

Women Who Kill: An Analysis of Legal Defences Used by Women Who Kill an Abusive Partner

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Introduction

Crime is predominantly a **male act**, and men compose on average 80% of homicide perpetrators. The minority of women who do kill, frequently kill a male intimate partner who has abused them for years. Justice systems have **struggled** to respond appropriately to this unique situation and apply traditional legal defences to such cases.

I wanted to research and investigate the application of traditional legal defences to women who kill an abusive male partner, as well as examine new approaches taken by different jurisdictions to such killings.

Murder

Murder, the intentional taking of the life of another, is thought of as a crime of 'utmost heinousness' and is punished as such, with mandatory life sentences upon conviction for murder in Ireland, the UK, and some Australian States, the most severe punishment available in each legal system.

Although the definition of murder differs slightly from one jurisdiction to another, murder typically requires **intentional unlawful killing** or intention to cause **serious injury** which has resulted in an unlawful killing.

Defences to Murder

Insanity - A defence of insanity requires proving that the accused was suffering from a mental disorder to the extent that they did not know the **'nature and quality' of their act**, and/or **did not know what they were doing was wrong**, and/or were unable to stop themselves committing the act. A successful plea of insanity will result in a verdict of **not guilty** by reason of insanity.

Diminished Responsibility - A defence of diminished responsibility is similar to insanity but is somewhat lesser. It requires a **'mental disorder'** which affects a defendant's ability to control their actions. It is a partial defence, and if pled successfully will reduce a murder charge to manslaughter.

Provocation - Provocation lessens a defendant's culpability if faced with severely **provocative conduct by the deceased**. Historically, the provocation defence has been applied to male defendants who killed a girlfriend who decided to date someone else, a divorcee beginning a new relationship, and other typically 'male' responses of sudden bursts of violence and anger. Recently, courts in Ireland and Queensland, Australia, have explicitly steered the defence away from 'warped notions of honour' and 'hurt male pride'.

Self-Defence - Women who kill a male abusive partner often plead self-defence. A successful plea of self-defence results in a finding of **not guilty**. Whilst on its face, self defence should equally apply to both male and female defendants, the application of self-defence to women who kill in response to domestic abuse has encountered **'strong resistance'**. This is especially true where an abused woman waits until her abuser has fallen asleep or has his back turned, as the lack of an imminent threat of violence makes self-defence a more difficult argument. A smaller and physically weaker woman is more likely to use a weapon against a larger and stronger man, but this tends to be interpreted as a **'disproportionate'** response by juries.

Current Problems

Women who kill an abusive partner or ex-partner have typically already been **failed by the systems** which they should have been protected by. Numerous issues with current defences have been highlighted by scholars, and women who kill their abusers in the UK are **'rarely acquitted using self-defence'**. An abused woman's violent response to years of abuse often occurs **without an immediate preceding violent act by the abuser and** is thus difficult to be seen by a court or jury within the lens of a typical plea of self-defence.

Additionally, concern has been raised over **whether a jury may fully understand** an abused woman's subjective reality and heightened fears of further violence from her abuser.

It has also been noted that the **'intersecting inequalities'** in an abused woman's life, such as their race, ethnicity, culture, religion and any disability they may have, may affect both their abuser's behaviour and their response to such behaviour, as well as engagement with frontline services.

Improving Defences: A Varied Approach

The **'Householder' Defence** - The UK Law Commission in 2004 stated that an abused person who attacks due to fear of further abuse is 'unassisted by the law of self-defence'. The Commission called for a 'radical shift' in some of the ideas underpinning the law of self-defence in the UK. While the 2021 Domestic Abuse Act introduced a wide range of measures intended to prevent domestic abuse and assist and protect victims, it was 'notably silent' on the issue of domestic abuse victims who offend.

The Centre for Women's Justice, a lawyer-led charity which aims to prevent discrimination against women in the criminal justice system, put forward two proposals to amend the Domestic Abuse Act. It would align self-defence when used by a woman against her abuser with the 'householder defence' under the Criminal Justice and Immigration Act 2008. Under this proposal, an abused woman, like a householder defending their home, could use 'disproportionate' force against her abuser, if it is not 'grossly disproportionate'. This proposal has the support of many practitioners and experts in the field, and the similarity to the already existing householder defence would enable easier understanding by judges and lawyers.

The **'Self-Preservation' Defence** - In 2010, the Australian State of Queensland introduced the self-preservation defence, a specific murder defence for those who kill for preservation in an abusive domestic relationship. The defence does not require a specific or imminent threat from the deceiver, and there is no timeline requirement. The explanatory notes regarding the legislation introducing the defence highlighted the importance of evidence from expert witnesses as to the altered perception of a person in an abusive relationship. In a review of the self-preservation defence, the critical importance of expert witnesses was highlighted, in recognising the 'long-term effects of abuse, the cycle of violence, why an abused person might find it impossible to leave their abuser'.

Procedural Changes

Changes to the procedure of the **trial** of a woman accused of killing her abusive partner have also been suggested to improve their treatment in the criminal justice system. Jury directions, wherein **the jury is provided with more information** and guidance as to the facts surrounding the case, have been used with success in the UK in sexual offences cases, and could challenge common misconceptions in cases of abused women killing. Changes to the **default male pronoun use in legislation**, and specialised training and guidance for staff working on such cases have also been suggested as ways to help improve results in such cases.

Conclusions

Within the criminal justice system, there is a constant need to **balance rights** of all parties involved - victims of domestic abuse who are driven to offend, victims of the violence perpetuated by such women, the right of the government to enforce law and order, and the need to maintain appropriate criminal liability. Any changes to the legal system, in order to balance these rights, needs to be accompanied by more **largescale societal change**. Negative social attitudes can 'outstrip or undercut' legal reform efforts.

A **better knowledge of domestic abuse** and its impact on an abused woman's thought process and actions is necessary for police, lawyers, juries and judges, in order to better see justice for such women.

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