

BATTERED WOMEN AND THE REQUIREMENT OF IMMINENCE IN SELF-DEFENCE

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SUMMARY

Should the South African courts abolish the traditional imminence standard, something must be used to stand in its place. The identification of the various alternatives which have been suggested to replace imminence - most notably the establishment of the "reasonable woman standard" as advanced in the case of *S v Engelbrecht* 2005 (92) SACR 41 (W) - has moved the law of self-defence into the realm of subjectivity. The end result not only undermines self-defence as a justification defence, but is also unworkable for a number of reasons. For instance, utilising expert testimony to explain how the battered woman's syndrome affects individual perception would leave a judge with no meaningful way to determine if that abused woman's belief in the imminence of danger was reasonable, even if viewed from her distorted perspective. It is suggested that no reference need be made to the "reasonable battered woman", since South African courts already do this to a limited extent by taking a number of factors into account in determining if the abused woman acted reasonably. By rethinking certain factors in the situation as a set of relatively innocuous normative propositions, the abused woman's actions can be judged in accordance with standard propositions in the law of self-defence.

KEYWORDS: Imminence and battered women; abused women; necessity and abused women; self-defence; self-defence and abused women; defences for abused women; battered woman syndrome and imminence; "immediately necessary"; right to life; putative defence; cycle of violence; proportionality and self-defence; justification and excuse and self-defence

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