the aggression and the defensive act. It is essential that the defendant must not have had time to think or deliberate upon his/her acts.<sup>210</sup> As implied in the Supreme Court decisions, these factors are determined based on an objective-subjective standard, namely, how a reasonable person in the same situation as the battered woman would have reacted.

Considering the circumstances of a battered woman, the opportunity to attack her abuser or defend herself generally occurs after a battering incident and before another one takes place. Mindful of her partner's previous abuses and desperate to defend herself successfully, in several instances, she retaliates in a non-confrontational setting. As shown in the *Canja* case, the Supreme Court may hastily conclude that, in such a situation, there is no unlawful aggression or imminent danger to the life of the battered woman.<sup>211</sup>

From the perspective of the battered woman, however, danger is perpetually imminent. As can be explained by an expert witness on the syndrome, a battered woman knows, as confirmed by the cycle theory of violence, that future beatings are almost certain to occur and will escalate over time. Moreover, her intimate knowledge of the violent nature of her batterer makes her alert to forthcoming abuses. She is attuned to her abuser's pattern of attacks and can validly infer when a particular attack will seriously threaten her survival. In addition, a battered woman, trapped in the cycle of violence, may succumb to her helplessness and fail to perceive possible solutions to the problem such as escaping from the relationship. Society's tolerance for male violence and inadequate institutional support for victims like her may lead her to believe that the only remaining option is to injure or kill her batterer.

Therefore, from the point of view of a battered woman, it will be erroneous for the Court to rule that there is no unlawful aggression or imminent danger to her life. The repeated and serious beatings inflicted by her abuser is material, imminent, and unlawful aggression well within the Court's interpretation of the first element. Essentially, there is no

<sup>207</sup> *State v. Williams*, 787 S.W. 2d 312.

<sup>208</sup> Kinsports, *supra* note 5, at 409-436.

<sup>209</sup> *Id.* at 437.

<sup>210</sup> See discussions and cases cited in CHAPTER II, *supra*.

<sup>211</sup> *Canja*, 86 Phil. 518.

time lapse between the aggression and her defensive reaction. Although the actual violence may have ceased, especially if she attacked her aggressor in a non-confrontational situation, the threat to her life subsists because of the cyclical nature of the violence committed against her. Constant fear of impending abuses deprive her of any opportunity to deliberate or ponder upon her actions like any other ordinary defendant claiming self-defense. The perpetual terror of physical and mental abuse heightens her sense of imminent danger and does not wane even when the batterer is absent or asleep. Thus, for the battered woman for whom torture appears interminable and escape impossible, the belief that only the death or injury of the batterer can provide relief may be reasonable, even in the mind of an ordinary prudent person.<sup>212</sup>

The second requisite of self-defense pertains to the reasonable necessity both of the defendant's action and the means he/she employed to repel the aggression. Compliance with this requisite is dependent on the presence or absence of the first element of self-defense. As long as there is imminent danger of injury or death to the defendant, the Supreme Court maintained that the means of attack and the defense used need not be equal.<sup>213</sup>

The Court rejected the equal force rule and asserted that what is required under this requisite is not material but simply rational equivalence, giving more consideration to the imminence of the danger and the instinct of self-preservation than to the defendant's reason for the defense. According to the Court, the test is whether the defendant had other means to defend himself/herself and if such other means were available, if he/she had the opportunity to deliberately choose a less deadly weapon to repel the assault. Thus, the defendant is not expected to employ equal force nor to control the blow.<sup>214</sup> The gauge is the reaction of an individual in such a dire situation of losing his/her life, not that of a person under normal circumstances with time for reflection.<sup>215</sup>

In the case of a battered woman, her peculiar circumstances can justify her resorting to unequal force when she attacked her batterer. Initially, the conduct of an abuser against the defendant may be

<sup>212</sup> *State v. Norman*, 378 S.E.2d 8, cited in *Robinson v. State*, 417 S.E.2d 91.

<sup>213</sup> *Supra* note 138, at 178.

<sup>214</sup> *Lacson*, 94 SCRA 469.

<sup>215</sup> *Boholst-Caballero*, 61 SCRA at 195.

insignificant when viewed in isolation. If, however, the effects of the abuses are taken cumulatively, they can prove the existence of persisting aggression and partly explain her defensive actions. Her perception of being trapped in a cycle of potentially lethal violence can prove the reasonableness of her defense even if she attacked her batterer during a lull in the beatings, or resorted to deadly force in pre-empting the aggression. Moreover, her inferior size, strength, and lack of ability to engage in a hand-to-hand combat can explain why she used more force to stop her abuser than a man would use in a similar situation.

The Court, in previous cases, assessed the second element from the point of view of the defendant. Therefore, it should also evaluate a battered woman's defense within her context when deliberating upon the reasonableness of her action. Just as it considers the circumstances of a fight and the personal characteristics of the parties involved, in the case of an abused wife, the Court should also look into factors such as the frequency, severity, and unpredictability of the beatings, the length of time the battered wife has endured abuses, her socio-psychological as well as physical handicaps compared to her abuser, and her vicarious and experiential knowledge of why she perceived herself trapped in the relationship.

The third element of self-defense is lack of sufficient provocation on the part of the person defending himself/herself. There is no sufficient provocation unless a person commits an unlawful act calculated to produce injurious or fatal consequences.<sup>216</sup> In most instances, a battered woman is able to comply with this requirement. Claims that a woman, allegedly through nagging, provoked her husband's violence are unwarranted. Even if her nagging is considered a provocation, it cannot be deemed sufficient to trigger the repeated and sometimes severe beatings inflicted by her partner. Moreover, even if the battered woman attacked her abuser in a non-confrontational situation, still she cannot be considered the initial aggressor because she merely took her only chance to defend herself.

#### F. Case Study

In the case of *People v. Canja*, Teopista killed her husband while asleep. Based on the traditional interpretation of the element of unlawful

<sup>216</sup> *Canja*, 86 Phil. at 520.

aggression, the Court ruled that there was no imminent threat to the life of the defendant. It ignored Teopista's statement that she lost control, "as though the Evil Spirit possessed (her)" and that she killed her husband on the belief that if she did not do so, he would have killed her instead.<sup>217</sup>

Since the records of the case are no longer available, it cannot be stated conclusively that Teopista is a battered woman who manifested the battered woman syndrome. However, proofs of repeated and severe beatings gleaned from the case report and her statements implying loss of control and strong fear of being killed by her batterer, suggest that she approximates the case of a battered woman suffering from the syndrome. If this inference was considered in assessing the validity of her self-defense plea, the Court might have rendered an acquittal. By admitting evidence of the syndrome's component theories of cyclical violence and learned helplessness, the Court might have been able to confirm the presence of unlawful aggression and rule that she was justified in killing her batterer even if the latter was asleep.

In the case of *State v. Leidholm* where the battered woman also fatally stabbed her husband while asleep, the Supreme Court of North Dakota overruled the trial court's refusal to instruct the jury to consider testimony on the battered woman syndrome in deciding the defendant's self-defense claim. Because of the court's failure to receive evidence which can support the elements if the self-defense plea of the accused, the Supreme Court remanded the case for new trial.<sup>218</sup>

Concerning the second element of self-defense, admission of testimony on the battered woman syndrome could also have proven the reasonable necessity both of Teopista's course of action and the means she employed to defend herself. Since the syndrome implies the perpetual existence of unlawful aggression, her defensive act can be justified under the plausible presumption that there was a continuing threat to her life.

Moreover, since the Court views the reasonableness of the defense from the defendant's perspective, the possibility of a decision in favor of the battered woman increases. Even if that Teopista used a hammer and chisel and inflicted eleven incised wounds on her husband, it can

<sup>217</sup> *Id.*

<sup>218</sup> 334 N.W.2d 811.

still be argued that she employed reasonable means to repel an attack. As the Court ruled in *People v. Boholst-Caballero*,<sup>219</sup> the absence of any injury to the defendant does not negate self-defense. What is crucial is the presence of imminent danger to her life. Seized by fear of an existing or impending lethal aggression, the defendant has no opportunity to deliberate on her acts and choose a less deadly weapon.

There is no issue as regards the third element because the Supreme Court ruled in this case that Teopista did not provide sufficient provocation.

Following Justice Montemayor's discourse in his concurring opinion, Teopista's batterer's history of violence against her should also have been considered in her favor. Her helplessness in the face of repeated and severe abuses inflicted by her husband should have explained why she employed such weapons to kill him. As in other cases, her admission of guilt should have been appreciated too. The fact that she surrendered the following day and initially confessed her guilt connotes an absence of intent to commit the crime.

#### G. Limitations and Objections

Admission of testimony on the battered woman syndrome is not a novel defense. As stated, it would support the critical elements in the battered woman's plea of self-defense.

It would not entail an amendment of the elements of this defense but only an expansion of the Supreme Court's interpretation of the self-defense requisites to include the particular circumstances of battered women.

In trying to contextualize the act of a battered woman, the Court, however, should guard against the creation of a stereotype of a reasonably battered woman. An attempt to formalize the characterization and behavior of a battered woman into a standard of reasonableness would further restrict, rather than broaden, the Court's interpretation of the requisites of self-defense. More importantly, it would make this defense unavailable to a woman who is also battered but who does not fit the mold. Neither should the Court harp on characterizing battered women as persons who are helpless, passive, or psychologically disturbed; rather, the Court should focus on

<sup>219</sup> 61 SCRA 181.

explaining how their actions are justified within the self-defense claim. Emphasis on the incapacities of the battered women may conjure images of an insanity plea or a psychological defense and rule out the viability of a self-defense plea.

The battered woman syndrome defense does not connote special treatment for women. It does not suggest that a woman has a right to kill because she is a battered woman. Admission of evidence on the syndrome does not mean automatic justification for the act of the defendant. The battered woman still has to prove that the elements of self-defense are present in the light of her particular circumstances. What the defense only asserts is that a woman is entitled to the same self-defense claim available to other defendants trapped in an analogous situation. A battered woman faced with the choice of either using her only available opportunity to defend herself or continuing to endure future but certain abuses is in the same predicament as the defendant in the classic case of self-defense who injures or kills to avoid bodily harm.

Although the defense, as discussed, is primarily available to battered women, a battered male who can prove that he went through the same cycle of violence and developed the same socio-psychological effects may also invoke the battered woman syndrome to support his self-defense claim. However, it can be foreseen that he would have difficulty proving his defense.

It would be difficult to duplicate the state of battered women. To begin with, the present patriarchal society maintains male dominance and female subordination. As a result, there are more options available to a male defendant compared to his female counterpart caught in the same abusive relationship. With the impression that he is physically stronger than his wife, he can easily threaten her to stop the battering. He can report the incident to the police and the courts, and expect a response different from that given to a battered woman. The case of a husband being beaten by his spouse would call the attention of the authorities. Socialized to think that males are superior, such authorities may consider the incident as actionable because it violates the commonly held notion that men should dominate. In case the police or legal officers still dismiss the report as insignificant, the battered male has another choice – to leave the relationship. His feeling of superiority discounts the possibility that he is emotionally dependent on his wife, thus, cannot abandon her. Moreover, since most men in Philippine society are breadwinners, chances are that he

is financially independent of his wife. In addition, he is not socially burdened with the responsibility to keep the family intact. Society has assigned to women this responsibility, not to men. Finally, domestic violence is a manifestation of male, not female, dominance in society. If ever women resort to the same violent act, it would be because they desire the same superiority possessed by their male counterparts. Based on their perception, being able to batter their male spouse connotes power equal to that monopolized by men.

Another major criticism of the admissibility of the battered woman syndrome is that it would encourage women to kill. Such comment is based on the erroneous premise that battered women who kill their abusers do so after rational calculation of the success of self-defense claims. However, as previously emphasized, battered women generally kill only in rare instances, as a desperate attempt to save themselves from their batterers. Additionally, in such circumstances, they commit the act on impulse. Based on Walker's research, they have little memory of any cognitive processes other than the overriding concern to survive the battering.<sup>220</sup> Thus, most battered women who kill, except perhaps if the crime is committed with evident premeditation, act in a daze and simply reach for an easily accessible weapon to defend themselves.

#### IV. CRITIQUE OF SENATE BILL 541

Of the several bills aimed at addressing the problem of domestic violence in the country, only Senate Bill 541 proposes a defense for battered women who kill their spouses. The bill does not intend to directly amend directly any provision in the Revised Penal Code. By special legislation, however, it intends to exempt from criminal liability women who kill their mates while the latter are in the act of beating them.

The title of the legislative proposal reads, "An Act Exempting a Woman Suffering from Battered Woman Syndrome from Criminal Liability in Case She Kills Her Husband While in the Act of Battery Against Her."<sup>221</sup> However, while its title promises exemption, Section 2 provides for "the penalty of *destierro* as understood in Article 87,

<sup>220</sup> WALKER, *supra* note 3, at 41; see also *State v. Day*, 2 Cal. Rptr.2d 293.

<sup>221</sup> S.B. No. 542, 9th Cong., 1st sess. (1992).

Chapter 5, Title 3, Book 1 of the Revised Penal Code x x x in the event that (the battered woman) did not act in complete self-defense."<sup>222</sup>

Exemption, as consistently interpreted in criminal law jurisprudence, is the exoneration or excuse from punishment because of the complete absence of intelligence, freedom, intent or negligence in the commission of the crime. The offender is not penalized although a felony has been committed. On the contrary, the bill refers to Article 87 which pertains to the manner of execution of the penalty of *destierro*. The Article provides:

Any person sentenced to *destierro* shall not be permitted to enter the place or places designated in the sentence, nor within the radius therein specified, which shall be not be more than 250 and not less than 25 kilometers from the place designated.<sup>223</sup>

Under Articles 25 and 27 of the Revised Penal Code, *destierro* is a penalty with a duration of six months and one day to six years. It is clear, therefore, that *destierro* inflicts punishment although the sentence is not served in jail. By imposing it upon battered women who commit parricide, the bill does not exempt them from retribution as reflected in the title.

Section 2 of the Act provides further that the penalty shall be imposed when the offense was committed "while (the husband) is committing battery on her in the event that she does not act in complete self-defense." The section suggests that the legislative measure will apply only when a battered woman fails to prove self-defense in a confrontational situation.

As distinguished from a non-confrontational situation discussed in the previous chapter, a confrontational case arises when the woman is under actual attack by her aggressor. In most cases where the aggression was confrontational, the Supreme Court sustained the self-defense claims because the imminent threat of death or serious injury to the defendant was obvious and indubitable.<sup>224</sup> Thus, SB 541 covers those rather exceptional circumstances when a battered woman cannot prove that she was defending herself when she killed her husband while he was attacking her.

<sup>222</sup> *Id.*

<sup>223</sup> Revised Penal Code, art. 87.

<sup>224</sup> See discussion at 123, *supra*.

The application of the proposed statute is also limited only to battered women who kill their batterers. Its coverage excludes those abused women who merely inflicted physical injuries on their partners but still as an act of self-defense.

Moreover, as stated in its explanatory note, the bill adopts the "battered woman syndrome" in its title based on U.S. studies. However, the syndrome is not defined in the Act itself. Instead, the bill only defines battery as "the deliberate, severe, and repeated beatings of the husband on the wife, the latter suffering physical injuries as a result thereof."<sup>225</sup> The provision does not infer that battery as defined brings about the syndrome. Additionally, it overlooks psychological abuses committed against the battered woman, which, together with the physical injuries, cause the syndrome.

Lastly, the legislative measure only contemplates wives who kill their husbands and does not cover intimate relationships not necessarily legitimized by marriage. Specifically, it excludes live-in relationships

A closer scrutiny of SB 541 reveals that it does not provide a defense for battered women who kill their spouses. It merely shows compassion by proposing a lesser penalty for battered wives who cannot justify the act of killing their mates. It applies only to those cases where the abused wives cannot prove that they acted in self-defense while under attack by their batterers. Therefore, the bill does not overlap nor contradict the proposal made in this paper.

#### CONCLUSIONS AND RECOMMENDATIONS

It cannot be denied that domestic violence is now a pressing social concern in the country. It is a fact that women get battered in their homes. However, society, more particularly the legal profession, has not responded adequately to the problem.

Under the present legal system, there are no just defenses available to women who kill or injure their batterers in a desperate effort to protect themselves. The present notion of self-defense, which evolved from a male perspective, fails to take into account the contextual difference between the defensive act of women subjected to repeated and severe

<sup>225</sup> *Supra* note 221.

abuses by their partners and that of ordinary defendants asserting the same claim of self-defense.

To remedy this gender inequality in the legal system, this thesis proposes the modification of the Supreme Court's interpretation of the elements of self-defense to include the circumstances of battered women. It does not recommend the conceptualization of a new set of elements, but merely suggests that the Court, in interpreting the requisites, should take into account the perspective and context of the battered woman invoking this justifying circumstance. A more subjective evaluation would allow the court to better appreciate the self-defense claim of a battered defendant by giving it an opportunity to clarify its doubts on the necessity of her attack, thus rendering a more equitable judgment.

Specifically, this paper proposes the admission of expert testimony on the battered woman syndrome to support the self-defense plea of battered women. Allowing an expert to testify on the syndrome would help the court appreciate the reasonableness of the woman's act when she attacked her batterer, even if the situation was non-confrontational, as well as help it understand why the defendant attacked instead of simply escaping the abusive relationship. However, expert testimony on the syndrome may be admitted only after the defendant has proved that she had been battered by her mate and had gone through the cycle of violence twice. Moreover, she must not deny but admit the act, interposing self-defense as a justification. After proving these facts, the expert witness could now be allowed to explain the syndrome and its harmful effects on the defendant.

While this study only discusses the plight of battered women and recommends legal remedies to their predicament, it does not intend to discriminate against men, or specifically, against battered males. The proposal for the Court to include the women's perspective in its interpretation of the self-defense elements and to admit expert opinion on the battered woman syndrome is designed to ensure that the self-defense doctrine is fairly appreciated, whether the defendant be male or female. The proposal is based on a valid premise that the problem of domestic violence is more prevalent among women than men and the former have fewer options to cope with such a problem under the present patriarchal society. The feminist bias, therefore, was borne out of a desire to assert equal treatment for women and to rectify existing structural inequities which prejudice them.

The suggestions made in this paper are hardly sufficient to address the complex issue of domestic violence. Thus, other recommendations are in order:

1. **A special law acknowledging that a battered woman, proven to have acquired the battered woman syndrome, is justified in injuring or killing her batterer.** The scrutiny in Chapter IV of Senate Bill 541 sponsored by Senator Ernesto Maceda proved that the legislative measure does not really recognize the reality that battered women, suffering from the battered woman syndrome, lack culpability and should not be prosecuted for killing or injuring their abusers. The legislative measure fails to fully comprehend the concept of the syndrome as applied to abused women. In fact, as stated, the bill merely provides for a superficial criminal exemption of battered women suffering from the syndrome when they kill their batterers while in the act of abusing them. Therefore, there is a need for a new legislative proposal based on this thesis which will genuinely acknowledge the state of battered women who have acquired the syndrome, and will justify their attacks on their partners as self-defensive reactions. Considering the peculiar circumstances of battered women, the proposed legislation will not violate the constitutional provision on equal protection.

3. **A special law criminalizing wife battering.** To continue to subsume charges of wife battering under the existing provisions of the Revised Penal Code on parricide, physical injuries and other related crimes would be to mask the seriousness of the problem of domestic violence and prevent its complete eradication. Pending Senate Bill 408 and House Bill 698 which punish spouse battering by a penalty one degree higher than that provided for physical injuries does not address the issue. These measures miss the fundamental differences between wife battering as compared to simple acts of physical injuries or parricide. In wife battering, the violence is more severe and is sustained over a period of time; it produces indelible traumatic effects on the woman. These glaring dissimilarities among the offensive acts imply the need to incorporate a provision separately punishing wife battering into the Revised Penal Code. Apprehensions that this suggestion might wreck marriages are unnecessary. If a husband repeatedly batters his wife, there is not much reason to save such a relationship.

4. **Other legal remedies.** Battered women may be allowed to file civil suits for damages against their batterers. Arrest of batterers upon the report of the incident and mandatory prosecution of the case