

INQUIRY INTO PARTIAL DEFENCE OF PROVOCATION

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Select Committee on the Partial Defence of Provocation and the adequacy of Self Defence for victims of Prolonged Domestic and Sexual Violence.

I don't know much about the laws around Partial Defence of Provocation but I certainly know a lot about the effects on women at the hands of violent abusive husbands and partners who take deliberate advantage of some of these laws to the detriment of defenceless women and children.

Self defence should be a total defence for women or children who are facing a life of protracted violence and or a constant threat to their own lives. People who don't have to live under these conditions have no concept what it is like to live your life at the hands of these psychopaths. In fact when a serious domestic violence incident is reported to police a lot of the police officers entrusted to enforce the already in place laws fail to do so. Often there is no one that is willing to enforce our laws to protect us in our domestic relationships. Then they are the first ones to arrest you, for what you are forced to do to SURVIVE or PROTECT YOUR CHILDREN.

One of the most chilling and vivid memories I have to endure is this.

One particular day and for no particular obvious reason my husband was standing in front of a sliding glass door looking out at the beautiful view deep in thought. Now you might think that is a serene image, and to normal people that would be the case except he was flicking his farmers pocket knife opened and closed at the same time giving me sideways looks of contemplation. My first thought was that he was considering whether to slit my throat or just stab me to death, I was wrong on both imaginings.

After a considerable time he walked past me towards the dining room door, stopped looked me in the eye, he said and I quote "you know if I had killed you 4 years ago I would be out now" then he just went outside. What made this event so scary was the fact he was so calm. He was referring to the very law you are having the inquiry about. The most unsettling thought is that if he had killed me at that day he would have most likely been right.

It was a common belief that men how kill their spouse would receive a 4 year gaol sentence compared to the women who kill an abusive spouse; she would receive an average 15 year sentence this is documented. She would often be persuaded into pleading guilty to manslaughter instead of pleading self defence.

Women surviving extreme domestic abuse are so scared of their abusive, stronger spouse that they either need to take the chance to defend themselves and or their children when he is either drunk, drugged or asleep. Then they are charged with premeditated murder, sometimes changed to manslaughter after a plea bargain. In my opinion this is to cover up the police inaction of the past. The cries for help from the victims of domestic violence often fell on the deaf ears of the police force. My personal experience of police inaction and the inaction my children experienced from police happened on many occasions and over many years. Once the police inaction has taken place and more violent incidents occur which were also reported to police. The police need to cover up the mistakes of the past by not making a paper trail of evidence. This results in women having less proof of the ongoing domestic violence to use in their defence when it comes to Self Defence.

My abuser often referred to the fact that “men get away with murder calling it a crime of passion” or “all I had to do was kill you and swig a bottle of whisky then call the police, report the death and plead no memory of how it happened “. He also said men get away with murder “because she drove me to it I had a few drinks and just lost it”. He would often describe the way he would kill me and be able to get away with it.

Women on the other hand have trouble with the defence of provocation because most of the evidence she will need for that defence will not be available. Due to police not documenting the incidents reported by domestic violence victims, as is very common in DV cases. In my case I was gutted to find out that police had failed to make reports of many of the times they attended my property or in fact the notebook notes written at the time were missing when they were subpoenaed by the defence for court. Not once was violence or injuries documented by attending police. Except one incident in 1977 and then the report was very under stated and nothing in the report that I needed to attend hospital for treatment. Every woman that call police should put police on notice and insist on copies of everything and be sure of getting the event number. Follow up to make sure the incident is documented properly and GET COPIES OF ALL STATEMENTS.

Like me, women have for years been getting locked up after being charged with the murder of these vicious sadistic perpetrators. The sad fact is it won't get any better until the authorities work together and start at the START.

As for the adequacy of the defence of Self Defence as a defence for women driven to kill the perpetrators who inflict many years of protracted Domestic Violence there is a whole lot I could say about that subject.

In my case and in my mind the only way to protect my family and myself was to kill him first. Or my actions would at the least force an investigation into the circumstances of our case. God knows we tried everything possible to have our plight dealt with in a just manner.

I am still convinced he intended to kill me and any of our children as punishment for me leaving him, or for the children daring to go against him by aiding in my final escape from him, and not helping him with my recapture. I felt I had no choice but to defend my family. There was no one in authority willing to help us even though the police had ample proof what his intention was as far back as the year 2000. I was told by police that they believed my husband intended a murder suicide when he found me, just another fact not documented by police. Letters and a will were found in his car by police, they were also missing when they were required for my defence.

I am incensed at the fact that Police INACTION and the INCORRIGIBLE behaviour of some police when called on in the PROTECTION of WOMEN AND CHILDREN due to DOMESTIC VIOLENCE is still just as entrenched today in spite of all the evidence, nothing has changed since my first call for help in 1977 , THAT'S SOMETHING THAT NEEDS AN INQUIRY.

From the response and feedback I have received from victims since my first Australian Story and then the follow up story went on television, it is obvious that domestic violence and the ramifications need immediate attention from the authorities.

Catherine Smith (DV Survivor)