



PRIVATE & SELF DEFENSE IN THE CONTEXT OF DOMESTIC VIOLENCE: LEGAL PROTECTIONS FOR VICTIM

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Abstract

The majority of women experience domestic violence at some point in their lives, which can take many forms, from physical to psychological. Women are more impacted by this issue than any other group, and it is a contributing factor to "disability, homelessness, poverty, and illness among women worldwide. The issue is pervasive throughout Europe and most certainly breaches four articles of the European Convention on Human Rights (EUROPEAN CONVENTION ON HUMAN RIGHTS):

Article 2: Right to life;

Article 3: prohibition of torture;

Article 8: right to respect for one's private and family life;

Article 14: prohibition of discrimination. Five The European Court of Human Rights (EUROPEAN CONVENTION ON HUMAN RIGHTS) developed a thorough body of case law to address domestic violence by dismantling the division between the public and private domains.

Furthermore, the court rulings in cases when women killed their abusers are inconsistent. In order to stop future violence (physical harm or death), the women who were the victims of domestic abuse assert that they killed the perpetrator in a non-confrontational manner out of self-defense. 14 However, when it comes to taking legal action, usual notion of self-defense ignores the unique features of domestic abuse.

INTRODUCTION:-

Discussing women's right to self-defense in heterosexual relationships when they kill their abusers in a non-confrontational situation is the aim of this paper. The self-defense claims brought by women who were victims of domestic abuse have varying results due to the discrepancy between the self-defense legal framework and its interpretation in these circumstances. Furthermore, the traditional formulation of the self-defense criterion, which ignores the particulars of domestic violence, treats claims of self-defense made by women

who were exposed to and acted under the effect of domestic abuse. In order to determine when and how self-defense claims in domestic abuse situations can be made, the study investigates this topic.

In order to determine which conditions and requirements support the self-defense claim for victims of domestic violence who kill their abuser, the paper also examines the self-defense claim and states' obligations in relation to European Court of Human Rights articles two and three, which prohibit torture and inhuman or degrading treatment or punishment.



1.2 Method and material

The study investigates the connection between domestic abuse and the claims of self-defense made by women who murder their abuser without resorting to violence. In order to derive the essence of domestic violence, self-defense, and their interpretation, the paper examines several legal research reports. The legal research articles from both Inter-American and European literature that address the issue from their regional human rights system perspective are used because the paper's topic is widely discussed. The general idea of self-defense claims and the relationship between domestic abuse and self-defense is contextualized through the InterAmerican literature, even though the article focuses on the European perspective on these issues.

since the subject is more thoroughly explored and brought up in several case law cases inside their legal system. Furthermore, the court's perspective in its arguments and rulings is elaborated and understood by essays written by various academics. Additionally, the European Court of Human Rights's case law is examined. I selected both recent and classic European Court of Human Rights cases that, from the standpoint of articles 2 and 3, describe the right to life with its exception for self-defense and the ban on torture. Conclusions about how those rights are contextualized in relation to state obligations are also drawn from the case laws.

because the topic is covered in greater detail and is brought up in a number of case law cases inside their legal system. Additionally, essays produced by a variety of scholars elaborate and comprehend the court's position in its arguments and rulings. The case law of the European Court of Human Rights is also reviewed. I chose both contemporary and historical European Court of Human Rights decisions that explain the right to life, including its exception for self-defense, and the prohibition against torture from the perspective of articles 2 and 3. The case laws are also used

to derive conclusions regarding how such rights are framed in light of state obligations.

1.3 Conceptual structure

Compared to men, women are more likely to experience domestic abuse. Domestic violence is defined as violence that occurs in a close relationship and is observed over an extended period of time, characterized by systematic and repetitive acts of violence. When a woman murders her spouse, whether past or present, in a non-aggressive manner, she frequently argues that her actions were motivated by a legitimate fear of harm. They therefore assert self-defense.

By excluding the characteristics that set apart victims of domestic abuse who acted in self-defense, the traditional definition of self-defense encompasses the masculine interpretation of defending one's right to life. Furthermore, the criminal justice system ignores the special connection between women who kill their abuser and those who have lived in homes where they have experienced physical and emotional abuse. In addition to However, women who are victims of domestic abuse and who have responded in non-confrontational self-defense are

still acted in self-defense, which is a crucial factor for the criminal justice system to take into account.

2. A claim of self-defense in domestic abuse

2.1 One Incident Approach? Domestic violence's characteristics

For the purpose of protecting women from violence, The Istanbul Convention, established by the Council of Europe, defines domestic violence as "any act of physical, sexual, psychological, or economic violence that occurs within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim."

Domestic violence, then, is a type of violence that occurs in the family home and in a close



connection between the ex-partner and the current spouse. Domestic abuse victims are frequently financially reliant on the perpetrator, live with them, and are emotionally linked with them. Because they are likely to be beaten and meet the perpetrator again, this might make the victims feel intimidated "Distinguishing element of domestic violence that the abuse occurs over a period of time" further distinguishes the nature of domestic violence from other types of violence. The violence is typically not a "one-off event" because the victim had a relationship with the perpetrator or knew them, whether as a spouse or an acquaintance. Rather, because it can be provoked at any time and by any situation, violence in cohabiting couples tends to be cyclical. Thus, the victim resides in concern that they will come across violence in their daily lives. Nonetheless, the victims continue to live with the perpetrator, which the researcher described as BATTERED WOMEN SYNDROME is defined as "a group of emotional traits or patterns of behavior of a woman in an abusive relationship with a man." These emotional traits of BATTERED WOMEN SYNDROME women point to a learned helplessness idea in which the women exhibit passivity, lack of reaction, or a sense of helplessness that prevents them from leaving the abusive relationship or from stopping the violence that they experience on a regular basis. Furthermore, the BATTERED WOMEN SYNDROME concept of a cycle of violence explains why the abuses typically follow a pattern or are cyclical, becoming more severe over time. Therefore, it can be argued that systematic violence inside intimate relationships, which is more likely to be repetitive than non-domestic violence, is what defines domestic violence.

However, the one-incident approach to criminal justice is frequently used to either aggravate the situation to the point where the victims take matters into their own hands or reject domestic violence charges due to a lack of evidence.

2.2 Killing the criminal: Self-protection

In certain situations, "a legal doctrine that would render an otherwise criminal act of violence acceptable" is how the self-defense concept is defined. The conventional theory of self-defense states that an action taken in response to an unfair attack must be immediate, reasonable, and required. Many times, the components of this definition are evaluated "in accordance with a reasonableness standard." 35. Accordingly, the action can be permissible in situations where a reasonable person would have both a reasonable and an honest perception that there was an impending risk. Similarly, according to common law, the individual who acted in self-defense must honestly believe that what they did was necessary and have a good basis to believe it. However, the judges' personal beliefs are frequently used to determine the act's reasonableness rather than those of the people who acted in self-defense.

Self-defense based on the right to life is explained by the right and forfeiture method. This method maintains that the right to life depends on the circumstances and behavior. As a result, when someone immediately jeopardizes another person's right to life rather than having their right to life taken away. However, in cases where the victim acted and killed in self-defense, this does not indicate that the offender's rights are forfeited; rather, "the right to life is forfeited (or not possessed) simply by virtue of becoming an unjust immediate threat to the life of another."

Therefore, killing in self-defense is acceptable; however, this does not mean the perpetrator is being punished or deserves to die; rather, it is a protection mechanism against an unjustified, sudden attack.

As a result, it can be argued that the idea of "imminence" or "immediate" attack, which is associated with the self-defense notion, limits the claim of self-defense by avoiding the use of excessive force and preventing the loss of a person's life. Thus, there are two primary pillars upon which the self-defense principle rests.



First, the threat against one's right to life must be immediate. Second, under the norm of a reasonable man, the deed is against the other person's unjust act.

2.3 The connection between self-defense and domestic violence

Regardless of whether the violence is domestic or not, one has the right to self-defense in court. It is frequently difficult to assert self-defense when victims of domestic abuse kill their abuser in a non-conflictual manner because the traditional definition of self-defense requires that there be imminent or ongoing violence in order for the argument to be legitimate. Since domestic abuse is continual and puts women in a condition of constant fear of attack, it has been suggested that the criteria do not take gender into account or address gender perspectives. Because of this, the BATTERED WOMEN SYNDROME theory was developed to help victims of domestic abuse defend their claim of self-defense. The idea clarifies the sense of taught helplessness that compels a victim of domestic abuse to stay with their abuser. Additionally, this makes the victim live "under a constant reign of terror, and may kill during an apparently peaceful moment out of fear that she will not be able to protect herself from the next, inevitable attack."

However, in circumstances of domestic violence, this rationale might not be sufficient to substantiate the claim of self-defense. According to Alafair, the BATTERED WOMEN SYNDROME theory was not supported by empirical data showing that victims of domestic abuse live in constant fear, that the duration of the violence is ambiguous, or that the tension or fear that the victim experiences eventually goes away if she continues to live in the abusive relationship. Alafair added that the idea does not explain why a victim of domestic abuse perceives danger after more than one attack.

Therefore, he contends that the fundamental idea of using self-defense as justification is being undermined when the aspect of self-

defense is modified to match the victim of domestic abuse's self-defense in a non-confrontational situation based on subjective perception rather than objective reasonableness.

The conventional self-defense theory, on the other hand, has been criticized for being gender biased and failing to take into account victims of domestic abuse who commit murder in a non-conflictual setting. Additionally, it is suggested that losing control is more of a masculine response to violence, demonstrating the bias of the traditional self-defense notion toward women through the use of subjective tests that favor male defendants. Additionally, "it is not likely that the victim of domestic abuse might believe that she could lose her composure without becoming much more vulnerable."

3. How the European Court of Human Rights interprets Articles 2 and 3 in connection with a claim of self-defense

3.1 Maintaining Life Rights

The enjoyment of all other human rights is contingent upon the fundamental principle of the right to life. "The right to life holds a prominent place in the hierarchy of legal norms as a consequence." Despite any restrictions or exceptions to the right to life inherent in the treaties, human rights instruments, both international and regional, include provisions for the right to life in their instruments for the protection of human rights.

The right to life is recognized and safeguarded by the European Convention on Human Rights (EUROPEAN CONVENTION ON HUMAN RIGHTS), as stated in Article 2:

1. The law must preserve everyone's right to life. Except in the execution of a court judgment after a person is found guilty of a crime for which this punishment is stipulated by law, no one shall be purposefully deprived of his life.
2. Deprivation of life will not be deemed to have occurred in violation of this article when the use of force is absolutely necessary to: (a) protect



someone from unlawful violence; (b) make a lawful arrest or prevent someone who is lawfully detained from escaping; or (c) take legal action to put an end to a riot or insurrection.

Regardless of whether the death was intended or not, deprivation of life might be justified and deemed legal. Similarly, the essential nature of this right demands that any exceptions that support the denial of the right be interpreted rigidly and narrowly.

It raises the question of whether the claims of self-defense are supported by article 2 of the EUROPEAN CONVENTION ON HUMAN RIGHTS, which states that "defense of any person from unlawful violence," in the case of a domestic abuse victim who killed her attacker in a non-confrontational manner. This does not imply that article 2§2 "defines instances where it is permitted to kill an individual," but rather that it outlines the circumstances in which it is acceptable to "use force" that may, inadvertently, lead to the loss of life.

Thus, the European Court of Human Rights faced the dilemma of weighing "life against life" and impacted life interest in its case law. The *Stewart v. United Kingdom* case explores how this reason must be interpreted by acknowledging the circumstances outlined in article 2 that justify the violation of the right to life. The case of *McCann and Others v. United Kingdom* also explains the same thing. When According to the European Court of Human Rights, the use of force is justified when it is "absolutely necessary" and strictly proportionate to achieving the objectives outlined in 2§2. For example, when intentional lethal force is employed, the European Court of Human Rights considers all relevant circumstances in addition to the actions of the person administering the force.

According to the European Court of Human Rights's interpretation of article 2§2, three conditions appear to need to be satisfied in order to justify the "use of force": it must be absolutely required, proportionate to the accomplishment of the goals, and take into

account all relevant circumstances. Nonetheless, it appears that "a variety of distinct and complex circumstances may be at play in the context of the use of force between non-State actors, in which the distribution of power and vulnerability between victim and perpetrator may vary and where presumptions as to the distribution of" killing "power are not appropriate." Therefore, it is more troublesome to When violence breaks out between non-state actors, employ the absolute necessity criteria. Because of this, this condition attempts to balance each participant's right to life. In other words, the individual who defends themselves from a violation of their right to life must demonstrate that their actions were both appropriate and absolutely required to preserve their life. Article 2§2 tends to focus on the various conditions that justify the use of force rather than observing the need of imminence or expressing the time frame for the right to life to be deprived.

As per the theoretical framework of BATTERED WOMEN SYNDROME, a woman who murders her violent spouse in a non-conflictual manner is often a victim of chronic domestic abuse, which often results in emotions of impotence and hopelessness. Furthermore, because she knows that leaving the abusive relationship will only result in more violence, the victim may feel that using force is the only way to stop future violence because that is her ultimate goal. In this way, the victim of domestic violence acted to protect her right to life and torture or ill-treatment because she believed that doing so would protect her rights to life and torture or mistreatment with the assumption that her right to life is in jeopardy as the abuser could take action at any moment.

Furthermore, women who live in homes with violent relationships and ongoing violence run the constant risk of losing their limbs or, worse, their lives. Additionally, the sense of helplessness, terror, and danger that arises in an abusive relationship appears to the woman who kills the abuser in a non-aggressive



manner as a means of preventing the realization of their right to life.

3.2 Reliving the fear of mistreatment

According to Article 3 of the European Convention on Human Rights, "Neither torture nor inhuman or degrading treatment or punishment shall be inflicted upon any person." Every applicable international human right and humanitarian instrument specifies this prohibition. Likewise, the ban constitutes a component of customary international law, which recognizes torture as a crime. According to Article 1 of the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, "torture" is defined according to: "Any act that causes extreme pain or suffering, either mental or physical, and is purposefully done to a person in order to punish them for an act they have committed or are suspected of committing, or to intimidate or coerce them."

According to this definition and a general understanding of domestic violence, torture is defined as an act or omission that intentionally causes the victim to suffer or become helpless, making it pointless for the victim to flee the situation. The United Nations declared that "the pain or suffering caused by domestic violence often fall nothing short of that inflicted by torture and other cruel, inhuman, or degrading treatment or punishment."

However, the European Court of Human Rights did not take significant action to declare domestic violence to be torture; instead, it interpreted article 3 according to a case-by-case formula, as shown in the case laws below, which allow domestic violence to not be considered torture. In the case of *Opuz v. Turkey*, the European Court of Human Rights states that in order for ill-treatment to qualify as torture, it must reach a minimum level of severity. It goes on to explain that this

"The nature and context of the treatment, its duration, its physical and mental effects, and, in some instances, the sex, age, and state of

health of the victim" are some examples of the circumstances that determine the minimal level, which is relative. *Opuz*, the petitioner, claimed that her husband's abuse against her had caused her anguish, suffering, and anxiety. Additionally, the applicant had been subjected to mistreatment more than five times, which had been reported to the relevant authorities and resulted in the filing of criminal charges in various instances before the national court. Therefore, the European Court of Human Rights observes that the applicant's psychological distress and physical harm are adequate to qualify under Article 3.

The European Court of Human Rights determined the minimum degree of severity that is accepted when the treatment or humiliation goes beyond what is typically "inherent in any punishment" in the case of *Costello-Roberts v. United Kingdom*. Because of this, not all forms of punishment fall under the purview of article 3. The *Volodina v. Russia* case offers a similar result, however it goes into further depth to recognize the abuse's wide-ranging ramifications, which go beyond physical or mental suffering. Therefore, it defines mistreatment as "treatment which degrades or humiliates an individual, demonstrating a lack of respect for or diminishing his or her human dignity, or which arouses feelings of fear, anguish, or inferiority capable of breaking an individual's moral and physical resistance, even in the absence of severe physical or emotional distress or actual physical harm."

Furthermore, it is more likely that all of the aforementioned examples include vulnerable people, especially women and children, who fall within the minimal severity category of maltreatment. Therefore, the court views the act as a violation of article 3 of the EUROPEAN CONVENTION ON HUMAN RIGHTS when it is satisfied that the circumstances of the case have become more serious. This suggests that the court interpreted Article 3 so that it "does not prohibit" the use of force under specific conditions.



Furthermore, this does not imply that the European Court of Human Rights just takes into account the victim's vulnerability or the least amount of maltreatment while evaluating the facts to determine the infringement of Article 3, but it also considers the legislative context or the state's reaction to the act. The European Court of Human Rights has determined that the state in the *Rumor v. Italy* case has not violated article 3 of the convention. The state "had put in place a legislative framework allowing them to take measures against persons accused of domestic violence," according to the court, and those measures were successful in punishing the offender of the crime the applicant was a victim of and preventing future violent attacks against her physical integrity.

From the aforementioned perspective, it may be inferred that the European Court of Human Rights (European Court of Human Rights) views domestic violence as a violation of Article 3 of the EUROPEAN CONVENTION ON HUMAN RIGHTS when the act's maltreatment is justified by a minimal degree of severity. In addition to physical harm, victims of domestic violence frequently experience BATTERED WOMEN SYNDROME, or the sense of helplessness and passivity, to the point where they are unable to leave the abusive relationship because the nature of domestic violence is more duty of operational tasks, which requires them to take appropriate measures to likely to involve systematic violence in a cyclical manner that is repetitive and lasts for a long time.

Furthermore, torture is defined under the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment as involving both mental and physical suffering. As a result, victims of domestic abuse frequently experience BATTERED WOMEN SYNDROME, which is covered by EUROPEAN CONVENTION ON HUMAN RIGHTS article 3.

4. Talk about the European Court of Human Rights's view of states' obligations in this case

Regarding the human rights guaranteed by the EUROPEAN CONVENTION ON HUMAN RIGHTS, the European Court of Human Rights developed principles and provided some clarification in its case law. Thus, in addition to the negative requirement clearly outlined in article 2 of the convention, the court established and strengthened the states' positive obligation. The four general types of the states' positive obligations are the framework obligation, operational duties, investigative obligation, and duties of remedy.

According to the framework obligation, the state should put in place a legislative framework that may both punish those who breach the right to life and prevent the taking of life illegally. Additionally, nations have a positive safeguard the right to life where the relevant authorities are aware of it. In order for the victim of violence to receive competent remedy, states also have an investigative positive obligation that must be effective in order to determine how the right to life is violated or justified based on the state's legislative framework.

Therefore, the European Court of Human Rights (European Court of Human Rights) requires nations to establish effective legislative frameworks that ask the authorities to respond reasonably when they knew or should have known about a breach of the right to life. In the event that the right to life is violated, the state must conduct thorough investigations to address and correct the situation.

The state frequently implements criminal law laws to address the affirmative responsibility of the right to life. The statutory framework, however, fell short of the state's inherent positive obligation to construct an effective mechanism that punishes the individual who violates such a right and provides restitution for the victim, as the court found in the *Opuz* case. Furthermore, the court finds that the relevant authority failed to realize the state's operational



and investigative duty to safeguard victims of domestic abuse, regardless of the absence of appropriate legislation to punish the offender.

In a similar vein, the European Court of Human Rights imposed an affirmative responsibility on the state in accordance with article 3 of the European Convention on Human Rights. States are under "positive obligations to ensure that individuals within their jurisdiction are protected against all forms of ill-treatment prohibited under Article 3, including where private individuals administer such treatment," in accordance with its case law. The state's obligation under the Istanbul Convention "to take the necessary legislative or other measures to ensure that investigations and judicial proceedings in relation to all forms of violence covered by the scope of this Convention are carried out without undue delay while taking into consideration the rights of the victim during all stages of the criminal proceedings" is another topic covered by the court. In the event that a woman kills her abuser because of pain or fear brought on by battered women's syndrome, the positive obligation stated in article 2 is consistent with a legal framework that acknowledges self-defense and is prepared to accept BATTERED WOMEN SYNDROME as one aspect of self-defense.

Therefore, it can be claimed that this legislative framework might motivate the relevant authorities to conduct an efficient investigation that strikes a balance between the rights of the man who is killed by the woman he abused and the woman who kills the abuser, as well as the torture and mistreatment endured by the woman who acted in self-defense.

same, "the substantial contours of criminal liability for acts or omissions endangering or resulting in loss of life in a domestic context are not to be set or administered by the European Court of Human Rights." Instead, it is up to the states to develop legal frameworks, such as criminal codes, that can deal with the criminal aspect of the problem. In this regard, states play a crucial role.

Conclusion: –

Despite being a fundamental right, the right to life is not an absolute one because everyone must be alive in order to exercise other human rights. Self-defense is one of the legal reasons why a private person or a state agent may legally take away someone's right to life. Justifications that one may use to protect oneself.

The legal justification for a woman who kills her abuser in a non-confrontational manner looks conflicted when considering her self-preservation viewpoint. The right to self-defense frequently ignores women who have experienced domestic abuse and who believe that their act of killing was justified and reasonable. However, the idea of BATTERED WOMEN SYNDROME provides some insight into the thought and behavior patterns of women who murder their abuser in order to protect themselves from torture, mistreatment, and death. One of the rights listed in EUROPEAN CONVENTION ON HUMAN RIGHTS article 2§2 as an exception to the right to life is the ability to defend or save oneself. According to the article, a person may use force or claim self-defense when it is absolutely required, proportionate to the accomplishment of the goals while taking all relevant circumstances into account. On the other hand, the traditional self-defense claim stipulates the use of force in situations where the threat to one's right to life is direct or imminent, in addition to the standards outlined in EUROPEAN CONVENTION ON HUMAN RIGHTS article 2§2. This conventional interpretation of self-defense ignores the special connection between women who kill their abuser and their history of domestic abuse.

Similarly, domestic violence frequently affects women who kill their abuser in self-defense or preservation. Article 3 of the European Convention on Human Rights states that domestic abuse qualifies as torture if the physical or psychological harm must meet the minimal standards for ill-treatment. Since systematic violence that lasts for a long time is



one of the characteristics that set domestic violence apart, it frequently falls into this minimum degree of severity. Legislators and courts must therefore acknowledge the impact of domestic abuse and its role in defending women's acts of murder in non-conflict situations. The European Court of Human Rights also specifies the positive and negative obligations that states have. Among these responsibilities, enacting laws is one method to protect women's rights in general and, in the case of domestic abuse, the right to self-defense. Furthermore, when interpreting the idea of self-defense, the state court must take into account the dynamics and manifestation of domestic abuse. Consequently, the court ought to examine and take into account the essence of domestic violence, in which the victim kills the abuser and claims self-defense. If so, applying the standard interpretation of the self-defense claim would seem to deny the women who experienced domestic abuse the ability to defend themselves or their right to life.

Furthermore, does a woman who has experienced domestic abuse that violates Article 3 of the European Convention on Human Rights—which protects against torture and ill-treatment—need to be given the benefit of the doubt when she argues that she killed her abuser in a non-confrontational situation out of self-defense?

Resources :-

1 European Human Rights Advocacy Centre

2 Penal Reform International, 2012

3 Penal Code of Turkey