



## RESEARCH ARTICLE

**Women Who Kill Abusive Men: Reform and Restrictions in China**Muhamad Helmi Md Said<sup>1</sup>, Liu Jing Yu<sup>2\*</sup>, Nurul Hidayat Ab Rahman<sup>3</sup>, Nadhilah A. Kadir<sup>4</sup>, Li YaoYao<sup>5</sup><sup>1,2,3,4,5</sup> Faculty of Law, Universiti Kebangsaan Malaysia 43600, Bandar Baru Bangi, Malaysia<sup>5</sup> Jiyang College, Zhejiang Agriculture and Forestry University, Zhuji 311800, China**ARTICLE INFO****ABSTRACT**

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In China, "the severity of past domestic violence" has been included in the scope of legitimate defence, and "homicide by a woman who has been subjected to domestic violence" and "homicide with lighter circumstances" has been expressly addressed in the statute. It aims to consider cases where women, who have been victims of prolonged domestic violence, kill their abusive intimate partners to prevent further harm or to escape the cycle of abuse. This article employs the method of doctrinal research to explore the legal reform of legitimate defence and its limitations. Despite this significant reform, women who defend against homicide, even if their behaviour meets requirements of legitimate defence, cannot be acquitted but may only receive lenient punishment at the discretion of the judge. Legitimate defence still reflects a background biased towards men, and the laws are still unable to provide a defence for battered women. By introducing reforms in other jurisdictions, a fundamental overhaul of the legal framework for defence is necessary to ensure just laws by incorporating women's experiences and defensive responses to violence.

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**INTRODUCTION**

Homicide is predominantly male, with men comprising the majority of offenders (Li, 2017; Eriksson and Mazerolle, 2013). Female homicides often occur after prolonged violence, reflecting the subordinate status of women (Moen et al. 2015). The most commonly studied cases involve women who kill violent partners, either during or after a precarious relationship characterized by severe abuse and threats (Moen et al. 2015). The main reason for women committing murder is often self-preservation (Serran & Firestone, 2004), as they seek to escape from violent or threatening partners permanently. Women who kill abusive partners often endure long-term domestic violence. However, when these individuals encounter the criminal justice system as offenders, the system frequently fails to adequately address their victimization and their relationship to the crime (Roff, 2021). This manifest in the fact that battered women who have been victims of domestic violence for a long time are unable to apply legitimate self-defence to justify their homicide.

Legitimate defence, also known as self-defence in many jurisdictions, occupies an important place in China's criminal legal system as a comprehensive defence of innocence. Ji (2007) undertook an analysis of the legal framework surrounding justifiable defence in criminal law, elucidating the requisite criteria for its application. However, despite the legislators' original intention to protect the right of legitimate defence, there were very few successful cases of legitimate defence in practice. Zhao (2019) proposed that the "consequentialism" of judicial organs was the main reason for the low success rate of legitimate defence from the perspective of judicial practice. Chen and Li (2005) analysed from a feminist perspective that the existing legitimate defence has excluded women's characteristics and experiences. The victim's extensive histories of domestic violence and the tragic experiences of abused women garner widespread public sympathy. The government's perceived

"indifference" towards husbands committing violence and the "harsh" punishments imposed on abused women against their husbands have raised public concerns and calls for better solutions.

In 2015, the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security, and the Ministry of Justice jointly issued the Opinions on Legally Handling Cases involving Crimes of Domestic Violence (Opinions)<sup>1</sup> in response to public and academics feedback. The opinions provide clearer and more detailed guidelines for handling cases where the perpetrator is seriously injured or killed due to the resistance by the abused individual during the process of domestic violence, so that judicial practices able to handle and process such cases with stronger evidence support (Zhang, 2018; Chen, 2015). The opinions also aims to address situations where women, who have been victims of prolonged domestic violence, killing their abusive and violent intimate partners either to prevent them from being subjected to domestic violence again, or to escape from it altogether. This development marks an important step in recognizing the circumstances under which women may resort to force out of fear for their lives and in order to protect themselves from violence perpetrated by their partners. Specifically, it has made major changes to the legal framework for the use of legitimate defence in domestic violence cases. Article 19 (19A) expanded the scope of legitimate defence to include "the severity of previous domestic violence". Article 20 (20A) explicitly incorporated "female homicide due to domestic violence" as a qualifying trigger for "discretionary leniency", while "intentional homicide due to domestic violence" provided for the sentencing of a battered woman when she satisfied the "lesser circumstances of intentional homicide". This article focuses on the legal framework of legitimate defence in China and the international legal framework, and attempts to draw on international experience to make suggestions for further reform of the legal framework for China.

## METHODOLOGY

This article predominantly adopts the doctrinal analysis method to analyse the legal framework of legitimate defence in cases of abused women who killed the abuser. This method is mainly carried out through a review of the existing Criminal Code and the Opinions. This approach is essential for understanding the legal framework for legitimate defence, identifying legal gaps, and proposing potential legal reforms. In addition, by adopting a comparative approach, the study aims to identify best practices through a review of legal reforms for full defence from different jurisdictions, and to provide a framework for reforming in cases of abused women who killed the abuser.

### Historical perspectives of legitimate defence

Legitimate defence in Chinese criminal law, often termed self-defence in various jurisdictions, possesses deep-seated historical background and cultural roots. Originating from ancient Chinese concept of "revenge" (Yang, 2022), both legitimate defence and the system of revenge originated from the fact that "no one has the obligation to tolerate the illegal infringement of others" (Liu, 2018). This concept of self-protection against unlawful aggression was recognized by the rulers, and gradually formed the early concept of legitimate defence. In China's modern criminal law system, legitimate defence represents a unique legal principle that encourages individuals to undertake necessary actions to protect their rights in the face of illegal infringement and bravely fight against violations and crimes (Jiang et al., 2020). However, it does not imply unlimited power. In order to prevent abuse of power and disruption of social order, the criminal law imposes strict conditions and restrictions on acts of legitimate defence.

In China, the current defence available to women who kill violent or abusive husbands is encompasses legitimate defence and excessive defence. Among them, legitimate defence constitutes a complete defence, while excessive defence qualifies as a partial defence. A person who successfully asserts legitimate defence may secure a verdict of not guilty. If an abused woman's plea for excessive defence is accepted by a judge, the ensuing punishment may be mitigated.

Regarding the elements of legitimate defence, the statutory framework is delineated in the Criminal Law of the People's Republic of China 1979<sup>2</sup>, the first criminal code following the establishment of

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<sup>1</sup> This legal document is a judicial interpretation of how judges, prosecutors and lawyers should apply the law in cases of domestic violence, and it occupies an important position in the legal system based on statutory law.

<sup>2</sup> Criminal Law (1979), Art 17. "Criminal responsibility shall not be borne for an act that a person undertakes in justifiable defence to avert an immediate and unlawful infringement of the public interest or of his own or

the People's Republic of China. Legislators in the 1979 Criminal Law considered legitimate defence as a citizen's legal right, which, if exercised appropriately, not only refrains from harming society but also beneficial it (Chen & Yao, 2021). The legislative stance unequivocally emphasizes that legitimate defence constitutes a citizen's right, with the law actively encouraging citizens to fight against illegal and criminal acts (Chen, 2022). Although the State believed that no right should be abused and that unnecessary retaliatory measures against wrongdoers should not excessively transgress the bounds of legitimate defence, the restriction cannot "cause undue harm beyond what is necessary" was attached. Following the Criminal Law of 1979, the requirements of justifiable defence are relatively strict in practice (Pang 2022), with few individuals successfully invoking justifiable defence. On the contrary, the conditions for determining excessive defence are more relaxed (Zhou, 2017). As a result, victims of criminal offences were not protected by the law, but were held criminally liable for acts that constitute excessive legitimate defence. This scenario dissuaded the populace from taking courageous action, prompting China to reform the legal defence clause in 1997 to streamline its application.

The Penal Code of 1997 ushered in reforms legitimate defence. Firstly, the 1997 Criminal Code relaxed the limitations by changing "causing unjust damage beyond the necessary limit" to "causing significant damage by clearly exceeding the necessary limit" (Lao, 2018). Secondly, the right to special defence has been added<sup>3</sup>, in instances of defending against ongoing violent crimes severely threatening one's personal safety, the act of defence may exceed the necessary limit, and the defender is not criminally responsible regardless of the defence's outcome (Li, 2019). China thus proposed a unique relative unlimited defence rights model based on the Western world's unlimited defence rights, that is, under specific circumstances (personal assault, murder, robbery, rape, kidnapping and other violent crimes that seriously endanger personal safety) defenders can fight back and defend legitimate defence successfully without restriction.

### Legal framework reform in China

The case wherein battered women choose to killing their abusive husbands in self-defence or to protect themselves and their families represents a distinct category within the realm of domestic violence crime. This category diverges from the general instances of intentional injury and intentional murder crime due to its background of the defendant's long-term domestic violence, and the defendant commits intentional injury and intentional murder against a specific criminal object - the abuser (Jin, 2015). The salient feature of these cases is the government's failure to fulfil its responsibilities in the context of the protracted abuse endured by the battered woman at the hands of her husband. But, when the abused woman seeks a self-help approach to getting out of the unhealthy relationship, the government often imposes severe penalties on the abused woman, even if such actions is the only option for the abused woman in a desperate situation. As articulated by Mo & Yuan (2008) said.

*"When violence is not resolved, women who are victims of violence may respond with violence when they cannot tolerate it. This kind of crime can be said to be the helpless choice of violent women, but also the human nature to seek benefits and avoid harm. Therefore, ending the domestic violence that women experience by means of criminal behaviour is a choice that women have in all the ways that they know and have available, and sometimes it is a choice that isn't other option."*

In response to the widespread societal concerns, that is, the public sympathy towards the serious domestic abuse suffered by abused women, and in order to protect their lives and their children, they have no choice but to fight back and facing harsh punishments because of the failure of legitimate defence. The promulgation of the Opinions provides more detailed provisions on legitimate defence in cases of battered women against the abuser, aiming to view female homicide from the perspective

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another person's rights of the person or other rights. Criminal responsibility shall be borne if justifiable defence exceeds the limits of necessity and causes undue harm; however, consideration shall be given to a mitigated punishment or exemption from punishment".

<sup>3</sup> Criminal Law (1997), Art 20(3). "Criminal responsibility is not to be borne for a defensive act undertaken against ongoing physical assault, murder, robbery, rape, kidnap, and other violent crimes that seriously endanger personal safety that causes injury or death to the unlawful infringer since such an act is not an excessive defence".

of battered women, and to help battered women obtain acquittal or reduced sentences. It is discussed below:

Firstly, China introduced a special criterion for legitimate defence in homicides involving abused women. In determining whether the act of defence is excessive (obviously exceeds the necessary limit), consideration is given to various factors related to ongoing violence.

19A of the Opinions showed:

*“The sufficient need to stop the domestic violence and to make the defender free from illegal infringement caused by the violence shall serve as the standard for identifying whether a defence “obviously exceeds the necessary limit,” and a comprehensive judgement shall be made according to the severity of the undergoing domestic violence committed by the assaulter, the cruelty of the means, the environment for the defender, the level of dangers facing the defender, the means taken for stopping the violence, the level of material injuries caused to the assaulter as well as the level of severity of previous domestic violence.”*

These factors include the severity of the undergoing domestic violence committed by the assaulter, the cruelty of the assailant's methods, the environment in which the defence occurred, the level of dangers faced by the defender, the measures taken to stop the violence, and the level of material injuries inflicted upon the assailant. Moreover, the severity of previous instances domestic violence is also taken into consideration. This provision is primarily tailored to the special nature of cases involving legitimate self-defence against domestic violence. Professor Chen (2022) of Peking University highlighted that, due to the prolonged abuse suffered by the wife, her decision to defend herself against the ongoing domestic violence is often accompanied by strong emotions and characterised by a surge of resentment and the resurgence of past grievances. In such instances, defensive actions may easily spiral out of control. In such cases, the examination whether certain actions exceed the necessary limits for legitimate defence, preference should be given to abused woman.

Investigations revealed that inconsistency in identifying specific mitigating circumstances and determining the extent of leniency across jurisdictions. Article 20 of the Opinions provides guidance on the punishment of such cases. These Opinions establish "the victim at fault" as a sentencing consideration in instance where women kill their abusive and violent husband. According to the severity of domestic violence, two sentencing considerations are divided into "a lenient punishment in considering the actual circumstances" and "minor circumstances of intentional homicide". This provision effectively integrates the social harm inflicted upon victims of domestic violence with personal danger, effectively prevented the imbalance in sentencing disparities in cases of "abused women who kill the abuser". The application of the principle of proportionality between crime and punishment in such cases has been improved, and the unity and impartiality of the judiciary have been maintained (Jin, 2015).

Secondly, Chinese legal system introduces two models of homicide perpetrated by battered women: one involves the battered women's killing within the context of long-term domestic violence, driven by emotions of anger and fear; and the second type refers to the intentional killing and injury in order to escape domestic violence. Both models impose requirements on abused women and violent husbands, stipulating that the perpetrator is directly responsible for the occurrence of the case, or the perpetrator is clearly at fault, and the abused woman's actions has a defensive element. In these two models, judges are granted discretionary power by law to administer lenient punishments to abused women. It was an attempt by lawmakers to understand the experiences of abused women, creating a special mitigation defence for women that aligns with China's policy of "protecting women's rights."

Article 20 of the Opinions provides:

*“Defence factors and fault liabilities in cases shall be taken into full account. Where, after having suffered from domestic violence for a long term, the defendant deliberately murders or injures the assaulter under irritation and terror for the purpose of preventing himself or herself from suffering from domestic violence again or getting rid of domestic violence, the act of the defendant is for defence, and the assaulter has an obvious fault in the cause of the case or is directly liable, the defendant may be given a lenient punishment in consideration of the actual circumstances. For a*

*person that deliberately murders the assaulter for suffering from serious domestic violence and whose body and mind are seriously damaged; or a person that deliberately murders the assaulter for unbearable domestic violence for a long term, where the criminal circumstances are not extraordinary execrable and the means is not extraordinarily cruel, the aforesaid circumstances may be identified as "minor circumstances" of intentional homicide as prescribed in Article 232 of the Criminal Law."*

Women who have endured prolonged domestic violence, experience emotions of anger and fear, may intentionally kill or injure the abuser in order to prevent the recurrence of domestic violence, or to get rid from it. While such actions may not be deemed legitimate defence, the defendant, having suffered from long-term domestic violence, knew that they would continue to face inevitable domestic violence in the future, and then carried out acts of killing and injuring the abuser. In case where the perpetrator is clearly at fault or directly responsible for the cause of the case, lenient punishment may be warranted. This sentencing clause is consistent with China's criminal policy, which seeks to balance leniency and severity (Yang et al., 2015). A long history of domestic violence has left women in a heightened state fear, facing imminent or ongoing violence and even death threats. The victim's (the husband) domestic violence or the death threats (killing the children and family) caused the defendant (the wife) to a state of extreme distress, leading her to choose to kill the husband. The "killing in a state of anger and fear" clause aimed primarily to address criticisms that the law fails to consider women's experiences and to respond to proposals for legal reform. This clause emerged from China's recognition of the physical and psychological differences between men and women, attempting to understand the ordeals faced by abused women.

Finally, Chinese law provides for a lighter sentence (3-10 years in prison) for female intentional homicide resulting from domestic violence. There are two circumstances dictate the application of a lighter sentence. First, the defendant has suffered serious domestic violence, resulting in significant physical and mental damage. And second, the criminal circumstances are not exceptionally heinous, and the means of the crime are not excessively cruel. If either of these conditions is met, "the circumstances are relatively minor"<sup>4</sup> under Article 232 of the Criminal Law of the People's Republic of China concerning intentional homicide applies, permitting the judge to impose a penalty on the abused woman within the statutory range of imprisonment, ranging from a minimum of three years to a maximum of ten years.

To some extent, this relatively clear standard solves the problem of "different judgments in the same case" concerning abused women who have killed the abuser (Wang, 2015). It is important to note that the circumstances identified as constituting intentional homicide are relatively minor, including two different situations: one situation requires the defendant to suffering serious domestic violence and enduring significant physical and mental damage, without any special requirement regarding the circumstances or means of the killing or injuring of the perpetrator. The other situation requires the defendant enduring prolonged domestic violence, with the circumstances surrounding the killing or injuring of the perpetrator not being exceptionally heinous, and the means employed not particularly cruel. For example, in the case of Yao Rongxiang's intentional murder, the defence counsel argued that:

*"Yao Rongxiang had suffered domestic violence from the victim Fang Moping since she was 18 years old, and the victim had a major mistake. Yao Rongxiang killed her husband because she could not bear his serious domestic violence. According to the provisions of 20A of the Opinions, the aforesaid circumstances may be identified as 'minor circumstances' of intentional homicide."<sup>5</sup>*

The judge also agreed with the lawyer's perspective and stated in the verdict:

*"... It should be determined that the victim (husband) committed long-term domestic violence against defender in his married life ... Combining with the opinions of domestic violence experts, Yao Rongxiang is a battered woman, and the main reason why she killed the victim by the above means is*

<sup>4</sup> Criminal Law, Art 232. "Whoever intentionally kills another is to be sentenced to death, life imprisonment or not less than 10 years of fixed-term imprisonment; when the circumstances are relatively minor, he is to be sentenced to not less than three years and not more than 10 years of fixed-term imprisonment".

<sup>5</sup> People's Procuratorate of Wenzhou City of Zhejiang Province v Yao Rongxiang, Wenzhou Intermediate People's Court of Zhejiang Province (2015) Zhe Wen Xing Chu No. 4.

*to prevent her husband from inflicting more serious domestic violence on her if he had not died. In summary, Yao Rongxiang's methods of committing the crime were not particularly cruel and the circumstances of the crime were not particularly heinous, should be found to be intentional homicide as provided for in article 232 of the Criminal Law, where 'the circumstances are relatively minor.'*"

It is worth noting, however, that this clause sets "serious domestic violence combined with substantial damage" or "circumstances and means of the crime" as the necessary threshold before considering the defence of "minor circumstances".

### **Limitation of law reform in China**

The Opinions is China's response to the growing problem of domestic violence. This is China's first comprehensive anti-domestic violence criminal justice guidance document, holding significant value for the fair, efficient, and standardized adjudication of domestic violence cases. Furthermore, it aims to protection of citizens' legitimate rights, foster equal, harmonious, and civilized family relations, and uphold social harmony and stability.

While widely welcomed, it is not without its limitations. This reform was too cautious and not radical enough, because it failed to enact fundamental changes to legitimate defence (a legal system established from a masculine perspective) and didn't adapt to the specific ways through which women kill their partners (failing to tackle the problem of abused women's unsuccessful legitimate defence when they kill during a lull in domestic violence). Any accomplishments attained were related to mitigating responsibility simply by giving judges the right to show leniency towards women under limited circumstances.

Firstly, the standard of "long-term" in "long-term domestic violence" lacks clarity, as highlighted by Wang (2015), a professor of Peking University Law School: "When applying the Opinions to specific cases, the defendant must meet the condition of 'long-term domestic violence', yet there is still no clear standard on how to define 'long-term'. An ambiguous concept can render practical application challenging. The second problem is that the change brought about by this special provision for battered women merely granted judge's discretion to decide whether to accept a woman's plea for leniency. Therefore, merely incorporating consideration to the "severity of previous domestic violence" into this provision, it was incomplete and unfinished. While the "severity of previous domestic violence", focuses primarily on the history of abuse, its impact on women remains inadequately understood. Greater discretion at the sentencing stage proves detrimental to women due to the lack of knowledge about women. This undermined the understanding of abused, coerced and controlled women, where battered women's responses to their perpetrators may not necessarily come from the severity of the previous violence or coercion, but from perceptions of the seriousness of the threat of control or abuse (Edwards, 2010; Edwards, 2021). The existing legitimate defence clause serve as an obstacle to female victims of homicide.

Despite the government's intention to reform the law to better address the problem of abused women who have killed the abusers, the masculine conception of law, which has been criticised by feminists in legal circles, has been retained. Women have been incorporated into a pre-designed and predominantly unchanging masculine legal framework, characterised by a male-centric approach to law. As previously emphasized, the core concept of "legitimate defence" remains intact, and its structure continues entrenched within a masculine context. The jurisprudence surrounding justifiable self-defence has evolved within a legal culture predominantly influenced by male perspectives, wherein the interpretation of "reasonableness" is constructed biased towards male norms (Odonovan, 1994). As highlighted by Che (2018), a professor at Peking University Law School, many cases in judicial practice are not recognized as legitimate defence. The dominant concept behind it is that the judiciary consciously or unconsciously analogises the fighting relationship between the aggressor and the defender to a boxing match, wherein the Rule of "fair play" is implicitly applied. "In short, if the opponent hits you with his fists first, you can only fight back with his fists, and if the opponent stops attacking, you have to stop fighting back" (Che, 2018).

Behind its core lies an image, a stereotype, of isolated, one-on-one (person-to-person) violence, rendering it unlikely for frightened women to meet the standard of reasonableness (Edwards & Koshan, 2023). In China, the defence of abused women consistently falters in the face of judge's interpretations of "reasonable" or "proportionate" responses to abuse or threats by an intimate

partner, especially in the cases involving the husband's death. Chen and Li (2005), vice-professor at the university, called for the reform of legitimate defence (a legal structured by male experiences) to better reflect the realities of women's physical, economic and mental vulnerability to domestic violence. They assert "Given the various shortcomings in the definition of "defence" in legislation and judicial practice, feminists agree that the legal concept of defence is based on the standard of male behavioral characteristics. The traditional legal definition of "defence" is inadequate for women because the way women kill in defensive situations differ from those of men, particularly for battered women to defending themselves against domestic violence. Therefore, feminism proposes that the criminal law's concept of defence should reflect the women's experience and characteristics when facing violent attacks."

Since domestic violence constitutes unlawful aggression, it is possible to build a legitimate defence against the perpetrator. Legitimate defence remains the only plea of innocence permissible in Chinese courts for abused women who commit intentional homicide. The difficulty in securing a successful justifiable defence lies in meeting the requirements of proportionality and the reasonableness test (few have succeeded in proving the proportionality of force and the immediacy of the threat). In numerous cases, many battered women commit homicide while the victim (husband) is asleep or defenceless, and the common thread among such cases is that when the battered woman kills the abuser, the domestic violence has either ended or has not yet begun. Therefore, the key of establishing a justifiable defence lies in determining when the unlawful infringement occurred, and whether it can be determined that "the illegal infringement is ongoing" (Zhang, 2018). In essence, the main obstacle to establishing a justifiable defence is that abused women often resort to lethal force during intervals in violence, which does not align with the time requirement for its application.

Professor Chen (2022) of Peking University believed that in the case of abused women who killed the abuser, the abuse itself constitutes a continuous and predictable act. In such cases, the abuse can be understood as a continuing violation. Despite the absence of physical abuse, such as assault, at the time of defence, it cannot be denied that the abuse is ongoing. Therefore, the action of stopping it to prevent forthcoming abusive domestic violence is fully in line with the temporal condition of defence.

During the process of law reform, it has been suggested that domestic violence differs from other forms of violence due to its characteristic of continuous recurrence and escalation. Victims of domestic violence often find themselves physically vulnerable, being forced to relinquish their defences while the violence is occurring. Instead, they choose to injure, maim or even kill the perpetrator when the domestic violence has stopped and a new episode has not yet begun (when the perpetrator is unprepared or sleepy). In this way, the perpetrator is incapacitated from continuing the assault, thereby protecting the victim's personal safety. In such a case, as long as the necessary limits of legitimate defence are not exceeded, it shall also be deemed legitimate defence.

However, the reform failed to respond the concerns raised by the academic community and the issues that triggered widespread discussion. It deliberately overlooked situations where women kill their abusers during lulls in the interval of domestic violence. Some scholars were not in favor of a change to the time requirement, as Yang et al (2015) believed that justifiable defence must be targeted at the ongoing unlawful infringement. The murder was acted during the interval of domestic violence, which exceeded the time requirements of justifiable defence, and in practice, it was indeed difficult to determine that domestic violence was bound to occur. In the end, Chen's opinion was not adopted, but the aforementioned circumstances were considered as an important discretionary leniency factor.

### **International legal framework reform**

Internationally, self-defence can be used as a complete defence in violent crime. In order for abused women to successfully use the defence, three requirements must be met: the existence of an imminent threat, a response that is proportional and necessary, and that any reasonable opportunity to retreat. However, self-defence has been criticized by many feminist scholars, who believed that self-defence is based on the male experience, ignores what women have experienced, and excludes battered women from defence.

Concerns regarding the legal status of battered women have prompted legal reforms aimed at enhancing access to murder defenses for women who kill in the context of abuse. Homicide laws have been reviewed and reformed in jurisdictions, and self-defence laws have been amended. In the UK, provocation defence was replaced by a "loss of control" to undermine the experience and background of men. At the same time, the clause "fear of severe violence", which reflects women's experiences, was introduced as a qualified trigger for "loss of control" killings (Edwards, 2021). Australia removed the "imminent" requirement for self-defence to help battered women who fought back while their husbands were asleep or turned around, and domestic violence was taken into account (Braun, 2017). Provocation was abolished because of gender orientation, and in order to encourage battered women to go to court to defend themselves in self-defence, rather than admitting guilt through plea bargaining, and the Australian government focused more on self-defence reform. Battered woman syndrome is incorporated into the criminal justice system and used in criminal trials. Battered woman syndrome serves as admissible evidence in judicial proceedings, demonstrating that killing resulting from prolonged abuse is legitimate (Guo, 2013). Additionally, when an abused woman's attempt at self-defence fails, the defendant may raise a defence of provocation as a way to reduce the charge from murder to manslaughter.

### **Proposed legal framework for legitimate defence in China**

The reform in China does not change the requirements for defence. In this part, this paper attempts to provide suggestions for changes to the legal framework of legitimate defence in China.

The impediment to the application of legitimate defence in cases where a battered woman kills her husband is that the woman's homicide occurs when the husband is asleep or turn around, which is often an interval between the abuse. Battered woman is failed to adopt legitimate defence because the act of killing is not at the time of the violence. Reform of this issue could draw on existing international practice. For example, Australian law has taken steps to remove the immediate response requirement.

It is suggested that China's reforms will focus on the following aspects: revising legitimate defence to break through the limits of an immediate response to violence. This means that in domestic violence case, abused women can adopt legitimate defence even if they do not respond to an immediate attack, that is, a woman's homicide while her husband is asleep or turned around can also be considered legitimate defence and thus result in a not guilty verdict. In addition to this, domestic violence factors are taken into account and may be relevant when assessing battered women's justifications for their homicide. In the case of domestic violence, legitimate defence may be successfully adopted even if the defendant reacts to a non-immediate injury, or if their force that exceeds the involvement in the injury or the threat of harm.

In addition to the above, in order for the experiences of battered women to be better understood, this research suggests that the law can draw on the existing international legal framework and incorporate battered woman syndrome into the evidence system to help battered women defend themselves. In fact, although battered woman syndrome is not recognized by law, it has long been applied in practice. China's "killing in a state of anger and fear" clause embodies the application of the common law concept of provocation and battered woman syndrome, the former explaining the loss of control experienced by abused women and the latter elucidating their fear. The main purpose of introducing this clause is to address cases where women who kill out of fear of further abuse or in response to another instance of uncontrollable domestic violence. Although the Opinions do not explicitly incorporate the theory of battered woman syndrome and provocation-related homicide, they outline circumstances warranting leniency, mitigation, or exemption of punishment for battered women. This indicates that the court, to some extent, recognise and accept the idea of lenient punishment based on "battered women syndrome" (Guo, 2013). Therefore, for the clear, it may be helpful to include battered woman syndrome in the legal framework to help battered women apply the provisions of legitimate defence.

In addition to this, public awareness and train are also important components of the proposed legal framework, which can contribute to broader social reforms. Public outreach should be strengthened to enhance understanding of the context of battered women. Training for judicial personnel should also be strengthened to help professionals to exercise caution to avoid re-victimizing abused women.



## CONCLUSION

China attempts to reform its laws to better accommodate the experiences of battered women, which were viewed as a positive indication that the experiences of battered women were beginning to be acknowledged within the legal framework. However, it is worth noting that if these provisions merely serve to mitigate liability, then this legislation has not made much progress, despite the reforms implemented in 2015. The amendments of the Opinions fail to address the challenges faced by battered women in successfully defending themselves against intermittent killings resulting from domestic violence. Existing legal defences provide considerable scope for bias, which is detrimental to achieving justice for battered women.

Compared to other jurisdictions, Chinese law does not recognise battered women syndrome. The reform focuses on the perpetrator being clearly at fault or directly responsible for the case (the victim is at fault), with the judge potentially issuing lenient punishment as deemed appropriate (Wang, 2018). The emotions of anger and fear stemming from the prospect of recurring domestic violence and homicide are not fully understood and explored.

This suggests that the complete defence in battered women against their abusers still needs to be fundamentally changed. By amending the provisions, introducing battered woman syndrome, and public education and training, China can better recognize the individual and systemic factors that affect the legitimacy of battered women's homicide. The proposed framework would serve multiple vital functions. First, by amending the law to remove the time requirement for legitimate defence, this will help abused women who resist during intervals in domestic violence to use legitimate defence. Moreover, the introduction of battered woman syndrome as expert evidence helps judicial personnel to understand homicide by battered women. Ultimately, public education and training are implemented to help regulate the behaviour of the public and judicial personnel to prevent abused women from being re-victimized. Through these measures, China will view homicide from the perspective of battered women, and incorporate the experience of battered women into the legitimate defence system.

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