https://www.crimejusticejournal.com/ *International Journal for Crime, Justice and Social Democracy*
Volume **13** (4) 2024 https://doi.org/10.5204/ijcjsd.3699

Fighting for Justice for Women who Kill Abusive Partners

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Abstract

This article examines the collaborative process involved in campaigning for and representing women appealing murder convictions, highlighting the power of positive collaboration between lawyers, campaigners, frontline experts and the women themselves. Pragna Patel and Harriet Wistrich, who first met while protesting in the early 1990s outside the Royal Courts of Justice in London, have been pivotal figures in this movement. Patel has dedicated four decades to Southall Black Sisters, an organisation advocating for black and minority women. Wistrich co-founded Justice for Women and later specialised in representing women victim-survivors of male violence, challenging discrimination in the criminal justice system.

Their collaboration has led to significant precedent-setting murder appeals and reforms in domestic homicide law. This article reflects on their enduring involvement spanning three decades, detailing their efforts in individual cases and legislative reforms. Their approach focuses on obtaining detailed personal accounts from women and building legal strategies around them, aiming to challenge convictions through a feminist lens. Recently, their collaborative efforts prompted the United Kingdom government to commission the Law Commission to review defences in cases of homicide. This underscores their enduring impact in fighting for justice for women who kill their abusive partners and effecting legal change.

Keywords: Feminist campaigns; women who kill; battered woman syndrome; law reform; legal practice; appeals.

Introduction

This article explores the process of campaigning, advocating for and representing women who seek to appeal murder convictions and the power of positive collaboration between lawyers, campaigners, frontline experts and the women themselves. Pragna Patel and Harriet Wistrich met in the early 1990s, protesting outside the Royal Courts of Justice in London. They were both feminist activists campaigning for justice for Sara Thornton and Kiranjit Ahluwalia, two women convicted of the murder of their violent husbands who were appealing their convictions. Pragna worked for 40 years with Southall Black Sisters (SBS), a leading frontline advocacy and campaigning organisation for black and minority women. Harriet helped co-found the Justice for Women[1] campaign group in the early 1990s, before studying law and developing a specialist practice acting on behalf of women subject to male violence. The practice focussed on holding the state to account and challenging discrimination in the criminal justice system. They both played a key role in a number of murder appeals, some leading to precedent change in the law. They also campaigned and advocated for reform to the law around domestic homicide. They have found that collaborating as lawyers, campaigners and frontline advocates have helped them to achieve some historic

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successful outcomes. It has also brought about shifts in understanding why women kill and the dynamics of domestic abuse and coercive and controlling behaviour.

In this reflection piece, the authors describe their historic and continuing involvement in battles for justice for women over three decades, through individual cases and efforts to reform the law. In part due to this longstanding collaboration, on 29 November 2023, the Law Commission announced it had been invited by the government of the United Kingdom (UK) to review the use of defences in homicide cases (Law Commission 2023). The feminist approach to challenging the criminal convictions of women convicted of murder begins with obtaining her detailed account, around which a legal case is built. Likewise, in this article, the authors provide an approach to understanding the process of fighting for justice based on their own firsthand accounts.

Pragna

I recently stepped down from my role as director of SBS. For 40 years, I led some of SBS's most important cases and campaigns. Our feminist struggles and campaigns, by necessity, drew on the routine experiences of the many black and minority women who came to us with stories of violence and abuse, including culturally specific forms of harm. These included forced marriage, honour-based violence, marital captivity and transnational marriage abandonment and related issues of homelessness, poverty, racism and immigration insecurities.

Campaigns in the Early 1990s

For the first 10 years of our existence, from 1979 to 1989, our entire focus was on advocating on behalf of black and minority women in contexts where their experiences of domestic abuse and domestic abuse-related suicides and homicides were ignored or dismissed by community and state institutions. But from the 1990s onwards, we were confronted with a different challenge in the case of Kiranjit Ahluwalia, a South Asian woman who had killed her husband after 10 years of abuse (*R v Ahluwalia (1992)*). We found ourselves grappling with what was for us a new issue — that of battered women who kill in response to the abuse they face (Walker 2016). Here was a woman who stood on the other side of the law and we had to understand and deal with that experience.

When we first took up the case of Kiranjit Ahluwalia at the tail end of 1989, she had already been charged with murder and was awaiting trial. She had set fire to her husband following an argument in which he assaulted her and threatened to burn her face with a hot iron. She had obtained a court injunction restraining her husband from harassing or assaulting her. However, she stayed in her marriage due to family and cultural pressures to uphold her duty as a wife and to live by the patriarchal concepts of honour and shame. At one point, to manage the escalating violence, she agreed to renounce all her desires and her very identity in an effort to please and keep her husband, who was also having an affair. In a letter to her husband which amounted to a charter of slavery, she said she would stop eating and drinking things she liked, would stop visiting friends and relatives and stop laughing.

Kiranjit's family had instructed lawyers to represent her. As such, we could only attempt to work with the legal team to ensure that her history of abuse, in the context of her specific cultural background, was understood by them and by the court. However, this itself was an uphill task. Her legal team were uninterested in examining why women like Kiranjit were driven to such desperate measures, or understanding the very real practical, cultural and religious constraints that prevent them from exiting the abuse.

Needless to say, Kiranjit was found guilty and convicted of murder without the court having considered her experiences of abuse within her specific cultural context. By then, some of the SBS team had watched US documentary featuring battered women who talked about how the criminal justice system in their cases was preoccupied with only the event itself and not what led up to it. The issues raised in this film strongly resonated with the experiences of women like Kiranjit in the UK.

At the time, I was struck that the very term 'miscarriage of justice' was only used in respect of men who were wrongfully arrested and imprisoned in politically charged cases. It very rarely applied to women who killed violent men; that itself signified to me the political and legal battle that lay ahead. We knew it would be difficult to mount an appeal against Kiranjit's conviction, given the state of homicide laws at the time and a wider lack of understanding of domestic abuse and its impact on women. We realised that, if we were to succeed, we would need to mount a major campaign to gain widespread media and public support and to put the Court of Appeal under pressure to do the right thing.

The first task of the campaign was to empower Kiranjit to tell her story in public. Like many other South Asian women of her background, she was not used to speaking out about private family matters due to her fear of stigma, ostracisation and community backlash. Gradually, through endless prison visits and intensive support, she found her voice, and what a voice it was. At a public meeting to launch her campaign, through a taped speech that I smuggled out of prison, she mounted a powerful and stinging critique of the cultural and religious values that keep women like her in violence and subjugation. She also questioned the role of a criminal justice system that inflicted further injustice on women by failing to ask why they took such desperate actions. When she uttered the words, 'Today I have come out of my husband's jail and entered the jail of the law' she summed up the double injustice that countless abused women were faced with (Gupta 2007).

The second task was to create momentum for the campaign by forging alliances with other women's groups. We were greatly helped by two similar cases being in the spotlight at the same time. Sara Thornton and Amelia Rossiter had also been convicted for the murders of their partners, despite suffering abuse (*R v Thornton (1992)*; *R v Rossiter (1994)*). At that time, I met Harriet who had recently formed Justice for Women, together with her partner Julie Bindel and others, and was supporting Sara Thornton. Julie was a feminist activist who later became a journalist writing for a range of publications. Together with Justice for Women, we sought to raise political and social consciousness around domestic violence and to lay the groundwork for the success of the legal challenges that the cases represented. Building alliances was essential to counter some of the negative effects of the law's response at that time and to create solidarity between women across different constituencies. This emphasised the point that domestic violence affects all communities and requires all of society to take responsibility, irrespective of the backgrounds of the women concerned.

We had our political disagreements about what was to be done with the law, but it was a coalition that held fast in what was a joyous celebration of sisterhood and solidarity. Together, we organised the most colourful and exuberant protest on violence against women that the feminist movement had seen for over a decade. Young and old, black and white, survivors and activists and professionals and women's organisations all came together in what were some of the best moments of our activism. I do believe that the protests inspired lawyers, scholars, activists and feminists of the future. Ultimately, through our campaigns, we sought to create new understandings of patriarchal, class and racial power and how to deploy the law as a tool to confront and disarm patriarchal and discriminatory practices. This remains a key aim as the project not only remains unfinished but is also in danger of going backwards.

Harriet

In 1991, I was working in the London Women's Centre for an organisation that offered training courses for women interested in entering the film and television industry, which closed in the late 1990s due to cuts in funding. Having been a passionate feminist for over 10 years, I had thought that working in the media would be an effective way to communicate feminist ideas to a wider public. At the same time, I was involved in various campaigns around violence against women. A documentary entitled, 'The Provoked Wife', made by Gita Saghal of SBS in 1991, was broadcast on mainstream television. It featured four stories of women who had been convicted of murder after killing their violent husbands. None were able to avail themselves of the partial defence of provocation, which, if successfully argued, would have reduced their murder conviction to manslaughter. The stories featured included the cases of Kiranjit Ahluwalia, Sara Thornton and Amelia Rossiter, and we learned all were working towards an appeal. A friend, Sandra McNeill, who lived outside London, had been in touch with Sara Thornton and asked her whether she would like a campaign to support her forthcoming appeal, due to take place that summer. She welcomed the idea, so Sandra asked me and others from London if we could pull together a crowd.

We telephoned around our friends, made placards bearing slogans such as 'Domestic violence is provocation' and 'Self defence is no offence' and headed to the Royal Courts of Justice where the appeal was due to be heard. We handed out leaflets explaining why Sara's case was an injustice. They contrasted the murder conviction she had received with examples of recent cases where men had successfully used the defence of provocation when killing their wives in a fit of anger. My office was just around the corner from the Court of Appeal, and I rounded up women from our courses and other organisations that filled the large municipal-funded women's centre to join the ranks of demonstrators. At lunchtime, we performed street theatre, borrowing gowns and wigs from barrister friends and voicing notorious quotes from fuddy male judges to portray the sexism of the courts. The exuberance and colour of the campaigning attracted interest from the many lawyers and others heading in and out of the court complex as well as from the media. Soon, we were on the national news (Wistrich 2024: 10).

Inside the courtroom, Sara Thornton's lawyers were arguing that the requirement of the defence of provocation that there should be 'a sudden and temporary loss of control' caused by the provoking words or conduct did not fit the experience of women who were victims of domestic violence. Instead, they introduced the concept of what came to be known as 'slow burn provocation' — a slow and suppressed build-up of provocation over years of violence which finally overwhelms the woman,

causing her to react (*R v Thornton (1992)*). The Court of Appeal dismissed her appeal, stating that the 60-second delay between the last act of provocation and Sara fetching the knife was undermining of the 'sudden and temporary loss of control' requirement for the defence (*R v Thornton (1992)*). At her original trial, the sentencing judge had commented that Sara could have walked out of the house or gone upstairs (Wistrich 2024: 8).

Just two days after the judgment of the court, it was reported that Joseph McGrail, who had kicked his wife to death, succeeded with the defence of provocation. He received a sentence of just two years' imprisonment, with the sentencing judge commenting that his wife would have tried the patience of a saint (Lonsdale and Ghazi 1991; see also Bindel 2009; Wistrich 2024: 10).

Our campaigning to highlight the sexism within the criminal justice system could not have been illustrated better, and the media picked up on this. In response, Sara Thornton began a hunger strike and the story of her injustice stayed in the public domain as we generated publicity to support her campaign (Wistrich 2024: 19). By then, we had decided to form Justice for Women, focussing on Sara Thornton's case and others where women subject to domestic violence had been convicted of the murder of their perpetrators. We linked up with SBS to support their campaign in support of an appeal for Kiranjit Ahluwalia.

On International Day to End Violence against Women, November 25, 1991, we organised a torchlit procession through the streets of London. We focussed on the three cases of Sara Thornton, Kiranjit Ahluwalia and Ameila Rossiter and demanded justice for women. Thousands of women joined us from across the country to march and rally in Trafalgar Square. It was a significant moment in the revitalisation of feminist activism, united around challenging violence against women after a decade when the women's movement was mired in divisions particularly focussed on identity politics.

Pragna

Mounting an appeal on behalf of Kiranjit raised a range of questions and issues to do with the unequal treatment of men and women within the criminal justice system. In particular, the gendered nature of homicide laws that failed to recognise women who killed in self-defence or as a result of serious or long-term abuse were highlighted. Whilst we felt confident challenging the inherent discrimination of homicide laws,[2] we were less certain about how to articulate our demands without stereotyping abused women's behaviour or advocating for a licence to kill.

We sought to appeal her conviction on three specific grounds which were specifically addressed at Kiranjit's appeal hearing (*R v Ahluwalia (1992)*).

Firstly, we argued that the trial judge erred in directing the jury on the objective limb of the then test for provocation by directing the jury to consider how a reasonable, educated Asian woman would have responded to the provocation. He drew the jury's attention to Kiranjit's relevant characteristics but failed to also mention that she was also an abused woman. So, none of the context of abuse — the violence, the perceived lack of exit options and the impact of the abuse — was put to the jury. We submitted a medical report to show that the 'reasonable person' which formed part of the objective test, needed to be someone who was abused and from the same cultural background as Kiranjit. The problem, however, is that we had to frame the abuse as battered woman syndrome (BWS) and argue that BWS was more or less a permanent characteristic that needed to be taken into account. The court rejected this ground, arguing that there was no medical evidence that Kiranjit suffered from BWS before the judge or jury. However, its deliberations did pave the way for future cases, where with the right kind of medical evidence, the reasonableness of the defendant's actions could be judged from the perspective of an abused woman.

Secondly, we argued that there was a misdirection in relation to the subjective limb of the test of provocation, since the classic test required the defendant to show an immediate or sudden and temporary loss of self-control at the time of killing. We argued that the requirement worked against abused women, who, due to differences in strength, age and fear, may only be able to act once abusers are asleep or otherwise incapacitated. Their inability to respond immediately to an act of provocation meant that they were unable to demonstrate sudden loss of self-control. We argued that abused women subject to prolonged abuse were more likely to act out of slow burn rage built up over time. The Court rejected this argument on the basis that the sudden and temporary loss of self-control test had been firmly established in law. However, it did make a significant concession by accepting in principle the notion of cumulative provocation and the slow burn reaction to ongoing abuse. It accepted that the time lapse between an act of provocation and the act of killing wasn't a legal bar to pleading provocation but was simply an evidentiary matter. Although, it also argued that the longer the delay and the stronger the evidence of deliberation on the part of the defendant, the more likely it would be that provocation would be negated.

The third ground of appeal was the submission of fresh evidence of diminished responsibility. There had been some medical evidence that, at the material time, Kiranjit was suffering from depression. For some reason, this had not been adduced

at her trial by her then lawyers. We obtained fresh medical evidence to show that she was depressed and this was presented to the Court of Appeal as part of the evidence of BWS. The court recognised that BWS could support a finding of diminished responsibility but only if backed by medical evidence. It was this ground in the end that secured Kiranjit a retrial and immediate release.

We did have misgivings about the way in which the problematic concept of BWS was being institutionalised in the law, for all the obvious reasons (see, for example, Edwards 1990; Nicholson and Sanghvi 1993). BWS shifts the focus away from an examination of the real socio-economic and cultural contexts and societal complicity that erect barriers to exit for women subject to abuse. It also reinforces gender stereotypes and notions of female passivity and mental abnormality, as well as ensuring that the testimony of psychiatrists supplants the voices of the women in the legal process. However, we had to balance our objections in principle with not losing a route that might deliver justice in this individual case.

Nevertheless, the case was still groundbreaking because it exposed the ways in which society's most powerless and marginalised voices are silenced by the law. It helped to unmask and challenge the idea that the law is 'neutral', 'equal' or 'objective' not only on issues around gender but also race (Allard 1991).

Why Campaigning was Necessary

If the case was groundbreaking, it was due in no small part to the campaign that was in full swing by the time of Kiranjit's appeal. I was completely taken aback by the fact that the issues we raised struck a chord, not just with other feminists but also with many members of the public and the media. This created debate and discussion in often unexpected and creative ways. There followed widespread media coverage and support from NGOs, parliamentarians, trade unions and educational bodies as well as from the arts community, who staged drama and music performances around the issues raised (see Bindel 2009; McNab 2007; Austin and Gupta 2006). The media and the arts suddenly became vital tools of advocacy. All of this had a huge impact not only on the law but also in shifting cultural norms around domestic abuse in the wider society. I found it particularly satisfying that what was once a taboo subject in the UK South Asian diaspora was now out in the open and could not be denied. A particularly positive outcome is that Kiranjit received considerable community support not only from many women, including female survivors of abuse, but also from men.

Even as far afield as India, Kiranjit's case made headlines (see, for example, McNab 2007). A Bollywood movie (Austin and Gupta, 2006) was even made, the merits of which I will not go into. Suffice it to say, it has been used as a vital educational resource by community groups and university law and women's studies departments throughout India. As recently as 2021, India's largest storytelling platform, Humans of Bombay, made up of young women, interviewed Kiranjit to ensure that a new generation of women would know about her (Humans of Bombay 2021). It was a touching interview.

Harriet

In September 1992, just days after the news coverage of Kiranjit Ahluwalia's retrial, which concluded with a guilty plea to manslaughter and her release from prison, Justice for Women received a letter from Emma Humphreys. Emma was a young woman in prison who asked for our help in appealing her murder conviction. She wrote, 'In Dec 85 I was convicted of murdering my boyfriend, Trevor Armitage, who was 33, I had met him six months previously when I was 16. I was a prostitute, he was a client. I was 17 at the time of the offence and I am now 24' (Wistrich 2024: 15-16).

Emma described the circumstances surrounding Armitage's death. Having moved in with him because she had nowhere else to live, she had suffered violence and abuse. This occurred while working on the streets, including a traumatic gang rape, and at home, where she had been subjected to punishment rapes by Armitage. She had stabbed him to forestall yet another threatened rape. At trial, represented by an all-male legal team, she found it impossible to give evidence in her own defence, so was convicted of murder and sentenced to be detained at 'Her Majesty's Pleasure' (*R v Humphreys (1995)*). She had been in prison for seven years already, having signed away her right to appeal, but had always felt the conviction was wrong and that she was not a 'murderer'. The media coverage of other cases raising similar issues had given her the courage to consider she might be deserving of justice and to contact us for help.

We approached Rohit Sanghvi, the solicitor who had acted for Kiranjit Ahluwalia, to ask if he could take her case on. He said he would, but only with help from a volunteer who could obtain a detailed statement from Emma of her whole history. He described the approach Pragna had taken with Kiranjit and suggested something similar would be needed covering Emma's whole history (Wistrich 2024: 16-17).

As I was at that time contemplating a change of career to law, I volunteered to undertake this task. Over a period of many months, I visited Emma in prison to obtain her detailed account from childhood through to killing, and how she was represented afterward. That account revealed the extent of the abuse to which Emma was subjected from a very young age. Occurring within the home and as a teenager when running away from home, the abuse eventually drove her to the streets of Nottingham. There, aged only 16, she was picked up by Armitage. The older man posed as a boyfriend but then pimped her on the streets, locking her in at home and subjecting her to violence and repeated rape. One night, she could take no more and, as he approached her for sex, she stabbed him.

Represented by an all-male legal team, she found it hard to disclose details of the abuse to which she had been subjected or to explain why 'sex' with her 'boyfriend' became so intolerable when she was selling sex to multiple men on the streets. When Emma was due to give evidence at trial in her own defence, she could not bear to speak and without articulating her defence, unsurprisingly, she was convicted of murder.

In prison, Emma signed an 'abandonment' of her right to appeal. Whilst she felt it was wrong that she was labelled a murderer, she couldn't see the point of challenging the conviction as why would anyone care about someone who was 'just a prostitute'? She languished in prison for many years until, seeing the publicity about the campaigns and case of Kiranjit Ahluwalia, she began to have some hope.

After I had obtained a lengthy statement, we instructed counsel, deciding that this time around, Emma should have a female legal team. Vera Baird, who was later to become a government minister and Victim's Commissioner, was moved by the case and drafted grounds of appeal. Before we could proceed, however, we had to obtain a nullity of the 'abandonment' of her right to appeal that Emma had signed after she was convicted. Her solicitor had lodged a one-sentence ground of appeal against conviction which had led to a refusal of permission. When an appellant is notified of refusal to grant leave to appeal by the single judge, she can renew her application to appeal, simply take no further steps or positively abandon it. The latter would imply that she accepts she has been correctly convicted (Judiciary of England and Wales 2023). Emma's abandonment represented a barrier to taking forward an appeal against conviction seven years later when Justice for Women took on the case. We had to obtain a nullity of the abandonment and, to do so, we had to show that Emma did not appreciate the significance of what she was signing. We were ironically assisted by a letter from her solicitor at trial who responded to our request for assistance, 'I am quite sure Emma did not understand the nature of the appeal process. By that time, everyone had given up on Emma. What could one do for a girl who'd refused advice and wouldn't help herself?' For once, the dismissive and sexist attitude of a lawyer worked in our favour and the court granted the nullity and gave us permission to appeal (see Wistrich 2024: 27-28).

Over the next few months, as we waited for a date for the appeal hearing, Justice for Women campaigned extensively, building on the momentum of the campaigns around Sara Thornton and Kiranjit Ahluwalia. We worked with the media and grassroots feminist activists so that, by the date of the appeal, there would be a large crowd outside the court and plenty of news coverage. There were two grounds of appeal argued, both focussing on the defence of provocation. The first concerned the objective limb of the provocation test: in essence, if the jury found that the defendant was provoked by the words or conduct of the deceased, then would the 'reasonable man' with the relevant characteristics of the defendant have been so provoked? It was not necessarily a ground that we felt comfortable with arguing from a feminist perspective as we had to rely on evidence from the time of the offence that Emma had an 'abnormal personality'. However, we knew it stood a chance with the appeal court because of significant evolving case law on this aspect of the provocation test, including that in Ahluwalia. The first ground was thus formulated:

> the judge had erred (i) in not directing the jury that they could take the seriously abnormal personality of the appellant into account as a characteristic to be attributed to the reasonable person when considering whether that person would have lost her self-control and behaved as the appellant did. (*R v Humphreys (1995)*: *1010*)

The second ground that was argued was much more to the point. It concerned the concept of cumulative provocation and the importance of the trial judge drawing the jury's attention to various different strands in the relationship that amounted to provocative conduct, not only the final trigger point. This ground came closer to capturing an argument we were making as campaigners that the provocation defence in practice had been geared towards the male response — an explosion of anger following provocative words or conduct. However, for female victims of domestic abuse, there is likely to be a whole history of provocative acts which accumulate to a point where a straw breaks the camel's back. In Emma's case it was the long build-up of physical, emotional and sexual abuse and coercion that finally led her to break. Without a full understanding of this history, her actions on that night made little sense.

The Court allowed her appeal on both grounds. The widespread media coverage (Independent 1995; The Herald 1995) of this victory seemed to signal a sea change in understanding of domestic abuse as well as a different type of miscarriage of justice — where it is not the wrong person convicted but the wrong conviction for the offence.

Sara Thornton, whose first appeal had failed in 1991, recognised the injustice in her case and went on hunger strike. Justice for Women and SBS continued to campaign to raise awareness of her case. Prior to the creation of the Criminal Cases Review Commission in 1997,[3] the only chance someone had to argue an appeal after the court had previously considered and dismissed appeal grounds was if the Home Secretary could be persuaded to refer a case back to the appeal court. This usually occurred where fresh evidence had emerged that cast doubt on the safety of the conviction. SBS and Justice for Women would regularly gather outside the Home Office building in St James's Park with megaphones and placards, entertaining the civil servants within with our chants and singing. We heard later from some of those who worked there that the cacophony was certainly noticed. They believed that, together with continued media interest in Sara's case, it may have helped focus the attention of the Home Secretary once he received the fresh grounds of appeal submitted by a new legal team. In Sara Thornton's second appeal, it was held that, following the decisions in Morhall (*[1995]*), Ahluwalia and Humphreys, cases that make clear that mental as well as physical characteristics should be taken into account, the jury should have been directed that they could take into account her mental characteristics in assessing the standard of control expected of the defendant (*R v Thornton (No. 2) (1996)* at 1031).

Reforming the Defence of Provocation

Despite these gains, the law on provocation was still being successfully used by violent men who killed their wives and partners and were able to argue they were provoked because she was 'unfaithful' or because he believed such. There was growing concern from some feminists and politicians, as well as within the judiciary, that the provocation defence was letting too many violent men get away with murder (Elliot 2008).

In 2004, the Labour Government invited the Law Commission to conduct a review and consultation on the law of murder (Law Commission 2004). In 2005, a privy council case, *AG Jersey v Holley (2005)*, concerned the killing of his girlfriend by a man who argued the provocation defence on the ground that his mental characteristic of drunkenness should have been ascribed as relevant to the objective limb of the provocation test. The appeal against his murder conviction had been allowed, but the Attorney General (AG) of Jersey invited the privy council to reconsider. By a majority, the court ruled that parliament intended an objective standard for loss of self-control and that self-control was an issue for diminished responsibility, not provocation (*AG Jersey v Holley (2005)*).

Following publication of the Law Commission consultation in 2006, *Murder, Manslaughter and Infanticide*, and a further Ministry of Justice consultation in 2008 (Ministry of Justice [MoJ] 2008), the government introduced legislation contained in the *Coroner's and Justice Act UK 2009* which abolished the defence of provocation and replaced it with a defence of loss of control (Clough 2010). Section 54 of the *Coroner's and Justice Act 2009* (UK) sets out the constituent elements of the defence, which are that it has to be shown (as in provocation) that D lost her self-control, that there was a qualifying trigger and that 'a person of D's sex and age, with a normal degree of tolerance and self-restraint and in the circumstances of D, might have reacted in the same or in a similar way to D' (s. 54(1)(c)). The qualifying trigger can arise where:

- D's loss of self-control was attributable to D's fear of serious violence from V against D or another identified person. (s. 55(3))

- And/or where things done of said constituted circumstances of an extremely grave character, and. caused D to have a justifiable sense of being seriously wronged. (s. 55(4)(a) and (b))

The statute specifically excludes 'a thing done or said' which 'constituted sexual infidelity'.

Thus, this new partial defence was aimed at reforming the defence of provocation to correct its inbuilt gender bias. While recognising on one hand that women may kill when in a state of fear, it excludes men provoked by trivial reasons such as the 'nagging' wife or the unjustifiable reaction of killing someone who was unfaithful (see Edwards 1990).

However, the impact of this change to the law has been of limited assistance for women who kill their abusers. Anecdotally, it has prevented some men from successfully blaming women when they 'exploded in anger' and killed their wives or girlfriends (Douglas and Reed 2021; Edwards 2019).

In 2021, Justice for Women, in collaboration with the Centre for Women's Justice (CWJ), published a detailed piece of research looking at women who kill (Centre for Women's Justice [CWJ] 2021). Conducted over a four-year period, the research included

20 interviews with women convicted of murder or manslaughter, six trial observations and interviews with legal practitioners, journalists and academics. It also examined media reporting and secondary data. This included 23 domestic homicide reviews, 17 cases with the criminal cases review commission and data from freedom of information requests to police forces and the home office. Our findings showed that over a 10-year period from 2008 to 2018, 108 men were killed by female partners, compared with 835 women killed by male partners or ex-partners. In 77% of cases where women had killed their partners, there was evidence to suggest prior abuse from the deceased. Despite this, women were acquitted entirely in only 7% of cases, and in 43% of cases they were convicted of murder.

Our report then examined the barriers and challenges within the criminal justice process that allow so many victims of abuse to fail with self-defence and often be convicted of murder. This starts prior to the killing, where victims of abuse are not protected by the state and barriers exist to disclosures of abuse, which are exacerbated for black and minority ethnic (BME) women (CWJ 2021: 7-12).

In an independent domestic homicide sentencing review commissioned by the government in 2023, Clare Wade KC examined 120 cases of domestic homicide for a two-year period between 2018 and 2020 (MoJ 2023a). We examined 120 cases, of which 100 involved a male perpetrator and 20 involved a female defendant. Only two cases resulted in a manslaughter conviction by reason of loss of control. Both cases were female defendants.

As a result of the recommendations made in the Wade review, the government announced that it would refer the question of domestic homicide defences back to the Law Commission (MoJ 2023b). In November 2023, the Law Commission announced a public consultation to consider the use of defences in domestic homicide in light of modern understandings of the effects of domestic abuse on victims (Law Commission 2023).

Pragna

In the CWJ report on women who kill, I wrote a section that looks specifically at the range of concerns that arise when BME women engage with the criminal justice system, from the moment they are arrested to their appeals (CWJ 2021: 70-76). The criminal justice system's response reveals a complex matrix of racial, class and male powers which keep minority women silent and powerless.

Finding Legal Representation

The first problem that many women encounter is how to choose the right lawyers who have experience of defending women who kill in the criminal justice system. I have found that many minority women from tight knit communities who have led insular lives often don't get to choose their legal representatives because they have had limited or no interaction with the outside world. In some cases, lawyers are assigned by the police from the duty solicitor scheme, but more often than not, they are found by the defendant's families, usually through their community and business networks. Inevitably, such lawyers are usually general or even commercial legal practitioners who lack the understanding of domestic abuse necessary to represent abused women in homicide trials. Another problem is that women are often unable to change their legal representation in the course of the proceedings as legal aid will not normally be granted for defendants who want to change their solicitor. In all the cases with which I have been involved, inadequate legal representation has been front and centre of miscarriages of justice.

Failure to Disclose Abuse and Control at the Outset

Perhaps the most recurring aspect of BME women's accounts of their engagement with the criminal process is their failure to disclose abuse from the outset of their trial. As I have discussed, for South Asian women, this is often due to powerful cultural and religious constraints that demand silence and compliance from them. When they eventually do disclose, usually following specialist intervention and support, few are able to point to any contemporaneous documented evidence of abuse precisely because they have faced immense internal and external barriers to reporting.

Cultural Standards and Stereotypes — Kiranjit Ahluwalia and Zoora Shah

In the absence of objective evidence, women from minority backgrounds often need to turn to cultural experts to provide a proper understanding of the complex interplay between gender-based violence, culture and religion to explain why they did not leave the abuse. But the need for cultural evidence is often dismissed or viewed with huge scepticism, especially by the judiciary. It often carries little or no weight within the criminal justice process. Moreover, it is not uncommon to hear judges rule that there is no need for such evidence since culture falls within the 'common sense' understanding of juries and does not need further explanation (see, for example, CWJ 2021: 125). In cases where it is needed, lawyers and judges often resort to

relying on family members to provide the background information. This approach is problematic because family, relatives and community members cannot provide an objective or gendered analysis of their cultural and religious backgrounds. Many are socialised into the same value systems and structures, and they are often intentionally and unintentionally complicit in the constraints that are placed on these women.

Another issue is that the courts often create cultural standards based on misconceptions, assumptions and stereotypes of minority women's behaviour and then use these to judge their actions (see, for example, CWJ 2021: 102). For example, any exercise of agency and autonomy on the part of South Asian women, no matter how constrained, is deemed to invalidate the barriers posed by culture and religion on women's lives.

One potent example of how cultural stereotypes were used was in the case of Zoora Shah, with which I was involved in the 1990s (CWJ 2021: 125-126). Zoora came from an ultra-conservative Pakistani community in Bradford, England. She was a single parent with three young children who lived a shunned existence on the margins of her community. In order to survive, she entered into an exploitative relationship with her landlord, Mohammed Azam, in return for shelter and food for herself and her children. Living such a precarious life meant fending off other men who also constantly harassed her for sex. Eventually, after years of sexual and financial abuse, she killed Azam. At her original trial for murder, Zoora did not disclose the abuse for fear of its impact on her children's life prospects, including marriage. She was convicted on various counts, including murder and attempted murder (*R v Shah (1998)*). In 1998, she appealed against her convictions on the basis of the abuse she had experienced, but the appeal was dismissed by the Court of Appeal on the basis that she did not conform to their stereotypical notion of an Asian woman. Dismissing the appeal, the court stated:

> this appellant, as it seems to us, is an unusual woman. Her way of life had been such that there might not have been much left of her honour to salvage, and she was certainly capable of striking out on her own when she thought it advisable to do so, even if it might be thought to bring shame on her or to expose her to the risk of retaliation. (*R v Shah (1998)*: 12)

Her case stands in sharp contrast to that of Kiranjit Ahluwalia who fitted the classic stereotype of the passive battered Asian wife with an unblemished record who tolerates her oppression. Zoora's actions in killing Azam undermined the classic stereotype of Asian womanhood, and this effectively ensured her conviction for murder.

The other point I want to briefly mention is the problematic use of medical experts who do not possess a gendered understanding of culture. As such, they often resort to an uncritical acceptance of culture or religion from a male gaze. Thus, such experts often have a conventional understanding of different cultures and religions that does not take account of how they impact men and women differently within a community. Culture and religion grant men power and autonomy and do not lead to stigma and ostracism when social norms are broken. For women, it is a different story. Culture and religion act as constraining and controlling mechanisms that restrict their voice and autonomy and lead to negative consequences when transgressed. This is why any medical understanding of a minority woman's state of mind needs to be informed by a gendered analysis of their backgrounds, without which justice cannot be served.

Finally, the lack of proper interpretation for women whose first language is not English remains a perennial problem within the criminal justice system. Even where interpreters are available, they are usually male and may even hail from the same community as the defendant. The lack of trained, female, gender sensitised interpreters work as a further barrier preventing the female defendant from making a full and frank disclosure of abuse.

Harriet

Over the past 30 years, Justice for Women has been contacted by many women (sometimes though their friends and families) who were convicted of the murder of violent and abusive partners. Where possible, we have tried to assist them in exploring appeals against conviction. I have taken on perhaps a dozen such cases over those years and we have referred many other cases to other lawyers who have an understanding of the dynamics of domestic abuse and a willingness to work with campaigners.

So many of the cases that came to us appeared to be wrongful convictions insofar as there was clear evidence that these women were victims of violence and abuse from the deceased and had been driven to kill as a consequence of being entrapped in relationships and confronted by unbearable violence and control. In all such cases, a murder conviction seemed wrong, yet they were convicted, nonetheless. As we explored what may have gone wrong in any one case, we found a number of explanations for why the jury may have convicted them. These ranged from poor legal representation to lack of credible accounts given by the defendant of the offence itself. However, such explanations did not give rise to grounds of appeal.

Under our jurisdiction, leave to appeal against a conviction can be achieved only on an extremely limited basis. Essentially, this boils down to identifying a legal misdirection from the judge, some form of procedural impropriety or through the emergence and presentation of fresh evidence that was not available at the trial.

Often, there appeared to be a lack of understanding by defence lawyers, who failed to adequately explore the dynamics of the relationship between the defendant and deceased. Far too frequently, they had their own sexist judgements of the relationship, such as 'she gave as good as she got' and if the violence was so bad she could have left the relationship. They may have been hampered by failing to explore ways to encourage the defendant to disclose the history of abuse. They may also have lacked the understanding required to facilitate such disclosure, instead simply believing that if no disclosure was made then there was no abuse. They also often made the tactical error of considering that it wouldn't go down well with the jury to 'speak ill of the dead'. Such approaches, of course, deprived the jury of a true understanding of the dynamic of the relationship and how a woman may have become entrapped and worn down by controlling behaviour and violence (CWJ 2021: 8, 44).

Poor legal representation or bad tactical decision making by the defence would not normally give rise to a ground of appeal, except in the most exceptional circumstances. In one case where I represented the appellant, Sharon Akers, at the Court of Appeal, a serious conflict of interest existed. The solicitors representing the defendant had previously represented her deceased partner on a number of occasions, including in relation to his violent assault against her. The Court of Appeal recognised this was a conflict but nonetheless dismissed her appeal as they stated the conflict did not undermine the safety of her conviction (*R v Akers (2007)*).

In 2011, I was contacted by the family of Sally Challen, an upper-middle-class woman who killed her husband of over 30 years, Richard, by repeatedly hitting him over the head with a hammer. A relative contacted me after she was convicted of his murder. Despite paying for legal representation from one of the top legal firms in the country, the family were bewildered by the failure to put forward evidence of the extent of Richard's abusive behaviour towards Sally before the jury. They were advised that it wouldn't go down well 'to speak ill of the dead'. Instead, they relied on a medical report from a psychiatrist who found she had a depressive disorder that may have diminished her responsibility for the killing. That defence was rejected by the jury (*R v Challen (2019)*).

I commenced work on obtaining a detailed account from Sally of her family background and 40-year relationship with Richard, who she had met when she was a 15-year-old schoolgirl and he was 22. The relationship followed a very old-fashioned, traditional patriarchal dynamic, whereby Richard expected to be serviced by Sally and she completely doted on him. As they reached middle age, he would visit prostitutes and date other women. Sally didn't like that but was fearful of challenging him. There had been violent incidents in the past, including a punishment anal rape, but Sally — who was permitted no separate friendships — was mainly completely compliant. When I met with Sally in prison, she told me she still loved Richard and missed him terribly. What then had triggered the homicidal act from a woman who had never committed a violent act in her life and couldn't bear to be without Richard?

The fresh evidence that was to become the basis of her eventual appeal came in the form of applying a new framework of understanding to the dynamics of the relationship. In 2015, the government introduced a new offence, controlling or coercive behaviour in an intimate or family relationship, whereby one partner seeks to dominate and control the other through a series of acts and bespoke manipulation which ultimately entraps the victim in the relationship (*Serious Crime Act 2015* (UK), s. 76). This represented a new conceptualisation of a form of domestic abuse — one which matched the narrative of Sally and Richard's relationship. We argued this new framework of understanding in addition to new psychiatric evidence. It was a long shot, but with the aid of Sally's son, David Challen (who was quoted in a newspaper as saying, 'Mum murdered my dad. It was his fault' (Hamilton 2018), and working with Justice for Women, we built up a campaign highlighting the context (Wistrich 2024: 228-230). There was a lot of media interest and it was an opportunity to explore and expand our understanding of coercive and controlling behaviour. Many victims of coercive control identified with Sally's story. When the case eventually came to the Court of Appeal in February 2019, there was a large protest outside the court. The hearing had to be moved to the largest court in the building to accommodate all those interested in attending, including the press.

In their judgment, the Court of Appeal recognised that the absence of an understanding of coercive control and its impact on Sally's mental health undermined the safety of the conviction (*R v Challen (2019)*). Her appeal was allowed, but a retrial was ordered. Prior to that retrial taking place, the Crown offered Sally the opportunity to plead to manslaughter, which she did, rather than risk being re-convicted of murder.

Feminist campaigns, including those surrounding the cases of Kiranjit Ahluwalia and Sally Challen, have led to significant legal precedents and change in the law. They have generated greater recognition of the dynamics of coercive control within the

criminal justice system. However, despite these significant gains, we continue to be contacted by many women convicted of murder. Following publication of Clare Wade KC's *Domestic Homicide Sentencing Review* (MoJ 2023a), there is a public consultation on sentencing in domestic murder cases and the Law Commission has once again been invited to consider reform to the partial defences to murder (MoJ 2023b). Changes enacted in the *Coroners and Justice Act 2009* (UK) may have limited the ability of angry, jealous and violent men to get away with murder. However, far too many women who have survived abusive and controlling relationships continue to fail to achieve justice at trial and are sentenced to ever longer sentences of imprisonment. The challenge now is to transform the criminal justice process so that a homicide trial can properly take account of the history and dynamics of a relationship to provide a proper context for the final act of homicide.

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[1] https://www.justiceforwomen.org.uk

[2] The offence of murder is now, as it was in the 1990s, defined as the unlawful killing of a living person in circumstances in which there is an intention to kill or to cause really serious harm. Anyone convicted of murder will receive a mandatory life sentence. Legal defences to murder consist of complete defences (such as self-defence), which will result in an acquittal, and partial defences (such as diminished responsibility), which will result in a conviction for manslaughter. Manslaughter can be 'involuntary', in which case, it arises as a consequence of gross negligence or as a consequence of an unlawful act, such as an assault, which was not intended to cause really serious harm. Manslaughter can also be 'voluntary', that is a killing where a partial defence has operated as noted above. In the 1990s, the partial defences to murder were set out in the *Homicide Act 1957* (UK) and included Section 2, diminished responsibility, and Section 3, provocation. In 2009, following a Law Commission consultation, the Government introduced the *Coroners and Justice Act 2009* (UK), which amended the defence of diminished responsibility and abolished the defence of provocation, replacing it with the defence of loss of control.

[3] Created in 1997, the Criminal Cases Review Commission is a statutory body established to review miscarriages of justice in England, Wales and Northern Ireland. It was established under the *Criminal Appeal Act 1995* (UK) and is the only body that has the power to send a case back to an appeals court if it concludes that there is a real possibility that the court will overturn a conviction or reduce a sentence. In the main, it provides a further route to appeal where a convicted defendant has previously failed in an appeal or been refused permission to appeal by the Court of Appeal. It refers only a tiny proportion of applications back to the Court of Appeal and will do so normally only where fresh evidence arises.

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