

# When Is Murder Not Murder ? - When The Victim Is A Woman

IN this column, we reproduce cases concerning women. This is to educate ourselves not only about legal provisions as they exist but also about how in reality law operates. We invite readers to send in their comments, suggestions, and also the citations and details of any cases they may have in mind.

So far, we have examined how the laws which more specifically concern women, such as matrimonial and rape laws, are used against women. However a study of the law and its application shows that not only is the law itself heavily biased against women but its interpreters—lawyers, judges and writers of law manuals—all have a tendency to view the woman victim of a crime or a woman involved in any way with a case, as the real criminal, the root of all evil.

We are familiar with the attitude that women “invite” rape by their “provocative” dress and behaviour. It is something of a shock to find that even when a woman is murdered, she is usually looked on with suspicion— “surely she must have done something to deserve it”, the unspoken feeling being that women deserve whatever they get. After all, we are told that women want to “provoke” violence against their own bodies. So is it not logical that we can also “provoke” violence against our own lives? The essence of all these hidden and not-so-hidden violent attitudes towards us is that almost anything we say or do can be used as an excuse to attack us physically, morally and legally.

This society has once for all declared us guilty. Guilty of the crime of being women.

## Man the Measure of All Things

The Indian Penal Code draws several distinctions between murder and culpable homicide which is a lesser crime and is much less severely punished. For instance, a person who kills in self-defence has not committed murder. So also, a person who kills when given “grave and sudden provocation” does not commit murder. The question is, who decides whether the provocation was grave and sudden enough to incite a person to violence ? The test laid down by legal precedent is that the provocation must have been sufficient to anger a “reasonable man” and make him lose his self-control.

Nothing illustrates better the anti-women bias inherent in the use of language than the phrase “a reasonable man”, because the judges invariably think of the man as husband, father, the owner and controller of woman, and consider his contempt for her as perfectly “reasonable” and “normal”. The word “man” used here so as to include “woman”, sets up so-called “manly”, that is, aggressive and violent behaviour as the standard of human behaviour. It is assumed that to be a man is to be “normal” and “rational”, to be a woman is to be something by definition “unreasonable”, “irrational” and slightly abnormal.

Another much misused phrase is “under the circumstances.” In a society based on oppression, the social background of the oppressor can be used to justify almost any violence against the oppressed. Is the law to condone violence just because it is widely practised ? Would an upper caste landlord be shown extra consideration if he murdered a Harijan, just because such a crime is all too common ? Interestingly, it is only violence against women which is blatantly condoned with the plea that in our society such violence is part of “custom and tradition.” After all, the guardians of law are themselves “reasonable men” and know that such violence is something every man indulges in at some time or the other !

### “Her Conduct was Such..”

**Madhavan versus State of Kerala, All India Reports 1966. Judges : Govinda Menon and T. S. Krishnamurthy Iyer.**

In this case there were no eye-witnesses to the murder. So the case rests on the statement of the accused. According to him, on 18.1.1965, he and his wife Madhavi had gone to the temple near their house for a religious celebration. Around midnight, they

## WHAT THE LAW SAYS

### INDIAN PENAL CODE, 1860

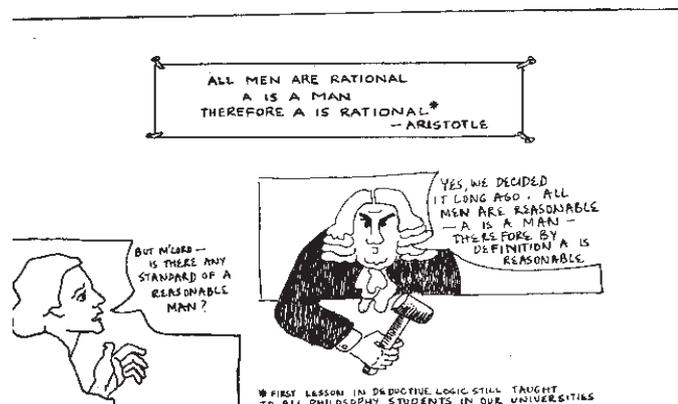
**Section 300, Exception 1** : Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation. Provided that : 1. The provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person. 2. The provocation is not given by anything done in obedience to the law... 3. The provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation : Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder, is a question of fact.

were returning home. Madhavan had a chopper in his hand with which he had been cutting branches of overhanging trees. When they reached the road leading to Madhavi's parents' house, she suggested that they should go there and he agreed.

On the way she began to abuse him and said she would never go back to his house. The appellant wanted to know the reason and took the child from his wife's arms. Then she swore by Chirakkal Bhagwati that she would never thereafter go and live with him. She tried to forcibly take away the child from him. When he resisted her attempt, the chopper injured her abdomen. Then she broke her *thali* chain (*mangalsutra*) and threw it at his face. This infuriated Madhavan. He hit her with the chopper, killing her instantaneously.

This story was believed by the learned Sessions Judge. He also found (presumably from Madhavan's testimony) that the couple had "no previous enmity and were living amicably." The Sessions Judge decided that this was a case of murder since the



—Purnima

provocation was not grave and sudden. He therefore sentenced Madhavan to life imprisonment

The High Court said: "The test of grave and sudden provocation is whether a reasonable man belonging to the same class of society as the accused, placed in the situation in which he was placed, would be so provoked as to lose his self-control. The provocation must be such as would upset not merely a hot-tempered or a highly sensitive person but one of ordinary calmness. Also, the mode of resentment must bear a reasonable relationship to the provocation."

The Judge then asks: "Is there any standard of a reasonable man ..?" and answers: "It is for the court to decide in each case having regard to the relevant circumstances." He goes on: "The threat of the wife to leave the appellant for ever, without obviously any prior reason is indeed provocative and her act in removing the *thali* from her neck which is attributable to the separation of her marital tie and throwing it in his face was quite sufficient to make him lose his self-control."

The learned judge does not care to go into the provocation

under which the woman herself 'suddenly' rebelled. Her unhappiness and suffocation within an oppressive marriage are naturally not "obvious" to the judge. Instead the woman is condemned for tampering with the mere symbol of her husband's life and of her bondage, and this is considered sufficient excuse for him to kill her! Does the "mode of resentment" - hacking her with a chopper—bear a "reasonable relationship" to the provocation of breaking a symbolic chain? The judge declared that "the conduct of Madhavi was such as to provoke a reasonable man..." and reduced the sentence of the said "reasonable man" to five years imprisonment.

### "The Murdered Wife on Trial"

**Daulatram Tularao versus State of Madhya Pradesh 1962 Criminal Law Journal 670. Judges: H.R. Krishnan and S.B. Sen.**

Daulatram was a mill labourer living on the out-skirts of Indore. He was often in need of money as he had a weakness for liquor. His wife worked as a cook in a hospital and supplemented this by rolling *bidis*. She was the sole supporter of their four children. Daulatram often disappeared for days together. Their 12 year-old daughter testified that he used to come home, demand money from his wife and if she could not satisfy these demands, there would be a quarrel and he would again disappear. In the course of these quarrels, he used to abuse her and say that she was an immoral woman. She always answered that his suspicions were false and baseless. The daughter gave evidence that her father had been away for several days. He returned at about 4 p.m. on 27.3.1960 and as usual demanded money from her mother. She refused with her usual reply that she needed money for the children. This led to a heated exchange.

Daulatram sat down in the verandah and asked the girl to go to his mother's house and get some money. He tried to persuade her by offering her two annas but she sensed danger and refused to go, so the younger boy was sent. Daulatram then walked into the house, caught hold of his wife who was rolling *bidis* and stabbed her repeatedly. Having received five or six wounds she tottered out and fell on the verandah. Daulatram followed her and stabbed her altogether 19 times till his knife broke. The little girl kept screaming for help. The neighbours collected but it was too late to save the woman.

Daulatram's story was that he suspected her of immorality and had often told her so but received a rebuff. He said: "On the 27th I talked to her for one and a half hours but she paid no heed. Then she said, 'I have not done it till now but now I shall go and take another man. I did not call you—you can go away.' This infuriated me. Four days before I had seen her talking to another man whose name I do not know. When I went near them, they separated".

The judges agreed that Daulatram had no grounds for his suspicions. Yet they said: "If the quarrel started with the husband charging the wife with immorality and with her being seen talking to another man a few days before, then the wife was put on a trial

of good behaviour and calmness. Whether his suspicion was justified or was merely a delusion in his mind, it was expected that the woman would do something to pacify him."That is, even when the husband is so "faithful" as to only appear when he needs money, contributes nothing to the upkeep of his children, and presumes to lecture his wife for one and a half hours just because he saw her talking to another man (Had she no reason to suspect him of "immorality" when he disappeared for days together?), it is still she who is on trial, she who must remain calm and pacify him! Indeed, even after her death, the custodians of justice put her in the dock and worry about the punishment she deserved for her "lack of restraint".

They say: "What she said was certainly enough to infuriate the husband. We are not concerned with her folly in doing this, for which certainly she has been more than amply punished, but we are concerned with the state of mind induced in the husband by these words...There was no proven past misconduct on the wife's part—he had nothing to go upon so he should not have been infuriated by her denial. But she continued by threatening to do the very act with which he was charging her. In other words, she created a sudden moral revulsion in him. In addition she insulted him by saying she wanted him no more."

Throughout, the course of events is being seen solely from the man's point of view. Was the woman not insulted by being accused and berated at such length for having talked to a man? Was this not a deliberate attempt to provoke her? Why the assumption that only a man can be provoked and it is the woman's duty to meekly submit to all the unfair tests her husband may choose to impose on her? In fact, his conduct here would come under Provision 1, Exception 1 of Section 300 of I.P.C. where the accused voluntarily provokes her into saying words which he then uses as an excuse to kill her. Even though the husband in this case was a husband only in name, yet the court felt that the wife's saying she wanted to have no more to do with him was a grave insult. They decided that Daulatram's wife had given him grave and sudden provocation so he was guilty not of murder but of culpable homicide.

### **Infidelity—Woman's Crime, Man's Birthright**

As may be expected, judges, whether in 1921 (222 Cr. LJ. 341) or in 1971 (Raj. L.W. 486), have uniformly been in agreement that "no graver provocation can be offered to a man than that of finding his wife or other female relations committing adultery." In fact, as one goes through one judgment after another, one finds that the moment it is even suggested that the woman, married or unmarried, may have had a relationship of any kind with a man outside marriage, the judge's tone immediately becomes harsher and even more unsympathetic towards her.

Every book on criminal law illustrates "provocation" by a long list of cases of a wife's infidelity, real or imagined, leading to her being murdered. The meaning of "provocation" in Section 300 has become nearly synonymous with a woman's conduct. She may be a daughter-in-law found in a room with a man and

hacked to pieces (1921) or a sister discovered to be having an affair (1933) or a young bride suspected of having had a pre-marital relationship (1958) or a woman whose husband having been away all night, sees two men coming out of his house in the morning (1969). The consequence is the same—the "poor" man "gets gravely provoked" and brutally murders her.

Punishments given have been as light as six months to a year's imprisonment—such was the sympathy of the court with the victims of "provocation"! The most dangerous thing about all such cases, however old they may be, is that they continue to be cited as precedents today and used by judges to extenuate more and more "reasonable men" of the crime of murder.

And what if the man is unfaithful? If the woman dares protest? Even in such a case, she is declared to have provoked him! Thus in *Chet Ram versus Union of India*, 1963 (Criminal Law Journal 120), Teja, a 17-year-old girl, was forced to marry Chet Ram, a man who had an intimacy with her mother. After marriage, the relations between husband and wife were not cordial. She used to go away to her mother's house without his permission. A month before her death, she had gone to her mother's place and did not return even when he went to fetch her. A *panchayat* was convened to bring about a reconciliation. There Teja openly accused Chet Ram of an illicit connection with her mother. The *panchayat* failed to persuade her to return to him. However, her aunt managed to persuade her to do so.

On 15-4-1961, Chet Ram came home in the evening. Teja was churning milk. He asked her to cook the night meal and spread the beds but she refused. He then went to her and tried to fondle her. She immediately tried to leave the house. He caught hold of her to stop her. She then kicked out at him and told him not to touch her and to go and have sexual intercourse with his mother and sister. She also said he should take charge of the household as she was leaving him. He then picked up a grinding stone and hurled it at her head. She fell down dead.

Bhikan Ram, the brother of the accused, said he had heard Teja crying out at about 10 a.m.: "Don't pull my hair! Oh my mother, I am dead!" Chet Ram denied having used any violence. His story was that while he was trying to stop Teja from leaving the house, she suddenly fell down. He laid her on the bed, massaged her hands and feet but she died within a few minutes. Medical evidence clearly showed that he had killed her and the court was forced to accept this fact as proved.

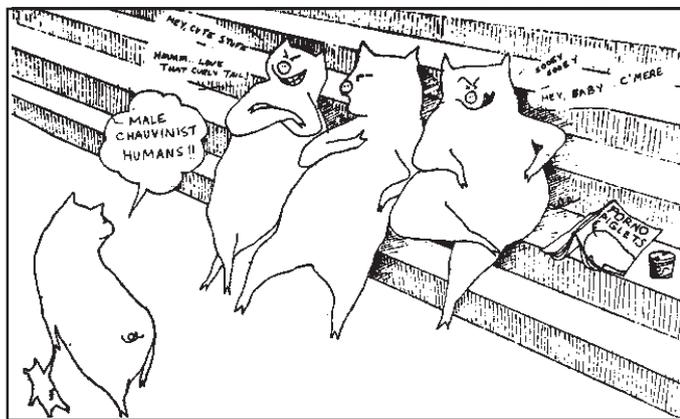
In spite of the fact that he had lied, the court accepted his statement as to what Teja had said. The judges concluded that Teja's abuse amounted to grave and sudden provocation because in Hindu law a mother and mother-in-law are not the same. They referred to *Pancham versus Emperor*, AIR 1947, Oudh, where the wife abused the husband for his infidelity and "starved him for four days" (that is she did not cook) and when he attempted to assuage his hunger by cooking some food for himself she abused him, saying he was going to eat cow's flesh, where upon he killed her and this abuse was declared to be grave and sudden

provocation.

So the court decided: ‘The appellant had gone to appease Teja and in return was given a kick and abused. The provocation was grave and sudden enough so as to deprive him of the power of self-control. He virtually got a stone when he asked for bread.’ This colourful metaphor is a reference to his fondling her, that is, grabbing her body and receiving a refusal. Was her refusal and resistance not an assertion of the right of private defence under Provision 3 to Exception I? Not in the eyes of patriarchal law, under which it is a man’s right to rape his wife.

In fact in one case, a refusal in itself was judged to be sufficiently grave provocation. This was the case of Atma Ram versus State of Punjab AIR 1967 (Judges A.N. Grover and Shamsher Bahadur). Atma Ram was declared guilty of the murder of his 35-year-old wife and sentenced to life imprisonment by the Sessions Judge. He then appealed to the High Court.

The relations between Atma Ram and his wife were not friendly. They were in the habit of accusing each other of leading immoral lives. The court’s comment on this is: “She did not possess a very good temper and had quite a pungent tongue.” In 1958 she was badly beaten up by her husband. Her brother got her medically examined and the matter was brought before the *panchayat*. Perhaps on their intervention, no criminal case was brought against the husband.



—From Plexus

In 1964 she was three to four months pregnant. On May 6, at 1 p.m., Atma Ram called her for sexual intercourse. She reacted by saying: “You should have satisfied your lust with your sister when you went to see her three days ago.” On hearing these words, he took up an axe and hit her on the neck. She fell on the bed and he inflicted more blows near her left ear. A neighbour, Kartar Singh, hearing her shrieks, climbed on to the roof and saw Atma Ram doing this. Atma Ram then left the house, telling Kartar Singh that he had killed his wife because on being asked to have sexual intercourse with him, she had uttered an abuse which he could not tolerate. It should be noted in this context that the abuse of “one who sleeps with his sister” (*Bhenchot*) is an extremely common abuse in North India, used as a punctuation

mark by men all the time, and even hurled by tiny boys at each other. So it would be nothing particularly horrifying to Atma Ram. In the case of Lala versus State 1953 Cr. L.J. 1361, Bilaspur, this same abuse of “go sleep with your mother” was not considered sufficiently grave and sudden provocation. There of course it was a man who had uttered the abuse, a man who was killed. Whereas here it was a mere woman, a wife who dared usurp this “masculine” prerogative.

The low value placed on her life was endorsed by the court in these words: “The restraint which is generally shown by sophisticated persons is hardly to be expected from a villager who still regards his wife as his personal property and chattel, amenable at all times to his desire for sexual intercourse.” Therefore the sentence was reduced to five years’ imprisonment.

The extent of provocation is supposed to be measured by the social and cultural background, customs and traditions of the accused. However, in measuring the extent of provocation, the woman’s background is totally ignored. For instance, how common is a particular kind of abuse or language among women of a particular class?

In fact, after examining the use of this provision through the years as a way of systematically declaring murder to be not murder when the victim is a woman, one comes to the conclusion that in all such cases it is the court, who as much as the murderer, is offered “grave and sudden provocation”. Any judge or instrument of the law bred and trained in this heavily male-dominated society, culture and tradition, is only too prone to be “gravely and suddenly provoked”. In every case involving a woman, he is “provoked” if she showed signs of rebellion, protest or even passive resistance, if she asserted her rights, refused to submit to injustice, if she wanted control over her own body and sexuality. The “provocation” is even more grave if she dared flout the unwritten - patriarchal ownership laws—if she refused to exist as a piece of property, if she opened her mouth to speak, in fact if she dared to be herself—a woman,

We are all offering “grave and sudden provocation” every moment of our lives. That is how this patriarchal society would like to explain away all the violence that is perpetrated against us—an explanation so fiendishly clever that we often end up believing it, blaming ourselves and our sisters,?”:

### **We Will Re-define Justice**

What we need today is not a few changes or reforms in the law. Because as long as the law is made and enforced within male-dominated hierarchical institutions, we can expect only punishment and more punishment from it. Today, the law is used by those in power to keep things the way they are. It is based on the same double standards of morality which oppress and kill women. It devalues women’s lives just as does the society which upholds it. It is used as a weapon against women. The laws need to be rewritten, justice needs to be re-defined. A system of maintaining justice can be meaningful only when it is evolved by those who suffer injustice. □