

**BATTERED WIFE SYNDROME:
LEGAL PROCEEDINGS IN THAILAND**

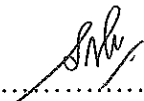
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**A THESIS SUBMITTED IN PARTIAL FULFILLMENT
OF THE REQUIREMENTS FOR
THE DEGREE OF DOCTOR OF PHILOSOPHY
(CRIMINOLOGY, JUSTICE ADMINISTRATION AND SOCIETY)
FACULTY OF GRADUATE STUDIES
MAHIDOL UNIVERSITY
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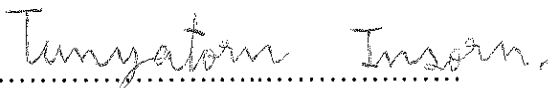
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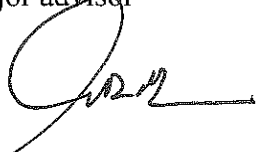
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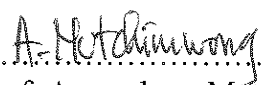

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Finally, my deepest appreciation belongs to my parents, family and husband as well as contributors for their encouragement and support in every possible way that are great until accomplishment.

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BATTERED WIFE SYNDROME: LEGAL PROCEEDINGS IN THAILAND

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ABSTRACT

This research aims to analyze nature of problems and restrictions of the law concerning protection of the wife murdering her husband as a result of having the battered wife syndrome, so as to seek appropriate and fair legal proceedings.

The researcher collected the qualitative information from documents and in-depth interviews to 18 qualified people involved in the judicial process and the wife murdering her husband as a result of being battered by her husband as domestic violence and the quantitative information by means of questionnaires to 201 concerned people involved in the judicial process and a survivor of domestic violence.

The research results show that the legal proceedings against the wife murdering her husband as a result of having the battered wife syndrome have problems relating to the statutes of law and enforcement engendering unfairness in 4 main issues i.e. 1. The applicable laws have none of statutes covering the case of the offender having battered wife syndrome 2. The process of legal proceedings and performance of duties of personnel in judicial process 3. Inappropriate and unfair application of penalties under the Penal Code 4. Unawareness of rights and duties and attitudes of personnel in the judicial process.

The research had suggestions for 5 main issues i.e. 1. To amend the definition of domestic violence in Section 3 of the Protection of Domestic Violence Victims Act B.E.2550 to include an offence relating to life 2. To proclaim the court's ordinance on the guidelines for protection in a domestic violence survivor's case to exercise methods of fact-finding in the case and in case of necessity the court has the power to refer the defendant for physical and mental check-ups and to require testimony of an expert witness in the stages of the court hearing 3. In consideration of proof and judgment in the case of the wife murdering her husband as a result of having battered wife syndrome, the court has the power to take measures of therapy, rehabilitation, probation of the offender's behavior, indemnification of the offender, community work and public service or parole in lieu of inflicting a penalty 4. Dissemination of information about battered wife syndrome, capacity and skill building for personnel in the judicial process in legal proceedings of domestic violence cases 5. Campaigning with the public to adjust attitudes in relation to domestic violence and mythology on gender inequality.

**KEYWORDS: BATTERED WIFE SYNDROME/DOMESTIC VIOLENCE/
LEGAL PROCEEDINGS**

187 pages

การฆาตกรรมโดยภรรยาที่ถูกทารุณจากสามี: กรณีศึกษามาตรการดำเนินคดีในประเทศไทย

BATTERED WIFE SYNDROME: LEGAL PROCEEDINGS IN THAILAND

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บทคัดย่อ

งานวิจัยนี้มีวัตถุประสงค์ในการวิเคราะห์สภาพปัญหาและข้อจำกัดของกฎหมายที่เกี่ยวข้องกับการคุ้มครองภรรยาที่ฆ่าสามีขณะที่มีอาการของหญิงที่ถูกทำร้าย (Battered Wife Syndrome) เพื่อหาแนวทางดำเนินคดีที่เหมาะสมและเป็นธรรม

ผู้วิจัยเก็บข้อมูลเชิงคุณภาพโดยการศึกษาจากเอกสาร และการสัมภาษณ์เชิงลึกผู้ทรงคุณวุฒิที่เกี่ยวข้องในกระบวนการยุติธรรม และภรรยาที่ฆ่าสามีเนื่องจากถูกกระทำด้วยความรุนแรงในครอบครัว จำนวน 18 คน และข้อมูลเชิงปริมาณโดยใช้แบบสอบถามกับผู้ที่เกี่ยวข้องในกระบวนการยุติธรรม และผู้ที่เกี่ยวข้องกับผู้ถูกกระทำด้วยความรุนแรงในครอบครัว จำนวน 201 คน

ผลการวิจัยพบว่าการดำเนินคดีกับภรรยาที่ฆ่าสามีขณะที่มีอาการของภรรยาที่ถูกทำร้าย มีสภาพปัญหาด้านบทบัญญัติกฎหมาย และปัญหาการบังคับใช้กฎหมายที่ก่อให้เกิดความไม่เป็นธรรม 4 ประเด็นหลัก ได้แก่ 1. ปัญหาการไม่มีกฎหมายใดบัญญัติครอบคลุมถึงกรณีของผู้กระทำที่มีอาการภรรยาที่ถูกทำร้าย 2. ปัญหากระบวนการดำเนินคดีตามกฎหมายและการปฏิบัติหน้าที่ของบุคลากรในกระบวนการยุติธรรม 3. การใช้บทลงโทษตามประมวลกฎหมายอาญาในความผิดฐานฆ่าคนตายไม่เหมาะสมและเป็นธรรมกับข้อเท็จจริงในลักษณะดังกล่าวนี้ 4. ปัญหาการไม่รู้สิทธิและหน้าที่ของประชาชน และทัศนคติของบุคลากรในกระบวนการยุติธรรม

ข้อเสนอแนะที่ได้จากการวิจัย มี 5 ประเด็นหลัก ได้แก่ 1. ควรแก้ไขคำนิยามความรุนแรงในครอบครัวในมาตรา 3 แห่งพ.ร.บ คุ้มครองผู้ถูกกระทำด้วยความรุนแรงในครอบครัว พ.ศ. 2550 ให้ครอบคลุมถึงการกระทำผิดต่อชีวิตด้วย 2. การออกกระเบียบศาลว่าด้วยแนวปฏิบัติคดีคุ้มครองผู้ถูกกระทำด้วยความรุนแรงในครอบครัว ควรใช้วิธีการไต่สวนเพื่อหาข้อเท็จจริงในคดี และเมื่อพบเหตุจำเป็นให้ศาลมีคำสั่งส่งจำเลยเข้ารับการรักษาสุขภาพกายและจิต และในชั้นพิจารณาพยานผู้เชี่ยวชาญต้องมาเบิกความ 3. การพิจารณาพิพากษาคดีที่พิสูจน์ได้ว่าภรรยาฆ่าสามีขณะที่มีอาการของภรรยาที่ถูกทำร้าย ให้ศาลมีอำนาจกำหนดใช้วิธีการฟื้นฟู บำบัดรักษา คุมความประพฤติผู้กระทำความผิด ให้ผู้กระทำความผิดชดใช้เงินช่วยเหลือบรรเทาทุกข์ ทำงานบริการสาธารณะ หรือทำทัณฑ์บนแทนการลงโทษผู้กระทำความผิดตามสมควรแก่กรณี 4. ควรให้ความรู้เรื่องอาการเจ็บป่วยทางจิตของภรรยาที่ถูกทำร้าย และการสร้างความเชี่ยวชาญให้แก่บุคลากรในกระบวนการยุติธรรมในการดำเนินคดีความรุนแรงในครอบครัว 5. ควรมีการรณรงค์ให้ประชาชนปรับทัศนคติเกี่ยวกับความรุนแรงในครอบครัวและมายาคติเรื่องความไม่เท่าเทียมกันระหว่างเพศ

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CHAPTER I

INTRODUCTION

1.1 Background and essence of the problem

The domestic violence is one of the most significant problems that correlates to individual and family, the main institute of the society. It has impacts on legal and justice policy as well as allocation of public health budget of the country. As a number of growing-up children have encountered and been besieged by conflicts and violent matters in their family, they would directly learn and further behave to other people in the same violent or abusive way without wrongdoing consciences. In the meantime, it might also traumatize them both bodily and mentally. This situation would hamper development of the people's quality of life in the future.

In general, the public formerly perceived the domestic violence as only an ordinary problem of the grass roots or the laborers who seemingly had use of force and emotion to solve household difficulties rather than reasoning. Nowadays, incident of or act likely to be the domestic violence are increasingly arisen and involved by people in every level of Thai society, no matter who they are i.e. perpetrator, victim, directly affected including family member, or even community member or close person being aware of violence committed in the family. Among old-fashioned beliefs in the society i.e. the domestic violence being only personal or family affair between the couple, the wife victim barely daring to disclose factual circumstances of such violence because it reflecting deficiency of spouse or role of family follower and some women being apprehensive for censure of impatience to the violence situation or being fearful of failure of their family on account of the wife being incapable of maintaining couple life, the women have to sacrifice and endure immensely to such violence throughout the time due to cultural and social reasons as well as being dependent on the husband by economic necessity.

Department of Woman Affairs and Family Development, Ministry of Social Development and Human Security reported about the situation of domestic

violence in Thailand during 2011-2012 that the UN Women ranked Thailand in the 7th place from 71 countries by sexual violence committed by spouse, the 36th place (23 percentage) from 75 countries by level of severity of physical abuse committed by spouse. As for another interesting statistic was a ranking by a belief that husband battering his own wife being acceptable, Thailand was in the 2nd place (36 percentage) from 49 countries. As per a report of violence situation in Thailand for the year 2013 made under section 17 of the Protection of Domestic Violence Victims Act B.E.2550 (2007), total domestic violence victims were 832 persons. In its categorization of various causes of the violence against child, woman and the domestic violence, the most cause was drug addiction and drunkenness among 412 individuals or 35.82%, the second rank was unidentified causes or other reasons of the violence among 291 individuals or 25.30%, the following causes were adultery and jealousy among 234 individuals or 20.34%, economic reason and unemployment among 103 individuals or 8.95%, physical and mental health among 91 individuals or 7.91% and pornography among 19 individuals or 1.65%. The most victims were 746 women or 89.66% and the rest were 78 men or 9.37% together with 8 persons of unidentified gender or 0.96%. A note was one violence case might be arisen by more than one cause.

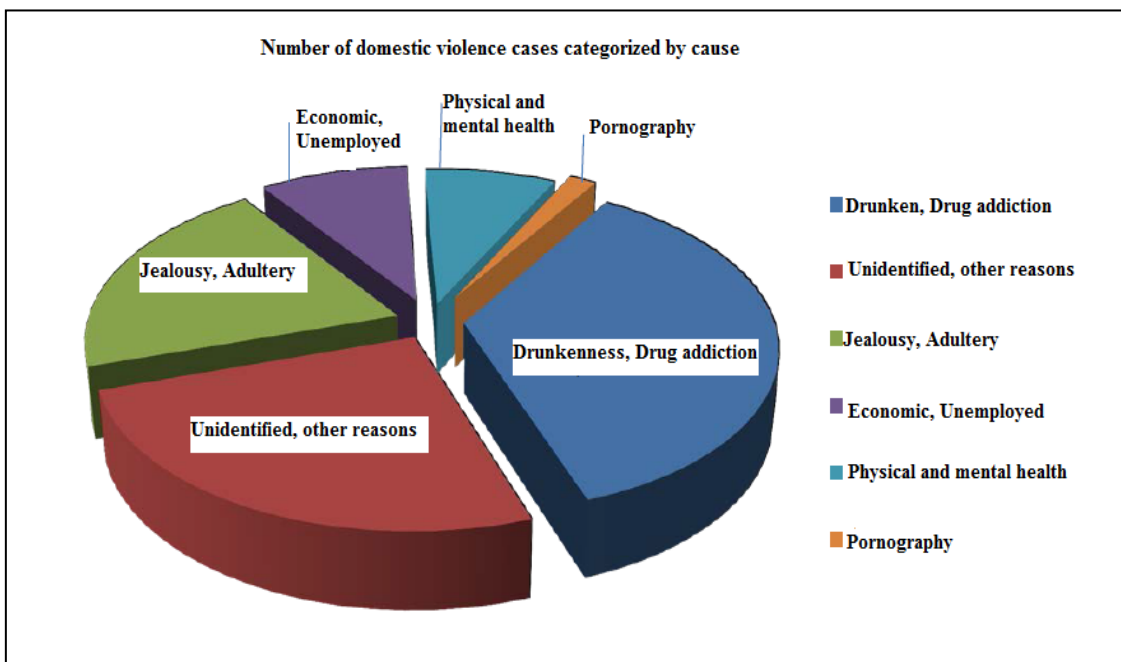


Diagram 1.1 Illustrates number of domestic violence cases categorized by 6 main causes

The Public Health Ministry’s information in 2013 indicates its increasing severe situation by total 31,866 individuals, broken down to be 19,229 children and 12,637 women in average of 87 individuals per day or other words in every 15 minutes either 1 child or women being the domestic violence victim.

The domestic violence against children and women is generally sorted out into physical, mental, sexual violence and abandonment etc. The situation report in 2013 unveiled 31,866 victims, as mentioned above, can be illustrated in the following categories.

Table 1.1 Number of the victims sorted out into category requesting for the OSCC services

Category	Children	Women	Total
Physical	3,956	9,699	13,655
Sexual	13,904	2,226	16,130
Mental	612	569	1,181
Abandonment	471	79	550
Beguilement / exploitation by coercion	286	64	350
Total	<u>19,299</u>	<u>12,637</u>	<u>31,866</u>

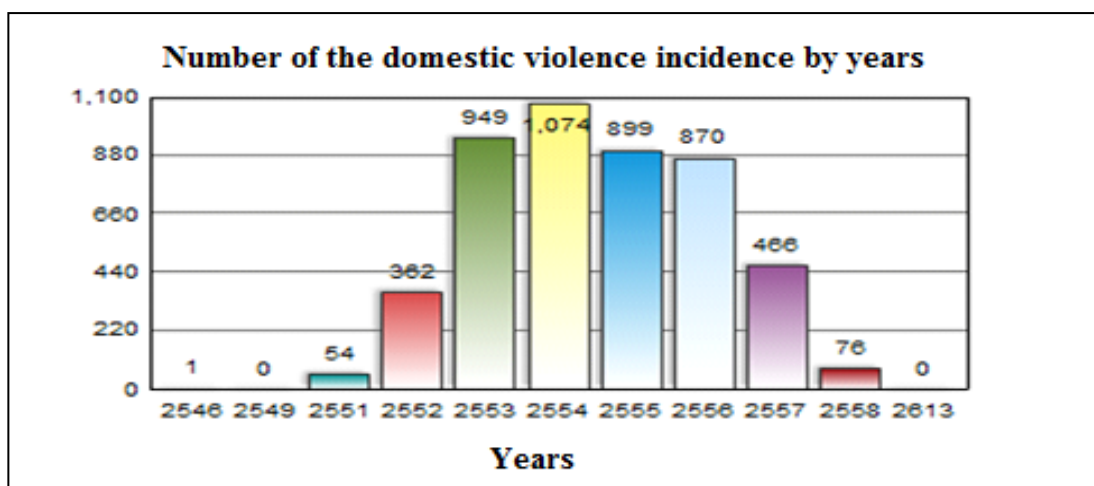


Diagram 1.2 Illustrates number of the domestic violence incidence during 2003-2015 (Source: Data collection of the Operational Center for Prevention of Domestic Violence, Ministry of Social Development and Human Security)

It is believed that there were a number of unreported victims, or other words the actual number of the domestic violence victims are more than the reported number of those who have approached the OSCC. This reflects the pressure situation of women being assaulted in the family and unable to solve or even to make decision so as to ask for help of their close persons or the government agency. Such pressure situation comes from various forms of assault by husband and a stress caused by unsolvable condition. Accordingly, some women have to murder the person who batters or assaults them because they reckon on such murder being only one way out to resolve the victim of battering. In many cases, women group of this kind usually choose to murder their husband in other time beyond the time of being assaulted or to use various weapon nearby their hands such as cooking knife or to poison their husband owing to their might cannot battle with the husband. From these circumstances and deeds, the way of proof in the court trial point out the women's brutality or premeditation to commit such act. As a result, the woman victim would not be protected under the criminal law. Moreover, the additional penalty to punish the woman victim may be considered due to the premeditation to offend.

It is unfair in the event that the wife who has the battered wife syndrome murders her husband, such wife must be legally punished in equivalent to the person who deliberately murders others. In comparative consideration of cause of the murder in these two cases, there is distinctive malice in each one. The battered wife is a victim of continuous domestic violence and cannot be out of violence cycle on accounts of love with the husband, a belief in maintaining family institution, an economic essence, an endurance to protect and bring up the child or even being inaccessible to legal rights and protection pursuant to the Protection of Domestic Violence Victim B.E.2550 (2007). Unfortunately, despite severity of both physical and mental effects arising out of the domestic violence, the battered wife is re-victimized by judicial process viewing this women group as the serious criminals and failing to take benefit in any matters of law to alleviate disastrous effect towards them. Accordingly, this study aims to find out legal protection where the legal action against the wife who has battered wife syndrome by being assaulted murders her own husband. This study aims to suggest revision of current legal measure based on

question whether and how it is appropriate and fair to the wife having the battered wife syndrome.

1.2 Objectives

1.2.1 To study criminological concept and theory in relation to the domestic violence

1.2.2 To study matters of fact in Thai society in issue of the murder of a husband by the battered wife

1.2.3 To study legal restrictions in relation to the protection of the wife having the battered wife syndrome murders her own husband

1.2.4 To find a guideline on the appropriate legal proceedings against the wife having the battered wife syndrome murders her own husband

1.3 Question of the research

How are the appropriate legal proceedings in relation to the murder of a husband by the battered wife?

Sub-questions

1.3.1 How is the concept of the legal proceedings against the wife having the battered wife syndrome murders her own husband under Thai laws?

1.3.2 How is the guideline on the appropriate legal proceedings of Thailand against the wife having the battered wife syndrome murders her own husband?

1.4 Scope of the research

1.4.1 Study the Penal Code, the Criminal Procedure Code, the Protection of Domestic Violence Victim Act B.E 2550 (2007) and related Thai laws in comparison to foreign laws

1.4.2 Study opinion of the experts by the in-depth interview and related practitioners in the judicial process by questionnaire so as to find the appropriate legal proceedings

1.4.3 Study the factual condition in the incidents of the wife having the battered wife syndrome murders her own husband

1.5 Conceptual framework

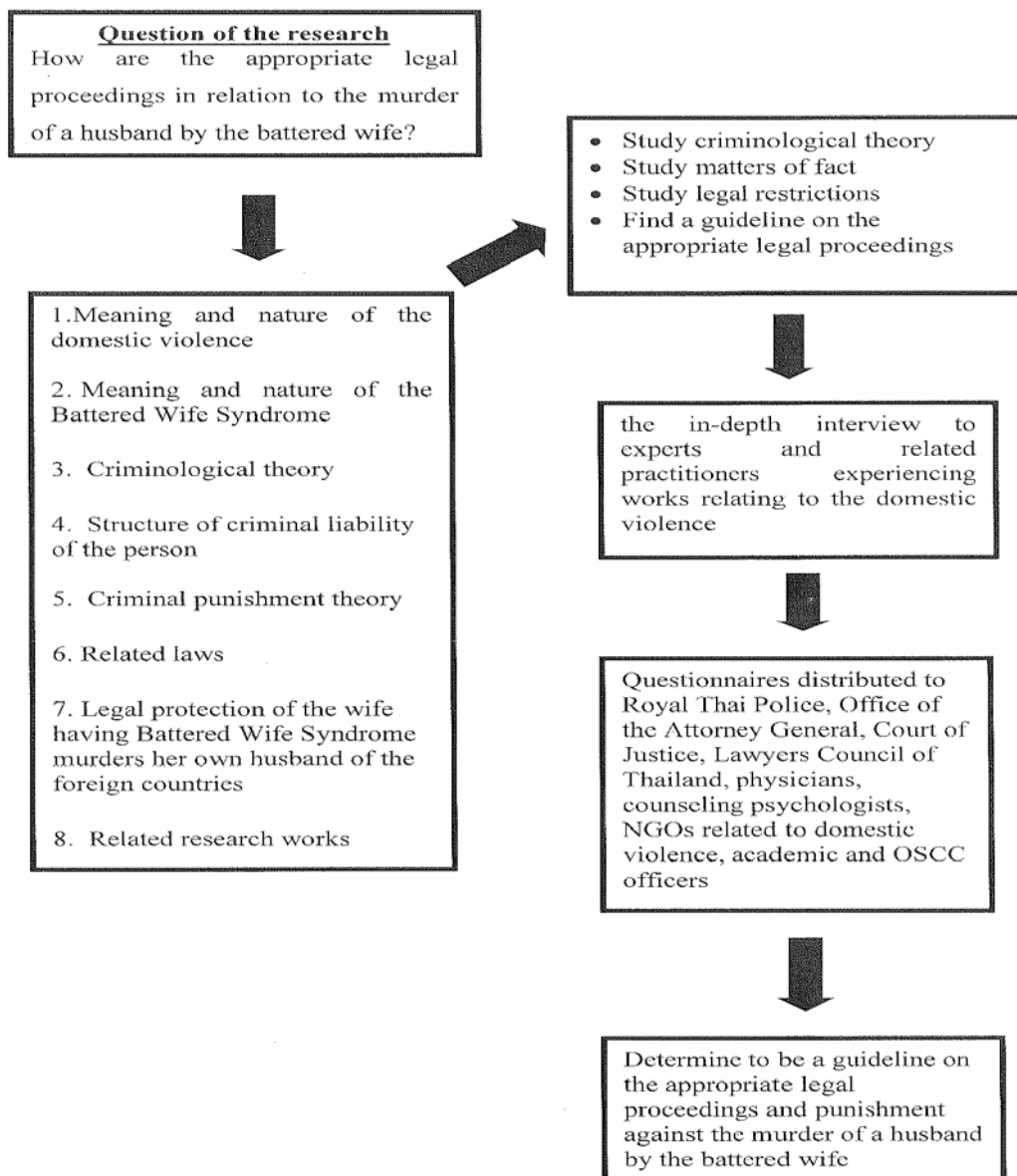


Diagram 1.3 Conceptual framework

1.6 Expected output

1.6.1 To have knowledge of the criminological concept and theory in relation to the domestic violence

1.6.2 To have knowledge of the matters of fact in Thai society in issue of the murder of husband by the battered wife

1.6.3 To have knowledge of the legal restrictions in relation to the protection of the wife having the battered wife syndrome murders her own husband

1.6.4 To have knowledge of a guideline on the appropriate legal proceedings against the wife having the battered wife syndrome murders her own husband for suggestion to amend the law and the regulation on its implementation of related government agency and for efficient solution in this regard

1.7 Definition

1.7.1 “Wife” means the lawful wife de jure and the wife de facto or other words the woman does not register marriage with the man who is de facto husband but both cohabit as the couple or live separately on voluntary basis not exceeding 3 years (as defined in section 1516 (4/2) of the Civil and Commercial Code)

1.7.2 “Domestic violence” means any act done with the intention to or in the manner likely to cause harm to body, mind, gender, freedom or health of a person or to exert coercion or immoral influence over a person in order to wrongfully cause him to do, not to do or yield to any act.

1.7.3 “Legal Proceedings” means taking the offender against criminal law into process of court trial and punishment under statutes of law.

1.7.4 “The battered wife syndrome” means a kind of temporary mental symptom normally found in woman whose body, mind, gender, freedom or health have ever been battered or harmed severely by her own spouse.

1.7.5 “Murder of a husband by the battered wife” means the factual circumstances that the offender commits as a result of the wife having the battered wife syndrome and when they are applied to the legal method under the penal code engender gives rise to disastrous effect in the case to be alleged of killing under

section 288, physical assault engendering death under section 290 and attempt to kill under section 80 of the Penal Code.

CHAPTER II

LITERATURE REVIEW

The study of the legal measure in legal proceedings against the battered wife murder her husband divides into 7 issues i.e. the first covering introduction, meaning and nature of the domestic violence, the second covering meaning and symptoms of the battered wife syndrome or the battered woman syndrome (BWS), the third covering related theory, the fourth covering structure of criminal liability of individuals, the fifth covering related law, the sixth covering related foreign law and the seventh covering research work relating to the battered wife murdering her own husband. These contents will point out whether determination of criminal penalty against the wife murdering the husband is appropriate or not, whether and how the legal proceedings and determination of criminal penalty is line with international principle and reason of criminal punishment or not. The researcher carried out review to these following literatures.

2.1 Meaning and nature of the domestic violence

2.1.1 Meaning of the domestic violence

To define meaning of the domestic violence depends on objectives of each definer who will use it to what phenomenon in particular such as social, psychological or legal. In social and psychological field, the domestic violence is defined in wide range. In medical and legal field, the domestic violence is defined as narrower to be definite in benefit of interpretation and application to diagnosis for medical treatment and in benefit of strict interpretation and enforcement of the act being criminally punishable (Watcharin, 2003: 23-42)

2.1.1.1 Social and psychological definition

Domestic violence means form of behaviors of coercion and taking control of the spouse who have intimate relationship, by intimidating, menacing or disturbing, annoying Mary Ann Dutton (1993) defined “Domestic Violence” means form of behaviors of abuse of power to control by use of force to maltreat bodily, sexually and mentally others as well as abuse of power to dominate acts towards children, property, pet or other people. Besides, the people who act or threaten to act in violence manner towards children tend to act in the same manner towards women in family.

Buszawa, S. & Buzawa G. (1980) defined “Domestic Violence” as violence between man and woman who live together or used to cohabit together as husband and wife. Extent of this definition was quite broad to include marriage whether it was lawful or not and the perpetrator who could be both man and woman.

Gelles (1972): Straus, Gelles&Sreinmetz (1980) viewed definition of the domestic violence must originate from social root; therefore, both males and females can be the perpetrator who commits domestic violence.

In summary, definition of “Domestic Violence” aims to explain psycho-social phenomenon, usually has broad meaning which is procedure of acting in violent manner to accomplish by acquiring power to dominate and control family members or acceptance from family members arising out of temperamental nature of oneself. If such behavior has not been properly interfered or controlled, recurrence and amplified violence in family frequently take place.

The feminism thought views the domestic violence being caused by male, its survival being only female and children, non-acceptance that the domestic violence being caused by female despite self-defense and because of male causing such violent act and its defense.

2.1.1.2 Legal definition

The legal definition of “Domestic Violence” is narrower than the psycho-social definition because determination on act, relationship between the perpetrator and the harmful affected must be definite regardless of gender causing the domestic violence or being harmful affected by the violence.

The definition in section 3 of the Protection of Domestic Violence Victims Act B.E.2550 (2007) stipulated that “Domestic violence means any conduct performed with the intention to inflict harm on a family member’s physical, mental or health condition, or with the intention that is likely to cause harm on a family member’s physical, mental or health condition, or any use of coercion or unethical domination which compels a family member to commit, omit or accept any unlawful act, except for an act committed through negligence”.

The acts of domestic violence are criminally punishable must be strictly interpreted. Such definition can be divided into these 3 following compositions:

1) Any act or conduct performed with the intention to inflict harm on physical, mental or health condition must be the conduct with intention to inflict, not necessary for having its consequence. Such intention must attain a level of being likely to inflict harm on physical, mental or health condition.

2) As regards the act or conduct performed that is likely to cause harm on a family member’s physical, mental or health condition and the harm has not yet happened but the perpetrator is aware of such harm possibly happens, it is considered as the domestic violence. However, local tradition and culture must be taken into account due to different level of consideration.

3) Any use of coercion or unethical domination which compels a family member to commit, omit or accept any unlawful act, except for an act committed through negligence for instance any acts compels the victim/victim to feel that if the victim/victim denies or does not follow, he/she would be an ungrateful person or not receive affection or reward from the perpetrator.

2.1.2 Forms of the domestic violence categorized into 7 cases

2.1.2.1 Murder among family members

Any murder committed by the same family members is the most severe domestic violence. According to a UN Special Rapporteur’s report on the domestic violence against women in 1996 , Australia, Bangladesh, Canada, Kenya, Thailand and United States of America were the countries where women have been mostly murdered on account of the domestic violence.

2.1.2.2 Bodily harm among family members

With regard to the study results worldwide affirm that the domestic violence by bodily harm between spouse or former spouse or between parents and child have being occurred in every society all over the world. The 25-50 percentages of all women used to be bodily harm by her spouse. Approximate 100,000-200,000 children per annum in the USA have been bodily harmed and around 6.6 percentages of Thai children have been bodily harmed by their parents.

When the bodily harm was done, it usually has repeatedly occurred. Its severity and frequency have tended to be increasing. Nature of the bodily harm includes:

- 1) physical force to push, slap, beat and kick
- 2) tie, bind and confine
- 3) force to assault until getting abrasion, wound, bruise, bleeding, puncture, broken, burning, scratching and bruising mark
- 4) force to throttle and strangle
- 5) force to pull hair, jerk hair or hold hair, leg and arm to drag
- 6) use weapon to harm bodily
- 7) force to harm or damage to pet or property of the other party

2.1.2.3 Domestic sexual violence

Many countries apply legal principle that husband commits sexual violence against wife or rapes wife is not the criminal offence. Most women view husband's coercion to force sexual intercourse is not the rape, under marriage or cohabiting as husband and wife.

According to survey in many countries, approximate 10-15% of women have ever been forced to have sexual intercourse. The domestic sexual violence may include these following natures:

- 1) attempt to do or compel the other one to do sexual activity on involuntary basis
- 2) having sexual intercourse with the other one's involuntariness

3) force to harm during having sexual intercourse or harm sexual organ including to use object or weapon to women's sexual organ or by mouth or anal intercourse with the other one's involuntariness

2.1.2.4 Mental or emotional harm

Mental or emotional harm sometimes is inflicted before or in synchrony with bodily or sexual harm in order to cause fear, feel worthless. Such mental or emotional harm may include many natures as follows:

- 1) threaten to harm
- 2) being left to be solitary
- 3) express excessive jealous
- 4) restrict providing essential things of subsistence
- 5) intimidate to be fearful, embarrassed, dishonor, affront, degraded, slavery
- 6) designate with improper words, criticize in derogatory way, affront and insult other person
- 7) accuse, impute, censure acts of spouse in every matters
- 8) being chilling, ignore, unconcern, driving out, frequently cynical
- 9) lie, break a promise, discredit spouse
- 10) pretend to drive fast and frightfully, intimidate and shock spouse
- 11) libel to leave spouse in dangerous place
- 12) deny to help in case of spouse getting sick or injury
- 13) threaten or destroy property or pet of spouse

2.1.2.5 Customary and traditional violence

Women and girls in many countries all over the world are distressed and afflicted with actions pursuant to various religious and tribal beliefs such as

A belief to circumcise the female's sexual organ has impact to death, sterilization, physical and mental pain.

A tradition to demand for dowry or engagement gift from the female in some countries cause killing to the female by fire or poisoning where the female fails to give dowry or engagement gift to the husband as per agreement.

A belief on killing for family prestige in many countries such as Bangladesh, Egypt, Jordan, Lebanon, Pakistan and Turkey where woman is in default by having relationship with man before marriage whether having sexual intercourse or not, by being raped or falling in love with man whom the family senior disagrees entitle the male family member to kill such woman or girl.

A forced or involuntary marriage which is one of the domestic violence committed to the female and the girls impacts to physical, mental and health of women and girl.

2.1.2.6 Discrimination against the female

In the society with tradition and value to treat the boy better than the girls, there are severe discriminations against the girls such as choose to have the female aborted or kill the female baby. Moreover, in many underdeveloped countries nurturing the girl is inferior to the boy, and malnutrition and insanitary condition of the girl results huge babies being disabled or dead in each year.

2.1.2.5 Forced prostitution

Woman or girl being forced to prostitute for sexual benefit and business by spouse or parents is one of the domestic violence. The poor or immoral families that are unable to raise the child usually sell or lease the child or in some cases the girls become the forced child labor. As a result, they are risky to be battered or sexually exploited by their employer.

2.2 Meaning and symptoms of the Battered Wife Syndrome

For women who are victims of the domestic violence have symptoms of women having the battered wife syndrome which were defined as follows:

Black's law dictionary (7th edition) defined the battered wife syndrome as a medical mental condition of woman afflicting with physical, sexual or mental battery by her own spouse or partner and in some cases this syndrome can be a legal defense of woman who murders man.

Dr. Lenore E.A. Walker (2009) defines this battered wife syndrome as temporary mental symptom that usually found in woman who has ever been severely inflicted by physical, sexual or mental harm by her own spouse.

Mrs. Siriporn Skrobanek (2009), President of Women Foundation briefed the battered wife syndrome being a traumatic symptom after long-term wicked experience, merely being abnormal at the time of such act, but not psychotic disorder.

Prof.Dr. Ronnchai Kongsakon (2008) explained about the battered wife syndrome as a symptom being not included in the psychotic disease but the textbook for psychiatrist containing words relating to this symptom in broader scope. The symptoms include these following 3 categories i.e. First, the adjustment disorder which is caused by distinctive stress condition in comparison to ordinary person, Second, the severe stress for instance when the husband comes closer, the wife is immediately startled, and Third, the depression which is the result of long-term bodily harm by husband until being dispirited and hopeless in their life.

Besides, Walker (1979) explained about cycle of the domestic violence starting from petty violence to increasing frequency and severity until becoming big matter, then the male expressing love to reconcile with the female and convince of non-recurrence of the violent act. Although the female usually believes in better situation after such love expression, such violence resumes in repeated manner in actual incident. As a result, the female would be depressed, low-spirited and self-esteem, denunciated herself, implied acceptance of the fate and not long for any assistance when having opportunity (Poirier, 2000:145).

The women being frequently harmed by her own husband or partner would have consequently mental symptoms which are the post-traumatic stress disorder (PTSD). This PTSD can be arisen by many causes. In connection with the domestic violence where the woman is being battered by her own husband or partner, some of them are

A. Encountering a mental-impacted incident that include these following two indications:

(1) get to know, perceive or confront the incident in relation to death or menace to life or serious injury or physical appearance of oneself or others

(2) react to the incident by severe fear, desperation or being startled

B. Have feeling being likely to be with a mental-impacted incident at all time that include over one of these following indications

(1) being agonized in imagination, idea or perception by flickering repeatedly of any related part of the incident

(2) being distressful by dreaming repeatedly about the incident

(3) act or feel as though the incident recurred (feel like being with the incident once again, having illusion, hallucination and dissociative flashback episodes that including these indications while waking up or being drowsy by drug

(4) being so distressful when confronting with any related part of the incident recalling directly by other situation seeming to be symbol or similar to the incident

(5) react physically when confronting with any related part of the incident or recalling directly by other situation seeming to be symbol or similar to the incident

From the above statements, we get to know that the battered wife syndrome relates to PTSD symptoms because both encounter the mental-impacted incident and cause fear to acts of physical, mental and sexual violence by her own husband or spouse. Those violent acts have continuously occurred more than one time as cycle. Most perpetrator always surge frequency and severity of those violent acts. As the victim attaches to the mental factor i.e. love, binding and subsistence necessity on economic and family unity reason, the perpetrator cannot get out of the domestic violence which may be compared to the Stockholm Syndrome in the event that the victim who is kidnapped to be hostage can have mental binding with the captor. As for the woman has still endured and lived with the man who batters her as well as does not select other solution to avoid violence or fighting that can be amplified to be perpetual mental pressure and stress until the woman decides to murder her husband. Reason for all of these can be clarified in mental indications rather than general logic.

2.3 Theory in this research

2.3.1 Criminology theory

2.3.1.1 Neo-classical school of criminology

2.3.1.2 Victim precipitation theory

2.3.1.3 Labeling theory

2.3.1.4 Forensic psychiatry

2.3.2 Related legal theory

2.3.2.1 Due process of law

2.3.2.2 Criminal punishment theory

2.3.3 Theory relating to the battered wife syndrome

2.3.3.1 Patriarchal society perspectives theory

2.3.3.2 Feminist perspective

2.3.2.3 Learned helplessness theory

2.3.1 Criminology theory

2.3.1.1 Neo-classical school of criminology

This theory focuses on free will of criminal before making decision to offend pursuant to the classic criminology but takes into account of difference of the offender i.e. age, gender and social environment in order to develop punishment in conformity with the offender because all offenders do not deserve the same treatment in all respects. Main criminologist and related theory are a theory of Jean-Gabriel De Tarde) and a theory of Raymond Saleilles.

Jean-Gabriel De Tarde suggested that the court power should be only limited to decide conviction or acquittal of the defendant. Tarde also suggested appointing an expert committee comprising physicians and psychologists to consider liability of the defendant. Upon the committee's decision, punishment should base on psychology because punishment against the offender in each offense should not be equal and the equivalent punishment does not make distinction among criminals. Tarde' philosophy contributes to current development of criminology such

as different treatment to prisoners, testimony of psychiatrist and other experts in the court trial. (Uthai, 2015:137-143)

A theory of Raymond Saleilles had the concept on the individual punishment that support to have appropriate punishment against the offenders. This concept views that criminal liability is variable to each offender on account of distinction of offense in each deed. This individual punishment is utilized in taking into consideration of external factor of wrongdoing, as the external factor reflects wicked mind which is internal factor of the offender. Therefore, punishment must be adjusted to suit each offender. If the offender's behavior does not deviate permanently, punishment to be inflicted would not be deviated more than it has ever been. Moreover, means to assist the offender to be able to rehabilitate and adjust his/her own behavior must be provided. (Uthai, 2015:143-148)

Both theories of Jean-Gabriel De Tarde and Raymond Saleilles are very supportive to the researcher's concept aiming to review whole procedure in relation to trial and punishment towards the wife having the battered wife syndrome because role of expert such as psychiatrist will help enable the court to understand pressure condition and uncontrollable state of the offending wife. As a result, determination of punishment will be more appropriate than incarceration which is applied to general offender having evil intention. (Uthai, 2015:151-155)

2.3.1.2 Victim precipitation theory

A classification of the wife who is victim of the domestic violence murders her own husband must take into account of such offender herself. The wife previously was the victim of the domestic violence and failed to endure anymore, hence the wife murdered the husband. In the meantime, the husband who was previously the offender became the victim of murder instead. Accordingly, the researcher presents briefly concept of classification of the victim in relation to this study subject as follows: (Annop & Srisombat,1995)

(1) Mendelsohn's concept of classification of the victim

Mendelsohn classifies the victim of crime by taking into account of gravity of offense. In case of the husband commits the domestic violence and then is murdered or battered by the wife, such husband is classified as the victim of crime being guilty than the offender i.e. the victim who stimulate others to commit

crime for instance instigate to get angry. In some cases, such husband may be considered as the most guilty victim and the victim who is guilty alone. As such kind of victim is usually aggressive or used to offend, the victim is guilty alone as engender crime such as the husband batters the wife until the wife's self-defense put him to death.

(2) Hentig's concept of classification of the victim

Hentig classifies the victim of crime by taking into account of mental, social and physical nature factor mainly in classification and points out the victim by birth and by society.

In consideration of the victim of the domestic violence, the battered wife is a kind of victim since she is weak by nature and some women is also murdered after being battered and distressful from lustful criminal or family member. The criminal who harms the women mostly are men since their power is more superior than the women by body structure.

The women become victim of the domestic violence in the following cases. First, domestic sexual violence for example the husband coerces the wife to perform sexual activity on involuntary basis by force or battery during sexual intercourse or harming sexual organ. Second, the victim of traditional violence for example a belief to circumcise the female sex organ has impact to death, sterilization, physical and mental pain, a tradition to demand for dowry or engagement gift from the female in some countries cause killing to the female by fire or poisoning where the female fails to give dowry or engagement gift to the husband as per agreement, a belief on killing for family prestige where woman is in default by having relationship with man before marriage whether having sexual intercourse or not, by being raped or falling in love with man whom the family senior disagrees entitle the male family member to kill such woman or girl, a forced or pre-mature marriage which is one of the domestic violence committed to the female and the girls impacts to physical, mental and health of women and girl.

For the husband who is victimized in kind of being distressful usually by sorrowful matters such as the husband or the child's father being chronic drunken or mental sick and making trouble and distress to family members for long time until being murdered by his wife or child. Nature of the victim of this kind is a

person who brings about stressful situation and such person is eventually victimized in such stressful situation that is caused by his own.

For the wife who murders the husband, the victim of this kind is broken off the opportunity and ignored as well as faces situation of loss, coercion and distress by being physical and mental harmed until the wife has to get back to fight for her own survival and dignity. Actually, the victim who gets back to fight, in view of struggle or resistance of the passive person should not be classified in the same kind. In the end, the victim is defeated by the superior criminal.

(3) Ezzat Abdel Fattah's concept of classification of the victim

Fattah classifies the victim of crime by focusing on participation in offending and emotional state such as aggression, hatred etc. The husband who is victimized is in kind of aggression, instigation to commit crime such as saying with abusive or insulting words or in kind of participation in committing crime such as the husband began the mental or physical battery to his wife or child. Such acts of the husband cause him to be easily victimized, at last.

(4) Stephen Schafer's concept of classification of the victim

Schafer takes into account of responsibility and relationship between the crime and the victim of crime. The husband who is victimized usually is the instigator to commit the crime or the provocative victims. The victim of this kind has done something in contrast with the criminal's mind. When the criminal is aroused or incited, the criminal harm the victim who is considered as the first doer such as batter wife and child, saying in abusive words, taking other women to stay in the same house. From such acts can inspire the criminal to commit the crime immediately and to put the victim in dangerous situation. The victim of this kind is the person who must be responsible vastly for happening of such crime.

On the other hand the wife who is victimized by acts of the domestic violence is classified as the victim being biological weak both physically and mentally. By such nature, the husband has an idea to harm her. The victim of this kind should not be responsible for the offense at all. The society and the state should have sharing responsibility and involve in responsibility because both do not perform a duty to protect the victim who cannot entirely or partially protect oneself.

In consideration of a problem of being victimized, reaction between persons must be also considered and analyzed rather than only each person's behavior. When an offense arises, it should not be pessimistic to look at the offender. Any evidence of the victim's involvement in bringing about the crime or of whether the victim previously attempted to harm the criminal or not should be searched. In particular, in case of offense that the wife batters or murders her husband, the husband who is victimized is usually found out that he actually behaved as initiator to commit a crime by coercing the wife to react or defend herself or other family members. In this regard, the society should not have positive attitude and solely sympathize the victim who is the husband and should not be fearful or filthy or have negative attitude towards the wife who murders the husband but being formerly violently harmed by her own husband.

2.3.1.3 Labeling Theory

This theory explains causes of criminal behavior include negative influence of the social control mechanism because a punishment not only results the offender being ashamed but also engender the offender thinking himself/herself being undesirable person in the society. As a result, the offender does not attempt to cooperate with compliance with the social rule. (Pornchai, 2010: 291) This idea reflect a looking-glass self principle that views a person will be as others thinks what that person is. If others stigmatize or label by their own way that a person is a bad one, such person will behave in line with the society's labeling which is having guilt. Therefore, labeling finishes chance of such person in the society and will commonly engender repetition of such behavior.

As for the society's labeling towards a person having mental disorder, a theory of Thomas J.Scheff, the medical sociologist namely the labeling of mental disorder theory views that whenever a behavior is interpreted in the way of psychosis, labeling process to frame up the person as a mental ill person will happen. Such labeling will thoroughly attach with that person and cause difficulties in living with others as well as may be set aside or lack of occupational opportunity in the society, not appreciated by his/her own family members and untrustworthy, all of which enormously impact to well-being and life of that person. (Ranee, 2000:12)

Labeling is influential to the people, causing nobody dare to accept that he/she has mental disorder. As a result, the people will not get legal benefits in the case in order to acquire exemption or reduction of penalty. A way to provide fairness in judicial process is the concerned officials apply the probable cause. However, this probable cause aims to have the concerned officials worked in proactive participation manner by discretion to carry out fact-finding in order to analyze and verify the probable cause or the believable cause whether the alleged has mental disorder or not in order to get legal benefits under Penal Code and Criminal Procedure Code.

In case of the wife who is alleged under legal proceedings of murdering her husband as a result of the wife has been battered by the husband until being mental disorder may not accept her mental disorder at the time of commission. It is because the wife apprehends being labeled to be an unsound mind in long-term and being distained by family and society. If normal legal proceedings and punishment are applied regardless of cause or circumstances of the women who has formerly been battered, it will probably lead to offending again and again. As per previous indication, the judicial process and the society label the battered wife is evil like general criminal. As a result, group of woman of this kind face difficulties to adjust themselves so as to accept the social labeling as wicked or jailbird after completion of sentence. At last, if the woman of this kind fails to resist, it is inevitable to offend again and again due to end of opportunity to live like ordinary people.

2.3.1.4 Forensic Psychiatry

The forensic psychiatry is an application of the psychiatry in connection with the law to help examine and diagnose offending of the alleged such as an unsound mind commits some acts to which statutes of law stipulates to be offense and punishable. Nevertheless, for fairness and compliance with the legal principle in relation to the “act” by law, the court of justice allows the physician who is an specialist witness to examine and further report the court of its result or summons the physician to give testimony in the court hearing such as to assess when mental disorder of such person began, how severe the symptom has been either all the time or occasionally, at the time of commission how much such person being unsound mind or having presence of mind or control oneself, how much such person endanger others if being outside alone, whether such person having mental disorder in the level of defending the allegation or not. These would be beneficial to be medically treated

before or to have medical examination and suggestion in a report to public prosecutor or court of justice in relation to the defendant's mental disorder at the time of commission in order to further get the penalty to be exempted or reduced.

World Health Organization (WHO) classifies the psychiatry disorders to be 10 categories, but only these following 4 categories being exempted for penalty.

First, the retarded

Second, the Schizophrenia, some symptoms are being confused, unable to distinguish, chaotic mind, delusion, unstable emotion, split mind etc. that the WHO determined this kind of person are still have intelligence and normal feeling, at last it is able to be planned.

Third, the bipolar disorder, the WHO referred this as emotional disorder, both having and not having psychotic symptom, to be proved on the presented facts (Sawaeng, 2012)

Fourth, the organic brain syndrome such as epilepsy causing the patient being unconscious and harm other or the infected brain symptom.

Criteria to examine and diagnose in relation to the forensic psychiatry

Examination and diagnosis in relation to the forensic psychiatry will be carried out these following actions by teamwork that includes psychiatrist, psychiatric nurse, clinic-psychologist.(Suthiporn,2014)

1) Consider objectives of examination from the referral or the request form

2) Take the forensic psychiatry examination

3) Collect both medical and legal information

4) Analyze and have meeting for decision

5) Summary of medical diagnosis and legal decision, in criminal case there must be taken into account of:

- At the time of examination, whether such person being unsound mind and able to defend the case or not

- At the time of commission, whether such person being unconscious and able to control oneself or not

- Provide opinion and suggestion such as dangerous state of such person

6) Preparation to testify and psychiatrist who is specialist witness should keep in mind in testimony to the court in these following issues:

- Psychiatrist has a duty to present relevant information and the court has a duty to connect such information with the law.

- Psychiatrist has no duty to have opinion whether the alleged can differentiate between right and wrong or not.

- Psychiatrist should not have opinion in testimony beyond medical information.

- Testimony should be free from moral citation, anticipation and should evade confirmation in the level of patient's responsibility

Forensic psychiatric knowledge and psychiatrist's role as the expert witness to testify in the court case against the wife who murders the husband as a result of being battered until having mental disorder are crucial since the offending wife's defense would be medically proved oneself such murder being not come from wicked intention but she did it under symptom of the battered wife syndrome. This could be clarified that although such wife is not insane according to medical term that the penalty can be exempted, such wife is unable to realize in right or wrong or to control herself as same as others do. Accordingly, such wife deserves reduction of penalty or medical treatment in order to engender fairness to the wife was prosecuted of murder her own husband rather than strict punishment in the murder offense as same as general cases of other people.

2.3.2 Related legal theory

2.3.2.1 Due Process of Law

This theory is one of criminal judicial process which contradicts with the crime control principle. The due process of law adheres to statutes of law in the law enforcement, provides fairness pursuant to steps in judicial process and proceeds formally fact-finding in the court trial or hearing the allegation. In these considerations through such court procedure must be done openly in the court. Therefore the due process of law deems that a person is not

alleged as a result of merely evidencing he/she offends it but he /she is guilty after the judge considers and decides actual conviction on him/her in mind of protection of rights pursuant to statutes of law. The due process of law in legal aspect includes legal principle that restricts legislation power so as to prevent abuse of power and to protect equally rights and freedom of the people (Office of Justice Affairs, 2009:17-18). In sum, the due process of law has the following important principles

(1) The most important element in judicial process is the lawful means or the provision of fundamental legal justice.

(2) The judicial process should highlight the defendant's rights, not the victim's rights.

(3) The police power should be restricted to prevent abuse of power to the people.

(4) The government agency in judicial process should abide by rule, process and guideline to ensure justice and adhere to the judicial process.

(5) The judicial process should be similar to an impediment to avert treatment of innocent people in equivalent to the offender.

(6) The government should not deem the alleged as the culprit based on only the fact but the alleged would be adjudged to be the culprit on a condition that the government only carries out the fact-finding process.

From the foregoing principles, in case of the wife was prosecuted of murder her own husband as a result of being battered until getting mental disorder, the judicial process of Thailand has still applied a principle of the crime control to proceed legal proceedings and proof of the wife's offending. The crime control has some significant characteristics such as the judicial process normally highlights the victim's rights rather than protection of the defendant's rights. Where the alleged is arrested and then prosecuted by the public prosecutor, such person is generally assumed as the offender on account of the fact-finding of police and public prosecutor is highly credible. The crime control may be beneficial to some sorts of legal proceedings or suitable to the society having high crime rate but if this crime control principle is applied to the wife having the battered wife syndrome who was

prosecuted of murdering the husband, the researcher deems not appropriate and in compliance with basic rights of the people under Constitution of Thailand. Accordingly, the due process of law should be an important guideline in legal proceedings against the wife having the battered wife syndrome.

2.3.2.2 Criminal punishment

In respect of the criminal punishment under section 18 of Penal Code of Thailand, the penalty has following 5 categories i.e. 1) execution, 2) imprisonment, 3) confinement, 4) fine 5) confiscation of property. The principles and objectives in which the State considered for penalty stipulation against the criminal culprit are as follows.

(1) Retribution

Based on a concept to punish for retribution in the ancient time, it was believed when the offending arose; the victim and their relatives were willing to revenge the alleged in a way of “an eye for an eye”. Principally, the culprit deserved punishment for retribution to the offence by appropriate penalty. Nevertheless, as human beings were the social animal living together as community and had cultural advancement and intelligence, the human beings know that the “an eye for an eye” retribution caused increasing damage to the society. But the human beings were still appreciated by retribution against the culprit. Therefore, the human beings authorized punishment to their leader or group chief or the State through stipulation of rule, regulation or law to be enforced to the social member and through penalty therein for retribution which followed the society’s demand of the appropriate punishment against the culprit in conformity with his/her offending act. The “an eye for an eye” retribution was turned to the retribution by the law of the country.

(2) Deterrence

Punishment against the culprit has a definite objective is to prevent others from imitating and recurring such offending act. The concept of classic criminologist attempted to upgrade the law by highlighting everyone in the society must know the law which is a significant instrument to control behavior of the people in the society. In the meantime, human beings are rational, independent to choose and decide to do or not to do anything by weighing from

benefit and expected penalty. In addition, by nature, the human beings need happiness, peace and avoidance of distress; therefore, the human beings were fearful to the punishment. The punishment is the instrument to deter others from imitating in committing criminal acts and to restrain the persistent offenders by giving them the lessons.

(3) Incapacitation

This principle has a concept to separate the culprit from the society either on temporary or permanent manner in order to safeguard other members of the society from risk of damage caused by the culprit. The punishment that includes execution, imprisonment and confinement are means to separate the culprit from the society. The execution and life imprisonment are especially the efficient penalty in treatment to the people who are the social peril and would be a guarantee of non-recurrence or repetition. Both penalties are disposal of the culprit and safeguard of the society. However, the punishment by execution against the person who is found afterwards as the innocent person is a huge concern. In such case, the remedy to such person's life is impossible or fixable. Therefore, the State still has the penalty of execution must sufficiently examine its own judicial process to ensure justice and transparency to all parties so as to prevent the unresolvable problem afterwards.

(4) Rehabilitation

This concept is developed from value of living and reliance together among human beings. The punishment must be mind of morality and humanitarian principles. This concept views that restriction of the victim's rights not to revenge in oversize and attempt to find the way of rehabilitation to bring the offender/culprit back to the good to the society. This concept also views the punishment's development that the retribution against the culprit has been unable to bring back the culprit to the good at all times. On the other hand, it may engender the culprit to upheaval the criminal behavior. In addition, after serving sentence of imprisonment, the culprit will be released. This is a challenge how to rehabilitate them to be the good people and not to be the criminal troublemaker to the society. The modern criminal punishment must include a flexible measure rather than only sole punishment. There must be refinement and persuasion by

various means to fix the prisoner to be the good of the society such as education, vocational training, ethnic and moral training.

By taking into consideration of all 4 principles and objectives of the criminal punishment that are generally combined in punishment, the modern concept pays attention to rehabilitation of the culprit rather than other principles and objectives. The criminal punishment should have basic purpose of maintaining the society by selecting proper means in mind of the nature of offense and the individual offender in order to have the culprit perceived that the society does not neglect to such acts and to warn people in the society for omission of criminal act otherwise they would be punished. In addition, the criminal punishment must be mind of providing chance to the culprit i.e. to fix their behaviors, to omit commission of such criminal act in the future and to bring them back to the society.

The wife commits the criminal act against the husband as a result of being battered physically and mentally by her husband because the wife commits such act without wicked intention which is an important element in determining criminal penalty against the individual.(Kanit,2000:198) As a result, punishment against such individual does not comply with principle and objective of the criminal punishment that was stipulated for the individual whose body and mind are normal and could be considered in its pros and cons of the offending. Therefore, the normal punishment process should not be applied to such wife. With reference to principle and objective of the retribution objective and if such wife is distressful by the punishment as same as other ordinary people are punished, the society may not need to revenge and cause retribution against such wife who is battered by her own husband. In respect of deterrence objective, such wife does not have wicked intention to offend against other people but offends against her own husband who bully her only. Therefore, the punishment against such wife is not necessary on account of such person is not dangerous to the society at all. Rather than the incapacitation, such wife is actually needed for physical and mental rehabilitation in order to bring such wife back to normal life in the society and further take care of her family. Accordingly, the enforcement

by criminal penalty against such wife is not in conformity with any of the aforementioned 4 principles and objectives.

2.3.3 Theory relating to the Battered Wife Syndrome

2.3.3.1 Patriarchal Society Perspectives Theories

This theory views that the domestic violence occurs from the society accepting the male to have more power and privilege than the female. The way of bringing up in different manner between the male child and the female child causes distinction of role and power of family member and in the society. The sons usually have privilege in their living and are not in strict behavioral framework as same as the daughters have to encounter. In some societies, having the son is more admirable than having the daughter. These have been accumulated as social value and discrimination since little childhood. The male is aware of superiority in the family, while the female is aware of inferior than the male. The practice of people in the society also put pressure to the female. Such acceptance and respect to the male bring about the male to be entitled to exercise the power or even if abuse of power to the weaker/ inferior or other words commission of violent acts to women and children.

This theory can explain inequality of social status between the male and the female, causes of pressure in relation to “womanhood” formed by family and culture and reasons for the male learning exercise of power to woman.

2.3.3.2 Feminist Perspective

With regard to the Liberal Feminism’s concept and the Radical Feminism’s concept highlight inequality between genders, oppression, maltreatment in sexual relationship arisen from social refinement and sexual distinction originated from culture rather than biology, their focuses are on battling and amendment of law (Warunee, 2002:1-3). As for the male harms the female on account of thinking that having a right to do that, in line with this concept/perspective, the male’s violence towards the female is common in the family. The feminist perspective views that the domestic violence is resulted from the society that the male hold superior power. Society and culture also contribute the male’s aggression towards his family members because violence and aggression mark abuse of the father or the husband’s power. If repeated or frequent actions are done, there will have pressure towards the female in

the family and reaction by opposition anyway including to murder husband so as to end the violence and aggression. (Pasatane, 1999:26-27)

2.3.3.3 Learned Helplessness Theory

This theory explains the way we have endeavored to avoid unpleasant matters for many times but have failed. This may be lack of motivation, apathetic and gloomy. This theory indicates reason of accepting violence or battery against woman and explains the reason why the woman has to endure living with her spouse who batters her. (Boonserm, 2002:16)

2.4 Structure of the criminal liability of individuals

Structure of the criminal liability of individuals in relation to the case of the wife who has the battered wife syndrome is prosecuted in allegation of murdering her own husband must have the following elements: (Taweekiet,2007:31)

2.4.1 Must take action: such action means movement or non-movement of body with consciousness or the other words being in mental control. Therefore, the action of person with unconscious mind, delusion while sleeping, epilepsy, being hypnotized to do something is not considered as the action by law.

2.4.2 Action must complete this following elements.

2.4.2.1 External elements i.e.

(1) **The doer** means the person offends by his/her own or by using animal or other person whose have no action to be an instrument to do something, the person offends indirectly by lying other person who has no liability by law due to lack of intention to be an instrument to do something, the person jointly offends include over two people jointly offend with other person.

(2) **Action** means movement and non-movement of the body and reaching the level of offense as stipulated by law

(3) **Object of action** means the effect that the doer aims to acquire, therefore the doer decides to offend.

2.4.2.2 Internal elements i.e.

According to section 59, paragraph 2, Intention means “action while the doer being conscious to do and meanwhile the doer desires or could have foreseen the effect of such thing.”

Paragraph 3 “If the doer does not know the facts constituting the elements of the offence, it cannot be deemed that the doer desires or could have foreseen the effect of such thing.

From the provision in section 59 paragraph 2 and 3, the act is deemed as action by intention includes the following elements:

(1) The doer must know the facts constituting the elements of the offense.

(2) The doer aims to actual happening, as the doer desires or could have foreseen the effect of such thing.

(3) Having special intention in some sort of offenses i.e. having motivation in addition to the ordinary intention. In an offense, the doer must complete internal elements which include intention and special intention such as thief that includes both by intent to take away and by unfaithful intent.

(4) Intention by legal effect i.e. this section is deemed as additional intention aside from an intention to desire or have foreseen the effect of such thing but the doer must not have foreseen the effect of such thing. If the doer have foreseen it, the doer shall be criminally liable to under section 59. The intention by legal effect under section 60 is the action by missing in which the doer’s intention to target one person transfers to the other person who get disastrous effect.

2.4.2.3 The action must have relation to its effect. In an action causing criminal liability, its effect must relate to such action or in other words its effect must be directly consequence from the action. If it is not direct consequence, the doer has not been liable to the action. (Taweekiet,2007:34)

2.4.3 The doer has no authority to act

Section 68 of the Penal Code stipulates that “any person is to commit any act for defending his/her own right or other person’s right in order to escape from a danger arising out of violence against the law and such danger being imminent, if

reasonably having committed under the circumstances, such act is a lawful defense, and such person shall not have a guilt”.

As for a danger arising out of violence against the law must be danger of such person or others who do not allow it happened. Such action is against the law even if it is beyond statutes of Penal Code, being done by human being. Otherwise, the doer cannot refer to the self-defense. (Taweekiet,2007:70)

Such danger being imminent means is going to happen, being impending. Even if it happened but not yet finished and if it lapses, the doer being unable to defend.

(The doer) Is to commit any act means having necessity to do it in order to prevent happening of peril or danger and being not necessary to attain the condition that the doer is unavoidable.

2.4.4 No exemption by law, criminal exemptions are as follows:

2.4.4.1 Act by necessity

When such person is under compulsion or under the influence of a force such that such person cannot avoid or resist and although it is against the law, it is exempted by law. If prosecution to find guilt against such person is done, it will be unfair to such person who is under compulsion or influence. (Taweekiet,2007:77)

Section 67 of the Penal Code stipulates that the person offends by necessity by these following elements:

(1) being under compulsion or influence of a force such that such person cannot avoid or resist or

(2) in order to make himself or another person to escape from an imminent danger which could not be avoided by any other means

(3) when such person did not cause to exist through his own fault, the doer is not punished.

Although such imminent peril or danger is not against the law or not the human beings' act or this peril is impending and unavoidable by other means, necessity can be referred to.

2.4.4.2 The doer having mental deficiency, psychosis or mental infirmity

In this case, Section 65 paragraph one stipulates that “Any person commits an offense at the time of not being able to appreciate the nature of illegality of his act or not being able to control himself on account of mental deficiency, psychosis or mental infirmity, such person shall not be punished for such offense.” The law limit category of patient who has mental deficiency, psychosis or mental infirmity only. Those mental disorders must be severe attaining the level of being unable to appreciate the nature of illegality of his act or not being unable to control himself/ herself at the time of commission of offense.

To know how level that the person is not able to appreciate the nature of illegality of his act, Prof.Chitti Tingsapat explained that the fact must appear the doer does not know whether such act is right or wrong against morality or law of the country. If such doer knows their appropriateness, it shall be considered as knowing and can appreciate the nature of illegality of his act. In respect of the doer is unable to control oneself, it means the doer has consciousness of offending and appreciate the nature of illegality of his act but the doer cannot control oneself’s mind anyway.(Jitti,1986:812)

The person having “mental deficiency, psychosis or mental infirmity” includes what kind of persons. Prof.Chitti Tingsapat explained about the person with these mental disorder can be classified in these following three categories according to German legal treatise.

- (1) Disorder by mental deficiency
- (2) Disorder by mental psychosis
- (3) Disorder by delusion

“The mental deficiency” means the person whose brain is not growing to the age or being deficient by birth or destructive due to individuals’ aging. “The psychosis” means the person getting disease of mind, having symptoms of crazy, schizophrenia. “The mental infirmity” means the person having symptoms of delusion, hallucination and illusion. (Jitti,1986:803)

Prof.Dr. Yud Saeng-uthai explained that

“The mental deficiency” means brain’s qualification being deficient which cause being unconscious to appreciate the nature of illegality of his act or unable to control oneself”

“The psychosis” means the individuals’ brain getting disease.

“The mental infirmity” means the mental disability or called crazy which does not come from the psychosis.(Sawaeng,2003:118)

Prof.Dr.Ronnachai Kongsakon defines the mental disorder as follows:(Ronnachai,2008:67)

“The mental deficiency” means mental retardation, delusion, hallucination, illusion and the person whose brain is not growing to the age or being deficient by birth

“The psychosis” means the individuals’ brain getting disease.

“The mental infirmity” means the person having brain illusion, delusion, auditory hallucination, hallucination and illusion.

Criminal liability of the unsound mind person is categorized into 3 cases. (Suthiporn,2011)

(1) None of guilt: commission of the offense without knowing nature and substantive/quality of such act of offense such as commission at the time of epilepsy or confusion or delirium

“Nature” means behavior with physical movement

“Quality” means result of physical movement

In combination of “without ability to appreciate the nature and quality of the act” means the person does not know what he/she is doing or act without consciousness. Section 59 deems these circumstances as non-commission of an offense.

(2) Having guilt but exemption of punishment: commits an offense at the time of not being able to appreciate the nature of illegality of his act or not being able to control oneself (section 65 (1) of Penal Code)

“Not being able to appreciate the nature of illegality of his act” means the doer does not know his/her own action whether it is right or wrong, good or bad, proper or improper that cover law and morality.

“Not being able to control oneself” means the doer cannot force or control physically to commit an offense.

(3) Having guilt but getting reduction of punishment: commits an offense at the time of being able to appreciate the nature of illegality of his act occasionally or not being able to control oneself occasionally (section 65 (2) of Penal Code)

In case of the offender having mentally disorder, the law protects the act of the person who is unable to appreciate the nature of illegality of his act and has symptom of mental disorder. Therefore, the person in charge of diagnosis of mental disorder is the physician in forensic psychiatry field who can apply the judicial procedure in relation to the forensic psychiatry cases in order to ensure justice to all concerned parties, taking care of the patient whether and how many he/she has mental disorder or not, commenting about legal liability of such person as well as treatment and nurture to the patient. (Ronnachai, 2012:514)

Diagnosis on the forensic psychiatry should be in compliance with criteria of team-working among psychiatrist, forensic psychiatric nurse, clinic psychologist in the following steps: (Suthiporn,2011)

(1) Consider objectives as appeared in the letter of referral or petition

(2) Examine on the forensic psychiatry

(3) Collect medical and legal information

(4) Analyze and make decision

(5) Conclude medical and legal diagnosis

Procedure of the legal proceeding against the mental ill patient

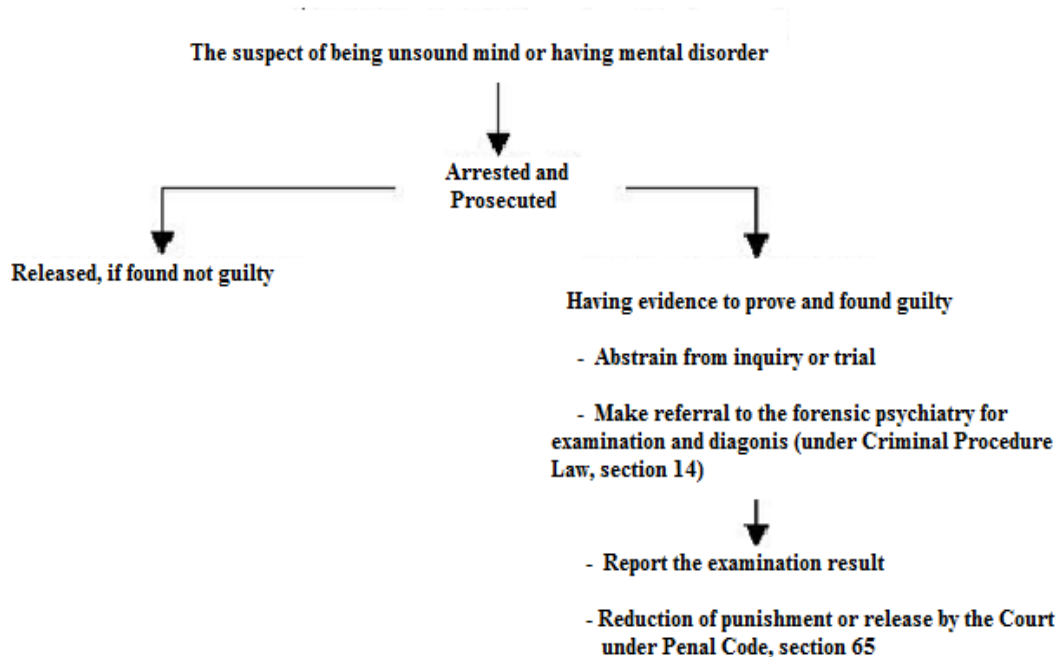


Diagram 2.1 The suspect of being unsound mind or having mental disorder

In case of the diagnosis found the doer had psychosis, mental deficiency and mental infirmity at the time of offending and the doer is unable to appreciate the nature of illegality of his act or unable to control oneself, the doer is supposed to be exempted from punishment under section 65 of Penal Code. However, if the doer is released and causes the society to be unsafe, the court will order to have such person been detained in the relevant hospital until being safe to the society under section 48 of Penal Code.

In part of public prosecutor, where the physician's diagnosis found certainly the doer is unable to appreciate the nature of illegality of his act or unable to control oneself under section 65 at the time of offending and the doer is not required by law to serve punishment, the public prosecutor can exercise discretion not to prosecute such offender by law. The main objective of the public prosecutor's prosecution is to "prove offending and penalize the offender". But it is apparently appeared in the fact that such offender is not required by law to serve sentence. In this regard, the public prosecutor in charge has an important role to consider and explore the ground of prosecution against such alleged. As the appropriate ground is found as mentioned above, the alleged has not to be prosecuted.

Ground of reduction and alleviation of criminal punishment are as follows:

1) Offending by sudden heat of blood

Section 72 of Penal Code provides a nature of offending by sudden heat of blood that “any person is hot blooded by being maltreated seriously by unjust cause comes to commit an offense against the maltreating person at that time and including closely continuing period without interruption. Such maltreatment may be or may not be against the law. As a result the court may inflict the punishment upon such person any less than punishment as prescribed by the law for such offense. The offending by sudden heat of blood is considered as the offending that the court may inflict punishment as less as the court deems appropriate regardless of “reasonable to the cause” or “beyond reasonable to the cause”. This is distinct from “defense” or “necessity”. The offending by sudden heat of blood is a legal issue relating to public order. Even though the defendant does not raise this issue to defend in his/her testimony, the court has authority by law to raise this issue for consideration and decision. (Sewaeng, 2009:111)

2) Reduction of punishment to the mental deficiency, the psychosis or the mental infirmity

In this case, Section 65 paragraph two of Penal Code stipulated that where the offender is still partially able to appreciate the nature of illegality of his act, or is still partially able to control himself, such person shall be punished for such offense, but the Court may inflict less punishment to any extent than that provided by law for such offense.

The case under section 65 must have clearness of the defendant who has symptoms of the mental deficiency, the psychosis or the mental infirmity being unable to appreciate the nature of illegality of the act and unable to control oneself at the time of offending. If the fact has no clarity of the person being unable to appreciate the nature of illegality of the act and unable to control oneself at the time of offending, the court inflicts punishment against the defendant under section 65 paragraph 2.

3) Extenuating circumstance

The court's discretion to extenuate punishment under section 78 of Penal Code stipulated that "whenever it is appears that there exists an extenuating circumstance, whether or not there be an increase of reduction of the punishment according to this Code or the other law, the Court may, as deems appropriate, reduce the punishment to be inflicted on the offender by not more than one-half.

Extenuating circumstance may include lack of intelligence, serious distress, previous good conduct, the repentance and the efforts made by the offender to minimize the injurious consequence of the offense, voluntary surrender to an official, the information given or the court for the benefit of the trial, or the other circumstance which the court considers to be of similar nature."

2.5 Related laws

2.5.1 Convention on Elimination of All Forms of Discrimination against Women and the Optional Protocol

In its preamble, the Convention explicitly acknowledges that "extensive discrimination against women continues to exist", and emphasizes that such discrimination "violates the principles of equality of rights and respect for human dignity". As defined in article 1, discrimination is understood as "any distinction, exclusion or restriction made o.1 the basis of sex...in the political, economic, social, cultural, civil or any other field". The Convention gives positive affirmation to the principle of equality by requiring States parties to take "all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men"(article 3).

This Convention has objectives to eliminate non-discrimination against women in all forms and to guarantee that women and men are entitled to equally be treated and care by the State. This has alteration from original social and family role

of women and men so as to bring about equality. In this regard, the State must set criteria to adjust rule of social behavior and culture so as to eliminate non-discrimination and tradition based on inequality between women and men.

Convention on Elimination of All Forms of Discrimination against Women has been in effect since 3 September 1981 and Thailand accessed into member state on 8 September 1985.

This Convention comprises with introduction part and 30 articles divided into 5 parts. Provisions relating to legal equality of women and men were provided in Part I and Part V as follows:

Article 2 “States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;

(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;

(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;

(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;

(e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;

(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;

(g) To repeal all national penal provisions which constitute discrimination against women.

Article 15 paragraph 1

1. States Parties shall accord to women equality with men before the law, etc.

As to Thailand became a signatory of the Convention on Elimination of All Forms of Discrimination against Women, Thailand has legally binding to examine, revise, amend, change any laws and regulations that seem to be discriminatory to the women and to provide statutes of law to ensure legal equality and various matters in Thailand's constitution.

2.5.2 Constitution of the Royal Kingdom of Thailand B.E.2550

The constitution which is supreme law of the country provides recognition and protection of the women's rights in relation to equality, right to judicial process and right to public health service and to state welfare in the following provisions.

Section 30 All persons are equal before the law and shall enjoy equal protection under the law.

Men and women shall enjoy equal rights.

Unjust discrimination against a person on the grounds of the difference in origin, race, language, sex, age, disability, physical or health condition, personal status, economic or social standing, religious belief, education or constitutionally political perspectives, shall not be permitted.

Measures determined by the State in order to eliminate obstacle to or to promote persons' ability to exercise their rights and liberties as other persons shall not be deemed as unjust discrimination under paragraph three.

Section 40 A person shall have the rights in judicial process as follows:

(1) right to access to judicial process easily, comfortably, quickly and indiscriminately;

(2) fundamental rights in judicial process composing of, at least, right to public trial; right to be informed of and to examine into facts and related documents adequately; right to present fact, defense and evidence in the case; right to object the partial judges; right to be considered by the full bench of judges; and right to be informed of justifications given in the judgment or order;

(3) right to accurate, prompt and fair trial;

(4) an injured person, alleged offender, plaintiff, defendant or the accused, interested parties, interested person or witness to the case shall have the right to appropriate treatment in judicial process including the right to be investigated correctly, promptly and fairly and not to testify against himself;

(5) an injured person, alleged offender, the accused and witness to a criminal case shall have the right to necessary and appropriate protection and assistance from State. The gratuity, compensation and expenses to be paid shall be provided by the law;

(6) every child, youth, woman or aging or disabled person shall have the right to appropriate protection in judicial process and shall have the right to appropriate treatment in the case related to sexual offences;

(7) an alleged offender and the accused in criminal case shall have the right to correct, prompt and fair investigation or trial with an adequate opportunity in defending his case, the right to examine or to be informed of evidence, right to defend himself through counsel and the right to bail;

(8) a person shall, in civil action, have the right to appropriate legal assistance from State.

Section 52 Children and youth shall enjoy the right to survive and to receive physical, mental and intellectual development potentially in suitable environment with due regard to their participation.

Children, youth, women and family members shall have the right to be protected by State against violence and unfair treatment and shall have the right to medical treatment or rehabilitation upon the occurrence thereof.

An interference and imposition of rights of children, youth and family members shall not be made except by virtue of the law specially enacted for the maintenance of family institution or utmost benefit of such person.

Children and youth with no guardian shall have the right to receive appropriate care and education from the State.

The aforementioned rights and protection under Constitution of the Royal Kingdom of Thailand B.E.2550 indicate recognition of the State on inequality and unjust arising out of discrimination, exercise of right to the judicial process and the domestic violence in Thai society. In case of the wife having the battered wife

syndrome murders her own husband, its cause is the husband commits various forms of the domestic violence. Being distressful by long-term survivor of the domestic violence which engendered the wife murders the husband, the wife deserves fair treatment and non-discrimination in the legal proceedings.

2.5.3 Penal Code

For Thailand in the event that a person put others to death, such person normally would be inflicted by serious criminal punishment to the execution. Nevertheless, the criminal law stipulates some circumstances that the offender is deemed as not being guilt because the doer has authority to act like that. In other cases of the exemptions by law are taken into analysis in connection with the woman having the battered wife syndrome murders her own husband as follows:

(1) Exemption or the doer having authority to act by law in case of lawful self-defense and by consent

(1.1) Lawful self-defense under section 68 of Penal Code

The lawful self-defense that can be referred by completion of its elements of “the danger being imminent” and “having committed reasonably under circumstances” cannot be applied to the case of the wife murders her own husband in other time when is not at the time of domestic violence. It is under the fact that the women who has been distressful and under pressure by the husband committing various forms of battering or torture cannot combat or resist force and power of the man at the time of such battering or torture against her. The woman facing such circumstances has to let the violent incidents pass for her own survival in that moment. After the violent incidents ends and the man is not in readiness to further defend or harm the woman anymore such as while sleeping or deep drunken without consciousness, if the wife who has the battered wife syndrome thinks about killing her husband for her safety so as to fling off state of battery and torture, the wife usually has to use any weapon to murder e.g. gun, knife or poisoning on account of woman’s physical force being inferior to the man and having frequently none of cruelty in her inborn trait. In the element of “having committed reasonably under circumstances”, the law enforcer considers such main issues i.e. at the time of offending, circumstances

and use of weapon to murder the husband. As a result, the woman cannot have reference to or get benefit from the lawful defense under section 68.

(1.2) Consent

The wife's consent both before and after the time of offending that would not have the husband being guilty cannot be applied to the case of the woman having the battered wife syndrome murders her own husband.

(2) Exemption of punishment

As the doer completes elements of the offense and has no authority to do that, such doer or offender usually must be punished. But the punishment inflicted to this sort of people is not beneficial to the society anyway in lack of the wicked intent of the offender or otherwise the offender has no other choice in relation to being not appreciated in nature of illegality of the act, being couple. As regards offending by these causes or circumstance, the law has exemption of punishment (Taweekiet, 2007:165-178). In taking consideration of the woman having the battered wife syndrome murders her own husband, the analysis herein can be described as follows:

(2.1) Act by necessity

To refer to the act by necessity under section 67 of the Penal Code where the doer "being under imminent danger", the doer cannot avoid or resist except offending. This necessity is not applicable to the woman having the battered wife syndrome murders her own husband because most of the incidents the wife does not murder her husband while being menaced, battered or tortured by the husband. The wife, naturally, cannot combat or resist the man's force or may be fearful to combatting with the husband. Therefore, if the law will focus on the time of offending to measure the act by necessity, it is not applicable to the woman having the battered wife syndrome murders her own husband.

(2.2) The doer having mental deficiency, psychosis or mental infirmity

In this case, Section 65 stipulates one exemption in relation to being able to appreciate nature of illegality of the act and its element is the consideration of whether the doer deserves exemption of punishment or not. The offender in section 65 must be the offender who commits the act "at the time of not being able to appreciate the nature of illegality of his act or not being able to control

oneself” which is resulted from only mental deficiency, psychosis or mental infirmity. But if it comes from merely emotional disorder such as anger, lust, excitement, fear which are not caused by the mental disorder, it is not the unsound mind under this section. In analysis to the wife having the battered wife syndrome, a strict interpretation finds out that such syndrome has not yet attained level of “unsound mind” on account of legal interpretation of symptom relating to the unsound mind is narrower than the consideration based on medical principle especially application of this section would result the offender does not serve sentence by law. Accordingly, the law enforcer cannot interpret in wide range or flexible manner at all, otherwise it will become a route of evading legitimate punishment which is unfair to the victim and the damaged person in the case.

(3) Causes of punishment reduction and extenuating circumstance

(3.1) The offending by sudden heat of blood

Its element includes an offending against the maltreating person at that time. This section is not applicable to the woman having the battered wife syndrome murders her own husband under the aforementioned fact that the woman may not dare to offend or murder the husband immediately at the time of being battered or tortured by the husband.

(3.2) Reduction of punishment to the mental deficiency, the psychosis or the mental infirmity

Clarity of definition of the defendant having the mental deficiency, the psychosis or the mental infirmity and clarity in accepting the battered wife syndrome would be linked to a proof on offending at the time of the offender is still partially able to appreciate the nature of illegality of own act, or is still partially able to control oneself. If the law enforcer has still not accepted and allowed a proof on the battered wife syndrome, the exercise of right to protect the wife murders her own husband by law is not certainly possible.

In consideration of cause, meaning and nature of the woman having the battered wife syndrome in order to analyze in comparison to existing protection under the Penal Code and the feminist theory which believed that the wife committing the murder to protect herself and on account of the husband has firstly began the domestic violence. The woman having the battered wife syndrome due to

the domestic violence has not been protected by law in appropriate and just manner to defend the allegation in the court trial. As a result, this women group are not only victim of their husband battering them and when they decide to murder while having the battered wife syndrome but also are re-victimized in judicial process because interpreting the element of exemption and reduction of punishment or even exemption of offense is not entirely in conformity with the mental disorder and nature of offending of these women. Accordingly, at present many of them have to serve sentence in equivalent to the penalty inflicted to general offenders. In some cases, fortunately, the court may apply a self-experience of being survivor of the domestic violence in taking into account of reduction of punishment but the reduction or even the exemption are not contained in provisions of law and regulation to be enforced in every case.

A guideline is the court can consider the woman's experience of being continuous and long-lasting survivor of the domestic violence to ensure fairness of defense in the court trial. If the wife having the battered wife syndrome must be punished on account of murdering her own husband, it does not comply with the intent of punishment under criminal law. Accordingly, an appropriate measure in relation to this sort of incident should be sought and provided in order to move efficiently the judicial process forward.

2.5.4 Criminal procedure law

This law stipulates criteria and means of find the fact in relation to commission of offence and taking action against the criminal offender throughout the process until having judgment to convict and punish the culprit or otherwise to acquit the alleged under statutes of law. There are provisions that relate to the case of the wife having the battered wife syndrome murders her own husband as follows:

(1) The alleged 's capacity to defend the allegation

Section 14 of Criminal Procedure Code provides protection to the alleged and the defendant who are lack of capacity to defend the case, stipulates that

“While carrying out an inquiry, preliminary examination or trial, if there is a reason to believe that the alleged or the accused is of unsound mind and is unable to put up a defense, the inquiry official or the court, as the case may be, shall instruct a

medical officer to examine such person. After the examination, the medical officer shall be summoned to make a statement or testify as to the result of the examination.

In case of the inquiry official or the court is of opinion that the alleged or the accused is of unsound mind and is unable to put up a defense, the inquiry official or the court shall suspend the inquiry, preliminary examination or trial until he/she recovers his/her sound mind or is able to put up the defense, and have the power to send such person to a lunatic asylum or to deliver him/her to his/her custodian, the provincial commissioner or any other person who are willing to take charge of such person, as it is deemed appropriate.

In case of the court has suspended the preliminary examination or trial as provided in the above paragraph, it may strike out the case temporarily from the list of the court case.”

In this section, the defendant must be unsound mind at the time of legal proceeding or be unable to defend the allegation. Therefore, the inquiry official or the court shall suspend the inquiry, preliminary examination, trial or striking out the case. As to the offender is of unsound mind at the time of offending, the exemption of punishment under section 65 of Penal Code can be applied. But the battered wife syndrome which is a temporary symptom of the mental disorder may not be protected under this section.

(2) Respite for imprisonment

Section 246 of Criminal Procedure Code provides protection by giving the order of respite for imprisonment until the cause being reasonable for the respite shall be finished in the following cases:

- (1) Where the defendant is unsound mind
- (2)
- (3)
- (4)

In the period of respite, the court may order the administrative officials or the police to arrange the said person to be under the control in the proper place.

The respite for imprisonment in relation to the wife having the battered wife syndrome would be protected because the defendant who is unable to appreciate

nature of illegality of her act is in state of unsound mind. However, the case will normally be considered on case-by-case basis.

(3) Respite for execution

Section 248 of Criminal Procedure Code provides protection by giving the order of respite for execution.

“If a person is sentenced to death becomes insane before being executed, the execution shall be suspended until such person has recovered. During the suspension of execution, the court may apply section 46 paragraph (2) of Penal Code

If the insane person recovers after one year from the date when judgment becomes final, the punishment of death shall be commuted to imprisonment for life.”

The respite for execution under this section applies in the case of being unsound mind after the court has sentence to death, being suspended until the insane/unsound mind has recovered. During the time, the unsound mind can be referred to the mental hospital for mental treatment. If such person is recovered from the insanity symptom after one year from the date of finality of judgment, the execution must be reduced to the life imprisonment.

In consideration of the Criminal Procedure Code together with the legal proceedings against the wife having the battered wife syndrome murders the husband, other sections in the Criminal Procedure Code should be applied to be beneficial to and to ensure fairness in the legal proceedings against such wife murders her own husband for instance.

Section 138 stipulates that the inquiry official is empowered to inquire in person or by commission inquired to be aware of the former life and habitual conduct of the alleged, but all of the acquired statements must be notified to the alleged.

Section 143 stipulates that upon receipt of the opinion and file from the inquiry official as mentioned in the foregoing section, the public prosecutor shall act as follows:

(1)

(2)

In either case provided above, the public prosecutor has the power:

(a) To direct the inquiry official to make additional inquiry or to send him for examination any witness as deemed appropriate for the purpose of making further order, ..etc.

As regards Thai court applies the accusatorial system in civil trial and criminal trial, this system was originated from retribution between the offender and the damaged person. The damaged person prosecuted to punish the offender by his/her own. Witness and evidence are then collected and presented to make a proof of the allegation against the defendant in the court. The court or judge is strictly in the impartiality. Such system was influenced by the ancient concept in trial of the case by means of trial by ordeal, trial by battle and court or judge has had role and position of intermediary or referee. Then, the system was developed to have witness in proof of the defendant's offending. For the court's consideration and weighing, the plaintiff presents the witnesses who are his/her people to testify alleging the defendant and the defendant presents the witnesses who are his/her people to assert his/her own innocence. The accusatorial system has highly highlighted these following criteria:

(1) The defendant has been presumed as innocent until the proof before the court to believe without any doubt that the defendant commits actual offense.

(2) The plaintiff and the defendant are equal before the court.

(3) The court is strictly in the impartiality, acting as if referee decides the game or control both parties to be in line with the law on evidence on strictness manner. If failing to follow the law, the court can dismiss the case.

(4) The court has minimal role in fact-finding because the parties or litigants have duty to find the relevant evidence to present before the court by his/her own.

Under the accusatorial system, the court's role in the fact-finding or acquisition of evidence to prove the offense against the wife having battered wife syndrome murders her own husband may not be appropriate and unfair to the alleged. In addition, legal framework on limitation of the law that provides elements of offending and strict interpretation of the criminal law are obstacles in taking into consideration of motivation or real cause and behavior or circumstances of the husband before the murder incident. But, actually, these substances are extremely beneficial to the trial, the decision and the punishment inflicted to such wife.

Accordingly, the court should adjust their attitudes to have increasing role in the fact-finding in relation to the inquisitorial system in order to ensure the most fairness and justice.

2.5.5 The Protection of Victims of Domestic Violence Act B.E. 2550

Essences of this Act are as follows:

(1) Definition or nature of “domestic violence”, categorized into these following three natures:

(1.1) Any act aiming to endanger body, mind, gender or health of a person in the family

The doer commits any act by intention to endanger body, mind, gender or health of a person in the family is the “domestic violence”, regardless of such act causing severe injury, ordinary injury or even none of danger. Therefore, there must be significant consideration of intention whether it attains level of endangering body, mind, gender or health or not.

(1.2) Act by intention being likely to endanger body, mind or health of a person in the family

The doer commits any act by intention and ordinary people consider such act as “being likely to endanger” body, mind or health of a person in the family. Although the doer does not know such act being likely to endanger body, mind or health of a person such as a husband getting anger and throwing household stuff, a husband lying his wife to be frightened by other person’s plan to harm, a husband driving car terribly to intimidate his wife, a father punishing his child addicting online game-playing by one day-starvation. These acts are likely to endanger body, mind or health because the result of such acts is not required. Such acts just being done by the intention and likely to endanger body, mind or health of a person in the family are considered as the domestic violence.

(1.3) To exert coercion or immoral influence over a family member in order to wrongfully cause him to do, not to do or yield to any act but not including negligent act for instance forcing the child to keep staying on limited area without reasonable ground.

(2) Elements of the domestic violence offense

(2.1) The perpetrator: must be family member as defined in section 3 i.e. a spouse or ex-spouse, a person who cohabits or used to cohabit as husband and wife without marriage registration, legitimate child, adopt child, member of family, including the person who have live mutually in the same household.

(2.2) The nature of offending: any act done with the intention to or in the manner likely to cause harm to body, mind, gender, freedom or health of a person or to exert coercion or immoral influence over a person in order to wrongfully cause him to do, not to do or yield to any act but not including negligent act as indicated in the aforementioned elements.

(2.3) The victim/survivor or damaged person: must be family member as defined in section 3 i.e. a spouse or ex-spouse, a person who cohabits or used to cohabit as husband and wife without marriage registration, legitimate child, adopt child, member of family, including the person who have live mutually in the same household.

The offense of the domestic violence is compoundable act but it is not wipe out offense under Penal Code or other law because nature of the acts in relation to the domestic violence may be the offense under Penal Code or other law as well for instance detainment which is the offense of destruction of liberty under Penal Code. The legal proceedings must include two offenses. Therefore, a compromise in the domestic violence does not affect to repeal the criminal legal proceedings in relation to other offense against the State except in case of offense of physical harm under section 295 of Penal Code which is in the same time of action of the domestic violent act, such physical harm offense is compoundable act with an important intent of law to maintain domestic relationship in the family.

The penalty to the domestic violence is imprisonment for not exceeding 6 month or 6,000 Baht of fine or both. The court has discretion to punish by other measure other than the criminal penalty, according to section 12.

(3) A duty to notify the competent official to take legal action under the Act

The Act stipulates the domestic violence victim/survivor or a person who has found or known of domestic violence conducted must have the duty to notify a

competent official for execution of this Act. Such notification can be made in oral, writing means as well as telephone, electronic or any other means. The competent official must intervene to cease the domestic violence incident without hesitation. Besides, physician, nurse, psychologist, social worker or public health officials who admits the domestic violence victim for medical treatment, teacher or employer who has a custody duty over student or employee has also a duty to notify the competent official without hesitation.

When a competent official has found domestic violence conduct or has been notified, the competent official have the power, without search warrant, to enter into the living place that such conduct has been made. But the competent official must perform duties pursuant to the Ministry of Social Development and Human Security's regulation on criteria and means of operation of the competent official having found or been notified of the domestic violence conduct B.E. 2551 (2009) such as record the notification taken, asking for help to the administrative official or police in the event that the perpetrator continues committing the domestic violence or the competent official is unable to enter into the place of incidence, having referral to be medically treated, notification of legal rights to the victim/survivor etc.

(4) Measure to help the victim and the affected people in 2 following means

(4.1) Measure made by the superior competent official's order

Section 10 provides a power to impose an order of provisional remedial measure or means to the domestic violence victim during inquiry stage whether a request is made by such person or not. After imposing such order, such order must be submitted to the court for endorsement within forty-eight hours from the date of having the order. The court may amend, change or revoke the imposed provisional remedial measures or means if the court disagrees to them.

(4.2) Measure made by the court order

During the inquiry or the trial is pending, the court has a power under section 11 to impose provisional remedial measures or means or any order as deems appropriate. Where any person infringes the court order, such person must be inflicted by imprisonment not exceeding six months or 6,000 Baht of fine or both.

(5) The court proceedings of the domestic violence case

The court has the following duties and powers:

(5.1) To impose provisional remedial measures or means or any order as deems necessary and appropriate to the case under section 10 and 11

(5.2) To attempt mediate for compromise under section 15

“Irrespective of the stage of proceedings of domestic violence case, the court shall cause the parties to settle the case for peaceful cohabitation of the family. In doing so, these following principles must be mind.

(1) Protection of rights of the domestic violence victim;

(2) Maintenance and protection of marital status as the center of man and woman who voluntarily cohabit as husband and wife. If it is unable to maintain marital status, divorce shall be made upon equal basis and cause minimal damage with due regard to welfare and future of a child;

(3) Protection and assistance of the family, especially while the family is responsible for the provision of education to a family member who is a minor;

(4) Any measure for the provision of assistance to husband, wife and family member to cohabit in harmony and to improve the relationship between spouse and among the spouse and their child.

In this mediating for compromise, the court may appoint the mediator to give advice or assistance in mediation for compromise under section 16.

(5.3) To make judgment

In the case where the court passes judgment that a person who commits domestic violence conduct is guilty, the court has the power to impose the measure for rehabilitation, treatment or probation to that person or to order that person to reimburse the relief money, to conduct community service, to refrain from doing an act which may give rise to the domestic violence or to be on parole in accordance with the procedure and period specified by the court in lieu of sentencing (section 12).

This Act has principle, way of proceedings and penalty that are appropriate to nature of criminal case of the domestic violence. However, as this Act is not applicable to the murder case that the offender is a domestic violence

victim, this Act is not also applicable to the criminal allegation against the wife having the battered wife syndrome murders her own husband.

2.5.6 The Mental Health Act B.E.2551

Most of people have still been lack of knowledge and understanding as well as had negative attitudes towards the people with mental disorder, therefore such people are not treated in the right and proper way until such mental disorder magnifies its severity to be hazardous effect to patient and society as a whole. This law stipulates procedure to cure the people with mental disorder during stages of inquiry, hearing or trial or post-period of judgment in criminal case in order to prevent the harmful incident and to have the patient treated in proper means. Main principles of this Act in relation to the mental disorder person committing the crime or potentially committing the crime are as follows:

(1) Definition

In this Act, section 3 defines **the patient** as a person with mental disorder who should be treated, defines **the mental disorder** as any symptom of mental disorder exposed through behavior, mood, thought, memory, intelligence, neuro-perception or perception of time, place or person, including any symptom of mental disorder resulting from alcoholic drinks or other psychotropic substances but not including abnormal behavior resulting from anti-social personality. It is apparent that this law protects the mental ill patient in the broader scope than the specific protection to the mental deficiency, the psychosis, the mental infirmity or the unsound mind pursuant to the Penal Code and the Criminal Procedure Code.

(2) Measure on forcible treatment

Taking the mental disorder patient to receive treatment is a measure to protect the society and assist the patient to acquire treatment of the professionals. In the meantime, this measure is a restriction of the patient's liberty. Therefore, taking the mental disorder patient to receive treatment must be based on these following two definite indications.

(a) Person being in threatening condition

(b) Person having requirement for treatment and such person being lack of capacity to make decision to give consent for treatment

Any person who has found a person having doubtful circumstances of being mental disorder or having threatening condition or having requirement for treatment must notify the competent official i.e. police or administrative officer. After being notified, the competent official must take such person to the state infirmary without hesitation for preliminary examination and assessment. If it is found out the person having none of threatening condition or having not potential requirement for treatment, such person shall be released. This procedure is aimed at the preliminary assessment and protection of person's rights not to be forcibly treated on without necessity basis.

During the course of treatment and in the case where the patient escapes from the state hospital or infirmary, the competent officer must take that person back to continue treatment. The medial officer may seek for the police's help to keep tracking and its means must not be the same practice as the means towards the alleged. This guideline is the essence and in line with the universal principle in enforcement of the mental health law.

Furthermore, the person supervising the place of detention or welfare agency or the probation officer who finds a person under his/her responsibility having behavior which is reasonable to believe that such person is a person with mental disorder, being in threatening condition and having requirement for treatment must transfer such person to nearby state hospital or infirmary for preliminary diagnosis and assessment without hesitation. This is a means of protection of the people with mental disorder who has not yet been the unsound mind during imprisonment term, as such person is not entitled to the respite for imprisonment under section 246 of Criminal Procedure Code in order to be treated in conformity with the UN standard minimum rules for the treatment of prisoner 1955 which states that "The prisoner with mental ill must not be detained in the prison, but must be immediately transferred to the mental rehabilitation place and the prisoner with mental disorder must be immediately transferred to the specific place/infirmary provided for mental treatment."

(3) Protection of the rights of patient

Although the rights of patient formerly promulgated for implementation of medical officers and public health officers, the Mental Health Act includes and extends the rights of patient so as to ensure definite protection of the mental ill patient.

(3.1) Only the consent from the patient received for treatment except

(1) Person being in threatening condition

(2) Person having requirement for treatment and such person being lack of capacity to make decision to give consent for treatment

(3.2) Concealment of information as secrecy except special reasons as follows:

(1) In emergency situation of being threat to life, acquisition of information being beneficial to life protection of others

(2) High possibility to cause danger and injury to others

(3) Prevention of disability or severe distress of the patient

(4) For public safety

(5) The court order

(4) The forensic psychiatric patient

The forensic psychiatric patient means the criminal offender having the mental disorder whose condition cannot defend the case. In this regard, the inquiry official makes referral by taking the patient to the physician for examination and treatment until being able to defend the allegation under section 14. In the course of court trial it is found out that any person is unable to appreciate nature of illegality of his/ her act or unable to control oneself due to psychosis, the law exempts punishment under section 65 of Penal Code. But if the court deems inappropriate to release the psychosis who may be unsafe to the people, the court will order to detain him/her in the infirmary. His order can be repealed at any time under section 48 of Penal Code.

Although statutes of the Penal Code and the Criminal Procedure Law stipulate the legal proceedings against the forensic psychiatric patient, in practical way there are several problems. The Mental Health Act stipulates interconnection to have clearer legal proceedings against the forensic psychiatric patient. In its chapter of the forensic psychiatric patient, the inquiry official or the court can have referral by transferring the alleged or defendant to take medical

examination at the infirmary and the circumstances of the case in details. Upon the infirmary admits the alleged or defendant, the psychiatrist diagnoses such mental disorder together with opinion to be supporting information for further consideration of the inquiry official or the court to decide whether the alleged or defendant can defend the allegation or not. A major problem in practical way is the physician being not sure that his/her opinion in line with the legal term or not. Therefore, the Mental Health Act determines the national mental health commission to provide a regulation on criteria and means of reporting result of diagnosis and assessment of capacity to defend the allegation. In this regard, there will be a seminar to have brainstorming and for mutual understanding among physicians and personnel in judicial process that leads to issuance of the regulation that includes practical means. In addition, such assessment would be more definite, if the attorney participates in the assessment.

In case of the court made judgment or order under section 48 or section 246 (1) of Criminal Procedure Code to make referral to detain the patient in the infirmary, the infirmary can admit and provide treatment without the patient's consent. However, the infirmary may petition the court to determine any means of preventing escape or possible danger. In the meantime, the law stipulates the infirmary board to report and have opinion to the court in the designated time.

(5) Rehabilitation

To protect and nurture the forensic psychiatric patient continuously, the Mental Health Act stipulates the chief of rehabilitation center has the following duties.

- (1) To notify the relatives to pick up the patient for further care
- (2) To notify the agency supporting social work and welfare as per determination of the Mental Health Commission for picking up and taking actions towards the patient whom nobody provides care pursuant to the legal duties
- (3) To notify the competent official to coordinate with the relatives who provides care and the agency as stated in (2) to take action to rehabilitate the patient in the community

In case of the detainee is treated in the place of detention and until the due date of release, the chief of such place of detention must also take actions pursuant to the procedure.

This law helps ensure the forcible treatment so as to cause trouble or damage to the surrounding people, protection of the rights of patient, diagnosis of the forensic psychiatric patient and rehabilitation of the patient. In addition, the procedure stipulated in this law also promotes better welfare among mental disorder people.

2.5.7 Regulation of the Office of Attorney-General on the criminal proceedings of the public prosecutor B.E.2547

This regulation is an improvement of the regulation and the official practice in the criminal proceedings of the public prosecutor to be increasingly efficient in accordance with role and mission in facilitation of justice, protection of the State's benefits and rights and freedom of the people. In clause 94 (3) of such regulation stipulates principle of statement description in the suit, aside from principle in the Criminal Procedural Code, "as deems appropriate and for benefit of justice", description of the fact in the inquiry statement to be beneficial and harmful to the defendant for the court use in consideration, judgment and determination of the penalty as well as other measure to be applicable towards the offender as far as it could be done such as in the case where the facts in the inquiry statement being found beneficial and extenuating circumstance under section 64, 65, 66, 67, 69, 72 and 78 of Penal Code, description must be in conformity with such facts and indication of related section in the end part of the suit."

In the aforementioned regulation, such principle is applicable to the criminal offense in relation to the domestic violence. But it depends on discretion of the public prosecutor who may be distinctive on case-by-case basis and in each individual. Therefore, description of the factual statement in the suit in benefit of the wife having the battered wife syndrome murders her own husband may be overlapped and derive justice in legal proceedings based on unequal norm.

2.6 Foreign laws

2.6.1 The USA legal protection of the wife having battered woman/wife syndrome murders her own husband

The battered woman syndrome (or in this research namely the battered wife syndrome) has been known well in USA since mid-1970s because of political change at that time when the society increasingly realized in importance and various activities of the woman. The battered woman/wife syndrome explains the case where the woman murders her own husband or partner in other time out of the time of the domestic violence committed by the husband. This murder may be possibly considered as a self-defense. With regard to the statistics during ten years ago, 75-93% of all woman prisoners detained in the prison are prosecuted in the allegation of murder her own partner who committed violence against her. Most of all reasons are the retribution or protection of herself or her child. In the country of the court trial by jury system like USA, persuasion towards the jury panel that comprises with ordinary people who have variety of experience and background in their life to believe that the woman murdered her own husband while she had the battered woman/wife syndrome, actually an expert testimony is required to examine mental disorder of the woman so as to assess whether the woman's citation having such syndrome is true or not because the woman who encounters the problem and has the battered woman/wife syndrome that is not definitely the unsound mind. Such syndrome's nature is temporary and occasional happening at any time, the test of this syndrome must be done cautiously and meticulously.

Citation of the battered woman/wife syndrome to defend the allegation in the court trial needs the expert testimony that is outcome of the important fact-finding and test as follows:

First, explanation about the domestic violence cycle between husband and wife that is divided into the following 3 steps i.e. commencing from a bit violence before the 2nd step of more frequently and severe violence and the 3rd step, the husband expresses love feeling to ask for apology and convince the wife to believe non-recurrence of such domestic violence. These are usually taken place.

Second, the expert testimony analyzes how the 3 steps of the violence cycle do relate to physical and mental harm against the wife and how recurrence of violence is. The expert testimony indicates relationship with the learned helplessness theory, the disappointment and incapacity with the woman having the battered woman/wife syndrome. Moreover, the expert testimony also explains about how bored feeling and economic and social necessity are, how the woman's gender role that being not able to leave the man committing violence against her is, how the woman's pain which is linked to the woman's perception and behavior at the time of murdering her own husband.

Therefore, the expert testimony is very important in finding necessary information in relation to the woman having the battered woman/wife syndrome for the jury's consideration. If lack of presentation of the expert testimony for proof, the jury cannot understand why the woman being continuously battered has still lived with the husband who has harmed her. This is also a good chance that the woman can share an experience of being battered with violence by her own husband. This expert testimony helps clarify the accurate information about the battered woman/wife syndrome.

In each State of the USA tends to accept proof of the battered woman/wife syndrome to be legal defense of the women murders her own husband in distinctive way such as Maine, New York, California, Ohio. In the appeal court of Florida, Georgia, Illinois, Kansas, Kentucky, Missouri, New Hampshire, New Jersey, North Dagota and West Virginia accepts a principle of the expert testimony to be applicable as the self-defense in the case of the battered woman/wife syndrome. But Louisiana, Miissouri and Oregon do not accept the expert testimony to be applicable to the battered woman/wife syndrome. But Texas and West Virginia has not had clearness I this regard.

Although the way of practice in each State is different, the study finds out that most of the States accept the expert testimony to be applicable to the case of the battered woman/wife syndrome. As those States consider it as the self-defense of the woman having such syndrome murders her own husband, accordingly it helps reduce punishment against the offender.

2.6.2 The England legal protection of the wife having battered woman/wife syndrome murders her own husband

In the case of *R v. Ahluwalia* (1992) AER 889, the wife murdered her own husband, citing sudden heat of blood. The court suggested the jury to consider whether the wife's citation that she failed to control herself in comparison to other ordinary people in the same characteristics which was the Asian, well-educated, married woman who lived in England was plausible or not. In the appeal, argument came up to suggest the jury to consider the act of ordinary people having the battered woman/wife syndrome/ BWS by focusing on the medical evidence rather than other issues. Therefore, the appeal court ordered to have retrial based on new evidence, in other words the citation to the battered woman/wife syndrome could be alleviate legal liability under English law.

In the case of *R v. Thornton (No.2)* (1996) 2 AER 1023 had similar circumstances i.e. the wife who was battered cited having the personality disorder. The appeal court ordered to have retrial. If additional evidence was presented in the Court of First Instance's trial, the jury might make decision in distinctive way.

In the case of *R v. Charlton* (2003) EWCA Crim 415, the wife was sexually battered. The wife and her daughter were violently acted. Therefore, the wife murdered her husband who assaulted and coerced her while he was being handcuffed, eye-blinded and mouth-blinded which were part of sexual activities between the husband and the wife. The punishment inflicted to the wife who murdered the husband was reduced from 5 years to 3 and a half years because such menace, control and coercion over the wife's life made the wife being truly fearful in her life and her daughter's life until she could not control herself and committed assault against her husband until being dead.

2.6.3 The Philippines' legal protection of the wife having the battered woman/wife syndrome murders her own husband

The Republic Act No. 9662 stipulated on the violence against woman and child, measure to protect the victim and to penalize the offender. This law defined "the battered woman syndrome" in section 3 (c) as a scientific explanation referring to

form of mental symptom and behavior found in the woman who cohabits with relationship in sort of long-lasting accumulated violence

In addition, section 26 stipulated the legal defense in the case where the offender having the battered woman syndrome under principle of the survivor of the violence whom the court decides that such woman having the battered woman syndrome, such woman would be free from both civil and criminal liability, even if a lack of legal element in referring to the self-defense under the criminal code.

In consideration of mental condition of the woman having the battered woman/wife syndrome at the time of offending, the court must seek for consultation with the experts such as physician or psychologist.

This law is a model law of protection of the wife having the battered woman/wife syndrome murders the husband because such woman is entirely exempted from legal liability. A note is the syndrome of the woman must be merely proved by the expert testimony such as psychiatrist, psychologist otherwise it would become the offender's instrument neither being liable by law.

2.7 Related research papers

Paungthong Kruamangkorn and associates, Research paper "Legal Proceedings Against the Wife Murders the Husband as a Result of the Domestic Violence", Bangkok, 2011.

This research paper is a qualitative research reflecting quality of life and legal proceedings against the wife murders the husband as a result of the domestic violence in the 2 targeted groups i.e. (1) main target includes 10 women who are alleged of murder of her own husband and whose qualifications being specific and (2) minor target includes 46 officials of 9 related government agencies. The research result concludes cause of the domestic violence and the serious incident leading to murder of the husband, impact from the domestic violence, amendment or request for assistance, legal proceedings and judicial process, result of the court trial and decision, a need for assistance.

Furthermore, this research paper had a suggestion on policy in several issues i.e. operational system, legal system, correctional system, public health system and social welfare, social system but did not suggest about appropriate legal proceedings against the woman murders the husband as a result of the domestic violence.

Nirumon Rattanarat, Research paper “Reinforcement Method to Solve Domestic Violence Problems According to Domestic Violence Act”, Bangkok, 2011.

This research paper was to study implementation of the Protection of the Domestic Violence Victims B.E.2550 (2007) by comparison between means of solution to the domestic violence of Thailand and foreign countries. Its result found out several problems of implementation and suggested exercising of the competent official’s power to order or launch measure or means for temporary relief without passing through the complaint process, to determine the OSCC, non-governmental organization and local administrative agencies can perform a duty as the operational center for prevention of domestic violence, providing appropriate and safe accommodation, setting up the provincial sub-committee of Protection of the domestic violence victims and the specific agency to manage efficiently information system in relation to the domestic violence.

This research paper analyzed the means of solution of the domestic violence under the Protection of the Domestic Violence Victims B.E.2550 (2007) but did not analyze the case where the wife having the battered woman/wife syndrome murders her own husband.

Pipat Chunmayka, Research paper, “Suitable Legal Measures of Criminal Procedure for Insane Persons in Thailand”. Bangkok, 2011.

This research paper aimed at exploring appropriate Criminal Procedure in relation to the unsound mind by study of various measures: (1) arrest and control (2) inquiry (3) prosecution and preliminary assessment (4) consideration and trial (5) appeal and dika appeal and (6) judgment execution. The research also suggested having a manual on the specific criminal operation for the unsound mind,

disseminating knowledge and understanding to personnel in the justice agency and related agency so as to provide medical and social treatment and therapy in parallel to legal proceedings, increasing the rehabilitation center, budget, personnel and escalating coordination between medical section and judicial process section.

This research paved the proper means of criminal procedure in relation to the unsound mind but did not have linkage to the woman having the battered woman/wife syndrome on account of such syndrome is not the genuine unsound mind symptom.

Penology System Development Section, Corrections Department, Research paper, “Factor relating to Offending Behavior of the Female Prisoner”, Bangkok, 2011.

This research was a qualitative study concerning the offending behavior of the female prisoner in the narcotic case, offense to life and body, offense to property. For the offense to life and body, the factor relating to offending was a pressure of being harm, mostly by close persons i.e. husband, neighbor, partner. The unhappy family life was brought about by the frequent battering to the wife by the husband who addicted liquor and gambling, had jealousy and was lack of responsibility as the head of family. This research had some interesting suggestions about the domestic violence i.e. to set up a domestic violence management program for the female prisoner and to provide counseling about relationship with the spouse in order to diminish the prospective domestic violence.

This research had analysis to the causes or factors of the female prisoner’s offending but did not involve the related laws.

Napaporn Hawanon, Research paper, “Testimony of the Wife Being Battered by Her Husband”, Bangkok, 2012.

This research paper is a part of a research project “Forgotten Life: Story of the Woman in Prison”, studying the narrative approach of total 120 female prisoners in 6 provincial correctional places and prisons. The 11 women of all prisoners had experience of being continuously battered by their husband or partner and ended such violence by murdering or attempting to murder the husband or partner.

The researcher suggested these following solutions: (1) adjust concept in relation to family and relationship between man and woman (2) assess battery situation by its process and purpose (3) set up system and mechanism to halt battery and (4) promote knowledge and understanding among youngsters through education system.

This research analyzed various experiences of the female prisoner who were formerly the domestic violence survivors but did not analyze the related laws.

Pasatane Sittisoradetch, Research paper, “Push Factor of the Wife murdering the husband”, Bangkok, 1999.

This research paper surveyed factors or force pushing the wife to murder her own husband. The study resulted the push factors include abrupt and accumulative distress, physical and mental harm and jealousy. In addition, the family’s earning and debt problem, the encountered severe domestic violence, values and beliefs relating to status and role of the husband’s superiority, disappointment in couple life were all factors pushing the wife to murder her own husband.

This research analyzed various factors pushing the wife to murder her own husband but did not analyze the related laws.

Leonore E.A.Walker, Research paper, “Battered Woman Syndrome Empirical Findings”, Florida, 2006.

This research paper tested the battered woman syndrome-BWS to find out whether this BWS was a part of the post-traumatic stress disorder-PTSD or not. The research was done by means of questionnaires to the women in 4 countries i.e. United States of America, Spain, Greece and Russia. The research found out that the BWS is a part of the post-traumatic stress disorder-PTSD and would be further beneficial to many related issues such as treatment and therapy management, decision in relation to the forensic science, utilization in the criminal court and the family court.

CHAPTER III

RESEARCH METHODOLOGY

This research includes the quantitative means and the qualitative means by studying documents, interviewing eligible people related to judicial process and utilizing questionnaires. The research aims to study matters of law and legal restriction concerning the protection of wives with the battered wife syndrome who murdered their husbands. There are 6 steps of doing the research which are: 1. Setting population and sample group 2. Creating the research instruments 3. Proceeding the data collection 4. Providing statistics utilized in analysis and carrying out analysis 5. Reporting the result 6. Implementing research term and operative plan which are as follows:

3.1 Population and sample group

3.1.1 Quantitative research

Convenient Sampling is used in this research by selecting 201 people from Royal Thai Police, Office of the Attorney General, Court of Justice, Lawyers Council of Thailand, physicians, counseling psychologists, NGOs relating to the domestic violence, academic and OSCC officers. These groups are efficient for this study due to their well-knowledge and skill in prosecution process, handling domestic violence or having direct experience so they tend to cooperate with giving answers for gathering the accurate information as per this research's objectives.

3.1.2 Qualitative research

Qualitative research is divided into 2 parts as follows:

3.1.2.1 Documentary research is carried out by studying and synthesizing information from domestic and foreign documents and resources such as

to study the legislation related to prosecution of wives with the battered wife syndrome murdering husbands and especially the Criminal Code, the Criminal Procedure Code, the Protection of Domestic Violence Act B.E.2550 (2007), court judgments, academic books, lectures, articles, thesis, other related research, operational documents used in government sectors and in non-governmental organizations, journals, printed matters, institutes' statistic reports and as well as internet search

3.1.2.2 In-depth interview is carried out to the key informants who are qualified people having knowledge, expertise and experience in works in relation to the domestic violence for total 18 people who represent Royal Thai Police, Office of the Attorney General, Court of Justice, Lawyers Council of Thailand, physicians, NGOs relating to domestic violence, academic, OSCC officers and the battered wife who murders her own husband. The purposive sampling is applied to select the qualified people as the key informants by taking into account of acquisition of information covering important issues in connection with the legal proceedings against the wife having the battered wife syndrome murders her own husband. In addition, an interview schedule/form is also applied to collect data, record and summarize as appeared in contents of chapter 4.

The sample group who are selected to be the interviewee by purposive sampling are the qualified people having direct authority, duty and experience in the subject of this research or being well-known or positioning in high level that supervise operation or performance pursuant to the policy in relation to the subject of this research. Selection does not come from the sampling means but it is the purposive sampling.

The sample group in this research includes 18 people having these following qualifications.

1. Being able to synthesize, analyze and share information in relation to philosophy or law theory
2. Being able to synthesize, analyze and share information in relation to philosophy or criminological theory
3. Being able to synthesize, analyze and share information in relation to the practical problem

4. Being able to synthesize, analyze and share information in relation to policy

3.2 Formation of instruments in the research

3.2.1 Instruments for quantitative means

As for this research part includes survey and data collection, this part relies on questionnaires to be a major instrument in collection of information. The questionnaires are concisely developed by the researcher in compliance with a process of developing instrument for sociological research in category of measuring attitudes or opinion. They are 5 scales of value evaluation in these questionnaires pursuant to Likert's Scales in 30 questions, 8 open-ended questions and 5 closed-ended questions, having extent covering every facet of the research problem.

Such development of instrument for data collection is processed in these following steps.

1) Search for documents, textbook, theory and related research result regarding current factual condition of the incidents, problems and obstacles in protection of the wife having mental disorder which is the battered wife syndrome murders her own husband and to explore means to develop a guideline on the appropriate legal proceedings against the wife having the battered wife syndrome murders her own husband

2) Study means to create questionnaire and test form

3) Create questionnaire based on the information mentioned above in no.1 and 2 in one set which is divided into the following sections, before submitting its draft to the qualified persons for their verification and amendment until completion:

Part one provide demography data of the respondent by multiple choice and brief statement in 6 questions i.e. gender, age, marital status, highest education level, occupation, work experience

Part two 8 open-ended and close-ended questions to reflect general comment by in relation to knowledge on the battered wife syndrome, the criminal

proceedings in ordinary case and nature of legal problems in the legal proceedings against the wife having the battered wife syndrome

Part three 30 questions, to reflect opinion on legal measure in the legal proceedings of the murder of a husband by the battered wife, with the following 5 scales of value evaluation

Scales of value evaluation

- 5 - the respondent agrees to the statement in the most level
- 4 - the respondent agrees to the statement in the more level
- 3 - the respondent agrees to the statement in the moderate level
- 2 - the respondent does not agree to the statement
- 1 - the respondent does not agree to the statement in the more level

The researcher determines the criteria towards average score and interpretation as follows:

- 4.20 – 5.00 means agreement in the most level
- 3.40 – 4.19 means agreement in the more level
- 2.60 – 3.39 means agreement in the moderate level
- 1.80 – 2.59 means disagreement
- 1.00 – 1.79 means disagreement in the more level

Part four 5 open-ended questions, to reflect opinion and suggestion in relation to legal measure in the legal proceedings of the murder of a husband by the battered wife, dividing into legal issue, judicial process administration issue, social issue and issue relating to helping women who are victims of the domestic violence as well as other issues.

The researcher revised the questionnaire in line with the qualified persons' suggestions by reducing questions, merging with other questions which had similar meaning, correcting erroneous words and arranging the pages in neatness until completion.

4) Evaluate the content validity by taking the questionnaire to be verified and rectified by 3 experts i.e. Prof.(Adjunct) Kullapol Phollawan, Asst.Prof.Dr. Sophon Charoen, full-time lecturers of Faculty of Law, Sripatum University and Asst.Prof. Amnard Wangchin, Chief of Applied Mathematic Section, General Study Bureau, Sripatum University by means of finding the Index of Item Objective Congruence

(IOC) until the experts' evaluation resulting IOC score at 1.00 in every question (Appendix A) that could be applied to test assurance

5) Make a pre-test of application with 30 individuals who are neither the target group of this research so as to measure assurance of whole set of the questionnaire by using the coefficient alpha formula of Cronbach until the first finding for whole set of the questionnaire being at 0.824 which is higher than 7.00, resulting an acceptable level of assurance in the social science research work (Kanlaya Wanichbancha.2548:445) and being usable to data collection.

6) Apply the developed questionnaires in data collection from the designated sample group

3.2.2 Instruments for qualitative means

This research part explored in-depth feedback from the qualified persons working in judicial process and the practitioners working to provide care, curation, remedy and assistance to the battered wife including the battered wife who murders her own husband. Due to variety of occupation, questions to interview these people were different in many issues in line with each occupation involving in particular part. The researcher determined a structure of in-depth interview in conformity with the interview's objectives and verified with the qualified person once again to ensure the interview structure covering and being concise completely to the research issues.

3.3 Means of data collection

3.3.1 In respect of quantitative data, the researcher proceeded as follows:

1) As to collection of data from the qualified persons working in judicial process and the practitioners involving with the victim of the domestic violence, the researcher requested various government agency and organization for disseminating and taking the questionnaires back by oneself.

2) The researcher verified completion of the questionnaires before making entry of data and program code into computer for further analysis.

3.3.2 In respect of qualitative data, the researcher proceeded as follows:

1) Studied and prepared data for having contact to the sample group to ask for permission, provided a request letter to ask for cooperation in data collection addressed the Lawyers Council of Thailand, Royal Thai Police, Office of Attorney-General, Court of Justice, physicians and NGOs relating to the domestic violence, academics, OSCC officers and the battered wife/victim of the domestic violence murders her own husband in order to ask for the individual In-depth Interview.

2) Collected data from such interview that being done to the aforesaid target group, summarized nucleus of the research's objectives for having the key informant acknowledged, explained means of answer in the questionnaire as prepared and when the interview was over, the researcher also verified accuracy and completion of the questions as well as re-asked or repeat questions that having not yet been answered.

3) After obtaining output from the In-depth Interview, the researcher verified and formatted such raw output into the research form in benefit of further analyzing by application of related theory and concept.

The output from the In-depth Interview was not analyzed by statistic means but the output which was individual opinion was analyzed. Wordings of the interviewee were probably quoted and contained in the analysis if such wordings would not affect to the interviewee. The data which were quotable or used in the analysis would be referred to the interview name, date, time and venue of interview in order to assert the actual output from the In-depth Interview.

3.4 Analysis and statistics utilized in analysis

3.4.1 Quantitative research analysis

This research was analyzed by the program package. The utilized statistics include

1) Descriptive statistics

1.1 To classify frequency and find percentage to explain population's characteristics of the target group in this study i.e. gender, highest education level, occupation and work experience

$$\text{Percentage of the } i \text{ group} = \frac{f_i}{n} \times 100$$

f_i represents number of sample in the i group

n represents total number of the sample

1.2 To use the mean and the standard deviation to explain opinion and attitudes towards legal measure in the legal proceedings against the wife having the battered wife syndrome murders murder her own husband.

$$\bar{X} = \frac{\sum_{i=1}^n X_i}{n}$$

\bar{X} represents the mean

X_i represents the observed data

n represents total number of the sample

$$\text{S.D.} = \sqrt{\frac{\sum_{i=1}^n (X_i - \bar{X})^2}{n-1}}$$

S.D. represents the standard deviation of variable

2) Inferential statistics

2.1 The T-test made a test of legal measure on legal proceedings against the wife having the battered wife syndrome murders her own husband in distinction between mental disorder of gender and marital status

2.2 One – Way Analysis of Variance: ANOVA by the F-test made a test of legal measure on legal proceedings against the wife having the battered wife syndrome murders her own husband in distinction between mental disorder among age, education level and occupation.

3.4.2 Qualitative Research Analysis

- 1) Analysis of various articles, books, newsletter and academic textbooks
- 2) Analysis of output from the In - depth Interview to classify data and verify accuracy of those data as well as to re-collect data in case of defect or incompleteness

3.5 Result reporting

The researcher provided output/statements from the interview in descriptive manner. Owing to those are raw statements, the researcher rearranged them into writing language in line with the Ph.D.thesis's format and to be compliance with the research's objectives and the nucleus issues. Thus, the researcher analyzed those rearranged interview statements in order to determine topic/category and take other significant related actions to be conceptualization.

The actions in this part include:

- 1) Rearranged the output from the In-depth interview in line with the research issues and amended to use academic words for quality research
- 2) Classified them into categories by analyzing each of individuals and groups to ensure the statements in conformity with the questions and the nucleus issues of the research for the most vividness, as the output in each of individuals and groups had difference and variety
- 3) Combined the categorized statements into the themes
- 4) Wrote report in the Ph.D.thesis's format

3.6 Term and plan of actions

Term of this research has been approximate 15 months commenced from January 2014 to March 2015

Period of time	January- April	May-July	August- October	November- January	February	March
<i>Nature of works</i>						
<i>Collection of documents</i>	→					
<i>Analysis of documents</i>	→	→				
<i>Creation of the questionnaire</i>		→				
<i>Data collection</i>			→			
<i>Data analysis</i>				→	→	
<i>Summary / presentation of the research result</i>						→

CHAPTER IV

RESULT OF DATA ANALYSIS

This study on the battered wife syndrome: legal proceedings in Thailand are hereto presented in table form and essay into 4 parts in accordance with the following 3 objectives:

- (1) To study matters of fact in Thai society in issue of the murder of a husband by the battered wife
- (2) To study legal restrictions in relation to the protection of the wife having the battered wife syndrome murders her own husband
- (3) To find a guideline on the appropriate legal action against the wife having the battered wife syndrome murders her own husband

The researcher surveyed to seek for opinion of concerned sample group involved in the battered wife syndrome for 201 persons by the questionnaires and the in-depth interview to 18 qualified persons involved in the legal action against the offending wife having the battered wife syndrome. The outcome is appeared as follows:

Part I. Demographic of the sample group

Table 4.1 The personal bio-data of the sample group

Description	Number (201)	Percentage (100.0)
<u>Gender</u>		
Male	89	44.3
Female	75	37.3
Others	37	18.4
<u>Age</u>		
25-30 years old	36	17.9
31-35 years old	64	31.8
36-40 years old	26	12.9
41-45 years old	18	9.0
Over 46 years old	57	28.4
<u>Marital status</u>		
Single	105	52.2
Marriage	90	44.8
Widow/divorce	6	3.0
<u>Maximum education level</u>		
Bachelor's	69	34.3
Master's	76	37.8
Ph.D.	22	10.9
Barrister-at-law	8	4.0
Others	26	12.9

From table 4.1, the sample group who are persons involved in the legal action against the offending wife having the battered wife syndrome, 44.3% are male, 37.3% are female and 18.4% are others. Most of them have age between 31-35 years old or 31.8%, followed by the age over 46 years old or 28.4% and the smallest group have age between 41-45 years old or 9.0%. Most people in the sample group are single or 52.2%, followed by marriage or 44.8% and widow/divorce or 3.0%. Most

people in the sample group are Master's degree graduates or 37.8%, followed by Bachelor's degree graduates or 34.3% and Ph.D. graduates or 10.9%.

Table 4.2 The percentage of the respondent's child

Marital Status	Number of child (person(s))					Total
	None	1	2	3	4	
Marriage	27 (30.0)	24 (26.7)	31 (34.4)	7 (7.8)	1 (1.1)	90 (100.0)
Widow/divorce	1 (16.7)	3 (50.0)	2 (33.3)	0 (0.0)	0 (0.0)	6 (100.0)
Total	28	27	33	7	1	96

From table 4.2, most of the married people have 2 children or 34.4%, followed by the married people having none of child or 30.0% and most people in the widow/divorce group have one child or 50.0%.

Table 4.3 The percentage of the respondent's occupation

Occupation	Number (201 people)	Percentage (100.0%)
Inquiry official	34	16.9
Public prosecutor	25	12.4
Judge	22	10.9
Attorney-at-law	26	12.9
Academics	21	10.4
Physician/ Counseling psychologist	28	13.9
NGOs relating to the domestic violence / One Stop Crisis Center (OSCC)	24	11.5
Social worker	21	10.4
Total	201	100.0

From table 4.3, each occupation of the sample group involved in the battered wife syndrome has similar number of proportion. The most number are the

inquiry official or 16.9%, followed by the physician/ Counseling psychologist or 13.9% and the academics having the least number or 10.4%.

Table 4.4 The percentage of the respondent's work experience

Work experience	Number (people)	Percentage (%)
Less than 5 years	43	21.4
During 6-10 years	68	33.8
During 11-15 years	36	17.9
Over 16 years	54	26.9
Total	201	100.0

From table 4.4, most people in the sample group involved in the battered wife syndrome have work experience for 6-10 years or 33.8%, followed by over 16 years or 26.9% and the work experience for 11-15 years being the least or 17.9%.

The 1st objective: to study matters of fact in Thai society in issue of the murder of a husband by the battered wife

The researcher presents the qualitative information that reflects matters of fact in Thai society and the concept of those people involving with the wife having battered wife syndrome.

Part II. General opinion of those people involving with the wife having violently been harmed and people in the judicial process towards the battered wife syndrome (BWS)

Table 4.5 The awareness percentage of people involving in the battered wife syndrome

Description	awareness / experience	
	number (people)	percentage (%)
1. Understand meaning of the battered wife syndrome	143	71.1
2. Aware of the criminal proceedings against offender under Criminal Procedure Code	146	72.6
3. Have direct experience or involve in the case where the wife murdering her own husband arising of the battered wife syndrome (the battered wife syndrome means a kind of temporary mental symptom normally found in woman whose body, mind, gender, freedom or health have ever been battered or harmed severely by her own spouse.)	40	19.9
4. Aware of current problem and obstacle of the criminal proceedings against the wife murdering her own husband arising of the battered wife syndrome	91	45.3

From the table 4.5, 71.1% of all people involving in the battered wife syndrome in the sample group understand meaning of the battered wife syndrome, 72.6% of all being aware of the criminal proceedings against offender under Criminal Procedure Code, 19.9% of all have direct experience or involve in the case where the wife murdering her own husband arising of the battered wife syndrome (*the battered wife syndrome means a kind of temporary mental symptom normally found in woman whose body, mind, gender, freedom or health have ever been battered or harmed*

severely by her own spouse.) and 45.3 of all being aware of current problem and obstacle of the criminal proceedings against the wife murdering her own husband arising of the battered wife syndrome until having mental disorder.

Table 4.6 The suggestion for solution of defective legal action against the wife murdering the husband arising out of the battered wife syndrome

Description	number (people)	percentage (%)
1. Coordinate with psychologist or psychiatrist to make assessment of the mental disorder in order to seek for proper solution	29	28.43
2. Improve substantive law and procedural law and people's participation in the legal proceedings	18	17.65
3. Court's discretion to make referral and to penalize in appropriate manner such as extenuating circumstance	14	13.73
4. Probably being difficult to solve	9	8.82
5. Create a system for family, state agency/social organization to monitor for providing assistance	9	8.82
6. Campaign to lessen, prevent, implant and refrain from the domestic violence	8	7.84
7. Adjust attitudes concerned people in the judicial process	6	5.88
8. Improve means of collecting evidence before and at the time of incident	5	4.90
9. Follow the current effective laws	2	1.96
10. Rectify means by legislation of the woman protection procedure law	1	0.98
11. Research to explore causes and solution of battery by the husband	1	0.98
Total	102	100.00

From the table 4.6, it was found out that people involving in the battered wife syndrome in the sample group the 11 suggestion for solution of defective legal action against the wife murdering the husband arising out of the battered wife syndrome. The most are 28.43% in coordination with psychologist or psychiatrist to make assessment of the mental disorder in order to seek for proper solution, followed by 17.65% of improvement of substantive law and procedural law and people's participation in the legal proceedings and 13.73% of the court's discretion to make referral and to penalize in appropriate manner such as extenuating circumstance.

In conclusion, most of those suggestions of the people involving in the battered wife syndrome for solution of defective legal action against the wife murdering the husband viewed the psychiatrist or the psychologist had better play an important role in the case of this kind because the current procedure of trial and penalization has not yet been appropriate and fair to the offender, as regards Jean-Gabriel De Tarde theory and Raymond Saleilles theory highlighted and aimed to have review of whole procedure covering both trial and inflicting the penalty.

Table 4.7 The attitudes of the people involving in the battered wife syndrome towards the wife being both the alleged and the damaged person simultaneously

Description	number (people)	percentage (%)
1. Feel pity, sympathize and concern	51	39.23
2. should have medical proof to acquire legal protection	21	16.15
3. View the woman having the BWS murders the husband deserving assistance and treatment as a patient, not the alleged	21	16.15
4. View the existing law being good but would rather add campaign to diminish the domestic violence	13	10.00
5. Feel pity and sympathize but deserve proper punishment	9	6.92
6. Sympathize and comprehend the situation	8	6.15

Table 4.7 The attitudes of the people involving in the battered wife syndrome towards the wife being both the alleged and the damaged person simultaneously (cont.)

Description	number (people)	percentage (%)
7. View the woman's behavior as cause of violent battery such as disobedience	3	2.31
8. View the wife committing murder as pitiful person resulting from probably physical and mental harm until being possibly the neurosis or the mild mental disorder, then becoming the BWS	1	0.77
9. View separation of the damaged person from the alleged who murders on account of being frequently battered by the husband and deserves benefits of 1. Heat of blood 2.Unsound mind 3. Cause of reduction of punishment subject to law amendment proposal	1	0.77
10. View, if none of preparation to kill, as a self-defense	1	0.77
11. Not be sure to conclude due to insufficient information	1	0.77
Total	130	100.00

From the table 4.7 the people involving in the battered wife syndrome had 11 attitudes towards the wife being both the alleged and the damaged person simultaneously. Most of all or 39.23% had an attitude of being pity, sympathized and concerned, followed by 16.15% of suggestion to have medical proof to acquire legal protection and the woman having the BWS murders the husband deserving assistance and treatment as a patient, not the alleged and followed by 10.0% of the existing law being good but would rather add campaign to diminish the domestic violence.

In conclusion, the attitudes of the people involving in the battered wife syndrome mostly comprehended and sympathized the offender, as they viewed that it was caused by disease symptom. Therefore, the appropriate means of taking care of the offender of this kind would be medical opinion or proof because in case the proof found the wife committed offense while having the BWS, she deserves assistance and treatment as the patient, not like ordinary people. This is in conformity with the due process of law or the other words the judicial process highlights the defendant's rights and the innocent people herein referred to as the wife or former survivor of the domestic violence should not be treated as the culprit/offender.

Table 4.8 The attitudes of the people involving in the battered wife syndrome regarding means to assist the women

Description	number (people)	percentage (%)
1. Provide a specific organization for help counsel and rehabilitate both before and after the offending	53	35.81
2. Provide physician and psychologist to cure physical and mental disorder	40	27.03
3. Provide both legal and social protection	21	14.19
4. Provide medical and legal assistance	14	9.46
5. Assign family member and community member to assist therapy and remedy	5	3.38
6. Legislate specific provisions of substantive law or procedural law to exempt punishment or suspend inflicting penalty	4	2.70

Table 4.8 The attitudes of the people involving in the battered wife syndrome regarding means to assist the women (cont.)

Description	number (people)	percentage (%)
7. Should not provide special assistance rather than enforce the effective law	3	2.03
8. Suggest the woman to take legal action against the husband before having the battered wife syndrome so as to discontinue battery by the husband	1	0.68
9. Should provide extreme assistance because its major cause is serial physical assault or mental torture before murdering the husband	1	0.68
10. Should prove cause and severity of the husband battered his wife until the wife cannot control herself and commits murder, therefore serious punishment should be inflicted to the husband battering his wife so as to terrify other people who commit the same domestic violence	1	0.68
11. Separate problem and group of problematic issues and provide punitive measure	1	0.68
12. The press ensures fairness to the woman in such situation when making the news go to the public	1	0.68
13. Provide assistance since initial stage before occurrence of horrific incident	1	0.68
14. Observe the Protection of the Domestic Violence Victims Act's statutes before occurrence of horrific incident and should share knowledge to the unaware target group	1	0.68
15. First, therapy those women to recover from mental ill before commencing trial and if proof found out truly their BWS as a result of the husband's battery, their citation of self-defense should be plausible	1	0.68
Total	148	100.00

From table 4.8, the people involving in the battered wife syndrome mostly or 35.81% are of opinion that a specific organization should be provided for help counsel and rehabilitate both before and after the offending, followed by the 27.03% having an opinion to provide physician and psychologist to cure physical and mental disorder and the 14.19% having an opinion to provide both legal and social protection.

In conclusion, most of the people involving in the battered wife syndrome of opinion that a specific organization should be provided for help counsel or provide medical personnel to cure physical and mental disorder in order to prevent stressful condition arising out of the domestic violence as well as provide both legal and social assistance at the time of occurrence in conformity with role of forensic psychiatric physician.

The researcher hereby presents qualitative information derived from the in-depth interview to the qualified persons. These outputs reflect matters of fact in Thai society and way of thinking of the people involving in the wife being battered and personnel in judicial process regarding symptoms of the battered wife as follows:

1. Most qualified persons agree that Thailand has still encountered the increasing domestic violence which are not limited to happenings in only low or middle-class people.

2. The Patriarchal Society Perspectives Theories are an origin of the domestic violence as on account of a belief that the man being always leader, having power to manage lives of other family members and being able to instruct family members to be follow him by use of force. But a qualified person who works for the the Ministry of Social Development and Human Security shares a remark that, at present, the perspective structure of superiority of the man over the woman has apparently resulted in the low-class people rather than the educated people.

3. The Learned Helplessness Theory explains a phenomenon that the wife has to endure in cohabiting with the husband, perpetrator of the domestic violence because the wife merely does not know how to ask for assistance or solve such problem.

4. An inquiry official views that “the Patriarchal Society Perspectives culture and the Learned Helplessness engender the woman or wife has to be ill-treated, distressed and under pressure until reaching the explosive point that the wife can no

longer cohabit. But, as culture and tradition do not facilitate the divorce, the solution would be in anger.”

5. The qualified persons point out nature of various kind of violence i.e. against physical, mental, gender and reputation of the wife including violence against the child or the elderly in the family as well.

6. The qualified persons point out forms of violence from severely physical e.g. battery, bodily assault, acid attack, burning, abuse of power to coerce sexual intercourse with close women, cursing the wife in public place or working place of the wife and other new form of violence in relation to communication technology via social media such as coerce to record video clip while having sex, share photo or pornography of women to the public, intimidate to share pornography of the wife to the public.

7. As to the victim theory in relation to the opinion on the wife murdering the husband arising out of battery of the husband, most qualified persons sympathize the wife being physically and mentally weak who is survivor of domestic battery committed by her own husband. Such husband is perceived as the crime victim being more guilt than the offender or the other words such husband is the victim instigates other people to commit crime. Samples of those opinions include:

An inquiry official views that “the wife has been bodily battered by her own husband for long time till the unbearable moment; therefore, such incident occurs.”

An officer of NGOs relating to the violence views that “the woman has necessity and is unable to control decision in the worst day, probably intending to dissuade the violence only but its consequence is worse than expected. Most women have the love cost and the norm of family unity; consequently the women themselves are likely to stick with the violence cycle.”

A lawyer views that “such incident may be generally occurred and instigated by others such as the drunken husband battering the wife, jealousy etc. The battered woman has to be patient due to economic dependence on the man.”

A qualified person who works for the the Ministry of Social Development and Human Security views that “being in sympathy to the wife who is distressful by

several factors such as value, dependence, social condition, state of speechlessness, none of other solution.”

In the meantime, some qualified people do not agree to the wife’s act on account of:

A lawyer views that “due to conviction, the wife has no right to kill except otherwise proof of unconsciousness at the time of commission.”

A judge views that “the wife has no right to kill the husband. In the event that the woman is battered, the woman should find a way out to escape. The woman has to cohabit with the person who batters her is the surrender to violence and has to take its consequence. The woman must take care herself to have human dignity, sustain life by her own. As the woman refers to a reason of being dependent on the man, it is implausible. To murder the husband deserve conviction and punishment as same as other ordinary people do.”

The researcher is of opinion in line with the first group of qualified persons who understand and sympathize to the wife murdering her own husband on account of being battered in the family for long time until having the battered wife syndrome. Therefore, if the legal proceeding is taken against the alleged wife without sympathy or consideration on its ground of the act, the wife will be victimized by the domestic violence and the judicial process.

In conclusion of this part, most of quantitative and qualitative sample group are of opinion that Thailand has still encountered the domestic violence. Most of them have knowledge about symptoms of the battered wife and are of sympathy the wife murdering her own husband as a result of the husband has been uninterruptedly battered. They pay attention to original grounds i.e. the culture of male superiority, the learned helplessness theory, belief in the family institute, necessity for being dependent to the husband and being resentful from the former domestic violence rather than only looking at the date of murder incident.

The 2nd objective: To study restrictions of law in relation to the protection of the wife having the battered wife syndrome murders her own husband

The researcher hereby present the quantitative information indicating attitudes in relation to impact of the domestic violence and appropriateness, restrictions of law and procedure in relation to protection of the wife having the battered wife syndrome as follows:

Part III. Legal measure of the legal action against the wife murdering her own husband as a result of being battered until having the battered wife syndrome

Opinions of all people involving in the legal action against the wife murdering her own husband until having the battered wife syndrome can be illustrated in percentage, mean and standard deviation in 5 following parts i.e. 1) Impact from the domestic violence 2) Application of the Penal Code to the woman having the battered wife syndrome 3) Appropriateness of the criminal law, the criminal procedural law, mechanism and steps of the legal proceedings 4) Determination of duties and methods of the police official and the public prosecutor 5) Determination of duties of the judge, regulation on the court proceedings and punitive measure.

Table 4.9 The level of opinion of the people involving in the battered wife syndrome regarding legal measure in legal action against the wife murdering her husband, categorized in various issues

Issues	\bar{x}	S.D.	Level
1. Impact from the domestic violence	4.12	.58	More
2. Application of the Penal Code to the woman having the battered wife syndrome	3.44	.74	More
3. Appropriateness of the criminal law, the criminal procedural law, mechanism and steps of the legal proceedings	3.04	.76	Moderate
4. Determination of duties and means of conduct of the police official and the public prosecutor	4.04	.69	More
5. Determination of duties of the judge, regulation on the court proceedings and punitive measure	3.86	.58	More
Total	3.72	.44	More

From table 4.9 The overall opinion of the people involving in the battered wife syndrome regarding legal measure in legal action against the wife murdering her husband result 3.72 of the mean or the more level. The highest mean is 4.12 in the more level of the impact from the domestic violence, followed by 4.04 in the more level of the determination of duties and means of conduct of the police official and the public prosecutor. The least mean is 3.04 in the moderate level of the Appropriateness of the criminal law, the criminal procedural law, mechanism and steps of the legal proceedings.

Table 4.10 Percentage, mean, standard deviation and impact level of the domestic violence

Description	Least	Less	Moderate	More	Most	Total	\bar{x}	S.D.	Level
1. The domestic violence having impact to well-being of Thai family	0 (0.00)	0 (0.00)	29 (14.43)	57 (28.36)	115 (57.21)	201 (100.00)	4.43	0.73	Most
2. The domestic violence having impact to well-being of the community	0 (0.00)	0 (0.00)	39 (19.40)	73 (36.32)	89 (44.28)	201 (100.00)	4.25	0.76	Most
3. The domestic violence being an important problem of Thailand	0 (0.00)	5 (2.49)	41 (20.40)	63 (31.34)	92 (45.77)	201 (100.00)	4.20	0.85	Most
4. A belief in superiority of the man over the woman in Thai society causing the domestic violence	8 (3.98)	26 (12.94)	59 (29.35)	58 (28.86)	50 (24.88)	201 (100.00)	3.58	1.12	More
5. Thai society having still treated the domestic violence as confidential without sharing to outsiders	9 (4.48)	12 (5.97)	49 (24.38)	68 (33.83)	63 (31.34)	201 (100.00)	3.82	1.08	More
6. In case of torture or bodily assault till the critical level, State and community should provide assistance of this problem or situation.	1 (0.50)	0 (0.00)	23 (11.44)	65 (32.34)	112 (55.72)	201 (100.00)	4.43	0.73	Most
Total							4.12	.58	More

From table 4.10 The opinion about impacts of the domestic violence towards well-being, family, community, society etc. result the mean at 4.12 in the more level of the impact to well-being of Thai family, the mean at 4.43 in the most level in case of torture or bodily assault till the critical level, State and community should provide assistance of this problem or situation, mean at 4.25 in the most level of the impact to well-being of the community. The least mean is 3.58 in the more level of the belief in superiority of the man over the woman in Thai society causing the domestic violence.

Table 4.11 Percentage, mean, standard deviation and level of enforcing Penal Code against the wife having the battered wife syndrome

Description	Least	Less	Moderate	More	Most	Total	\bar{x}	S.D.	Level
7. Case: The woman having the battered wife syndrome retaliates the husband battering her would be <u>alleged of murder to death</u> under section 288 of Penal Code.	21 (10.45)	45 (22.39)	69 (34.33)	41 (20.40)	25 (12.44)	201 (100.00)	3.02	1.16	Moderate
8. Case: The woman having the battered wife syndrome retaliates the husband battering her would be <u>alleged of assault to death</u> under section 290 of Penal Code.	21 (10.45)	30 (14.93)	76 (37.81)	52 (25.87)	22 (10.95)	201 (100.00)	3.12	1.12	Moderate
9. Case: The woman having the battered wife syndrome retaliates the husband battering her would be <u>alleged of attempt to murder</u> under section 80 of Penal Code.	22 (10.95)	40 (19.90)	74 (36.82)	39 (19.40)	26 (12.94)	201 (100.00)	3.03	1.16	Moderate

Table 4.11 Percentage, mean, standard deviation and level of enforcing Penal Code against the wife having the battered wife syndrome (cont.)

Description	Least	Less	Moderate	More	Most	Total	\bar{X}	S.D.	Level
10. Should apply section 65 paragraph 1 of Penal Code that <u>exempts punishment</u> to the mental deficiency, mental psychosis or mental infirmity with the wife having the battered wife syndrome murders the husband	2 (1.00)	10 (4.98)	38 (18.91)	78 (38.81)	73 (36.32)	201 (100.00)	4.04	0.92	More
11. Should apply section 65 paragraph 2 of Penal Code that <u>reduces punishment</u> to the mental deficiency, mental psychosis or mental infirmity being partially able to appreciate the nature of illegality of his act, or is still partially able to control himself with the wife having the battered wife syndrome murders the husband	1 (0.50)	9 (4.48)	46 (22.89)	81 (40.30)	64 (31.84)	201 (100.00)	3.99	0.88	More
Total							3.44	.74	More

From the table 4.11, opinions towards the level of enforcing Penal Code against the wife having the battered wife syndrome results the mean at 3.44 in the more level. An opinion on section 65 paragraph 1 of Penal Code that exempts punishment to the mental deficiency, mental psychosis or mental infirmity should be applied with the wife having the battered wife syndrome murders the husband has the highest mean at 4.04 in the more level. It is followed by the mean at 3.99 in the more level of the suggestion that section 65 paragraph 2 of Penal Code reducing punishment to the mental deficiency, mental psychosis or mental infirmity being partially able to appreciate the nature of illegality of his act, or still partially able to control himself should be applied with the wife having the battered wife syndrome murders the husband. The least mean is 3.02 in the moderate level for an opinion on the woman having the battered wife syndrome retaliates the husband battering her would be alleged of murder to death under section 288 of Penal Code.

Table 4.12 Percentage, mean, standard deviation and level of appropriateness of the Penal Code, the Criminal Procedure Code and the Protection of Domestic Violence Victim Act B.E. 2550 in relation to mechanism and procedure of the legal proceedings

Description	Least	Less	Moderate	More	Most	Total	\bar{x}	S.D	Level
12. Appropriateness of enforcement of the <u>Penal Code</u> against the wife murdering her husband who commits the domestic violence	17 (8.46)	36 (17.91)	85 (42.29)	43 (21.39)	20 (9.95)	201 (100.00)	3.06	1.06	Moderate
13. Appropriateness of enforcement of the <u>Criminal Procedure Code</u> against the wife murdering her husband who commits the domestic violence	16 (7.96)	39 (19.40)	90 (44.78)	40 (19.90)	16 (7.96)	201 (100.00)	3.00	1.02	Moderate

Table 4.12 Percentage, mean, standard deviation and level of appropriateness of the Penal Code, the Criminal Procedure Code and the Protection of Domestic Violence Victim Act B.E. 2550 in relation to mechanism and procedure of the legal proceedings (cont.)

Description	Least	Less	Moderate	More	Most	Total	\bar{X}	S.D	Level
14. Appropriateness of the legal proceedings' mechanism and procedure of the Criminal Procedure Code against the wife murdering her husband while having BWS	14 (6.97)	42 (20.90)	90 (44.78)	38 (18.91)	17 (8.46)	201 (100.00)	3.01	1.01	Moderate
15. The Protection of Domestic Violence Victim B.E.2550 can be enforced to protect the women from the domestic violence.	9 (4.48)	20 (9.95)	92 (45.77)	59 (29.35)	21 (10.45)	201 (100.00)	3.31	0.95	Moderate
16. Overview of Thai laws <u>in prevention and solution</u> of the domestic violence	21 (10.45)	37 (18.41)	96 (47.76)	32 (15.92)	15 (7.46)	201 (100.00)	2.92	1.03	Moderate
17. Overview of Thai laws in <u>remedy</u> of the people affected by the domestic violence	11 (5.47)	52 (25.87)	99 (49.25)	23 (11.44)	16 (7.96)	201 (100.00)	2.91	0.95	Moderate
Total							3.04	.76	Moderate

From the table 4.12, the level of appropriateness of the Penal Code, the Criminal Procedure Code and the Protection of Domestic Violence Victim Act B.E. 2550 in relation to mechanism and procedure of the legal proceedings has the mean at 3.04 in the moderate level. An opinion on the Protection of Domestic Violence Victim Act B.E. 2550 can be enforced to protect the women from the domestic violence has the highest mean at 3.31 in the moderate level, followed by the mean at 3.06 in the moderate level of an opinion on the appropriateness of enforcement of the Penal Code against the wife murdering her husband who commits the domestic violence. The least mean is 2.91 in the moderate level for an opinion on the overview of Thai laws in remedy of the people affected by the domestic violence.

In summary, from the result of this part of study, the involved people view that the Protection of Domestic Violence Victim Act B.E.2550 would be the most appropriate law and mechanism to protect the woman from the domestic violence. This view is in conformity with the researcher's way of thinking.

Table 4.13 Percentage, mean, standard deviation and level of the determination of duties and means of conduct of the police official and the public prosecutor

Description	Least	Less	Moderate	More	Most	Total	\bar{X}	S.D	Level
18. Require the inquiry official to reach place of the domestic violence incident, to record mental condition and circumstances of <u>the wife murdering</u> her own husband.	7 (3.48)	16 (7.96)	58 (28.86)	75 (37.31)	45 (22.39)	201 (100.00)	3.67	1.02	
19. Require the inquiry official to find evidence of background and habitual behaviors of <u>the wife murdering</u> her own husband.	1 (0.50)	14 (6.97)	41 (20.40)	84 (41.79)	61 (30.35)	201 (100.00)	3.95	0.91	
20. Require the inquiry official to find evidence of background and habitual behaviors of <u>the husband</u> murdered by his wife	1 (0.50)	8 (3.98)	43 (21.39)	82 (40.80)	67 (33.33)	201 (100.00)	4.02	0.87	
21. Require the inquiry official to examine background of physical disease and mental ill of <u>the wife murdering</u> her own husband	2 (1.00)	4 (1.99)	44 (21.89)	78 (38.81)	73 (36.32)	201 (100.00)	4.07	0.87	
22. Require the inquiry official to examine background of physical disease and mental ill of <u>the husband</u> murdered by his wife	2 (1.00)	2 (1.00)	42 (20.90)	81 (40.30)	74 (36.82)	201 (100.00)	4.11	0.84	

Table 4.13 Percentage, mean, standard deviation and level of the determination of duties and means of conduct of the police official and the public prosecutor (cont.)

Description	Least	Less	Moderate	More	Most	Total	\bar{X}	S.D	Level
23. Require the inquiry official to make referral of the wife murdering her husband to the accepted and standard infirmary without hesitation for physician and psychiatrist's diagnosis and preliminary assessment whether the wife's behaviors being in the battered wife syndrome at the time of murdering the husband or not	2 (1.00)	4 (1.99)	32 (15.92)	65 (32.34)	98 (48.76)	201 (100.00)	4.26	0.87	
24. Require the public prosecutor to narrate the facts about background and habitual behaviors in the inquiry report that having effect to the wife murdering her husband to be considered by the judge with a discretion to inflict penalty, punishment or other punitive measures	0 (0.00)	3 (1.49)	42 (20.90)	69 (34.33)	87 (43.28)	201 (100.00)	4.19	0.82	
Total							4.04	.69	

From the table 4.13, level of the determination of duties and means of conduct of the police official and the public prosecutor has the mean at 4.04 in the more level. An opinion on the inquiry official would be required to make referral of the wife murdering her husband to the accepted and standard infirmary without hesitation for physician and psychiatrist's diagnosis and preliminary assessment whether the wife's behaviors being in the battered wife syndrome at the time of murdering the husband or not has the highest mean at 4.26 in the most level, followed by the mean at 4.16 in the more level of an opinion on the public prosecutor would be required to narrate the facts about background and habitual behaviors in the inquiry report that having effect to the wife murdering her husband to be considered by the judge with a discretion to inflict penalty, punishment or other punitive measures. The least mean is 3.67 in the more level for the inquiry official would be required to reach place of the domestic violence incident, to record mental condition and circumstances of the wife murdering her own husband.

In summary, from the result of this part of study, the involved people view that making referral of such wife without hesitation to physician and psychiatrist's diagnosis the alleged's mental health will be the most beneficial to the way of trial based on the physician's opinion in accordance with the Jean-Gabriel De Tarde theory.

Table 4.14 Percentage, mean, standard deviation and level of the determination of the judge's duties, regulation of the court proceedings and punitive measure

Description	Least	Less	Moderate	More	Most	Total	\bar{X}	S.D	Level
25. Require the judge to apply the fact-finding of the inquisitorial system into finding background and habitual behaviors of <u>the wife</u> murdering her husband	1 (0.50)	1 (0.50)	38 (18.91)	73 (36.32)	88 (43.78)	201 (100.00)	4.22	0.80	
26. Require the judge to apply the fact-finding of the inquisitorial system into finding background and habitual behaviors of <u>the husband</u> murdered by the wife	1 (0.50)	2 (1.00)	42 (20.90)	72 (35.82)	84 (41.79)	201 (100.00)	4.17	0.83	
27. Provide the revised regulation of the court proceedings to ensure the improved fairness	2 (1.00)	2 (1.00)	48 (23.88)	76 (37.81)	73 (36.32)	201 (100.00)	4.07	0.85	
28. Require the judge in the wife murdering the husband case to summon the physician to testify about whether the wife's behaviors being in the battered wife syndrome or not	0 (0.00)	4 (1.99)	44 (21.89)	69 (34.33)	84 (41.79)	201 (100.00)	4.16	0.83	

Table 4.14 Percentage, mean, standard deviation and level of the determination of the judge’s duties, regulation of the court proceedings and punitive measure (cont.)

Description	Least	Less	Moderate	More	Most	Total	\bar{X}	S.D	Level
29. Inflict penalty of imprisonment or execution to the wife murdering her husband as a result of being battered by husband until getting mental disorder	46 (22.89)	58 (28.86)	54 (26.87)	25 (12.44)	18 (8.96)	201 (100.00)	2.56	1.22	
30. Utilize other punitive measure instead of imprisonment or execution such as forced therapy to the wife having the BWS murders her husband	4 (1.99)	6 (2.99)	52 (25.87)	64 (31.84)	75 (37.31)	201 (100.00)	4.00	0.97	
Total							3.86	.58	

From the table 4.14, level of the determination of the judge's duties, regulation of the court proceedings and punitive measure has the mean at 3.86 in the more level. An opinion on the judge would be required to apply the fact-finding of the inquisitorial system into finding background and habitual behaviors of the wife murdering her husband has the highest mean at 4.22 in the most level, followed by the mean at 4.17 of the judge would be required to apply the fact-finding of the inquisitorial system into finding background and habitual behaviors of the husband murdered by the wife. The least mean is 2.56 in the less level for inflicting penalty of imprisonment or execution to the wife murdering her husband as a result of being battered by husband until getting mental disorder. In summary, from the result of this part of study, the involved people view that the offender or the wife may not have relevant evidence to prove the event that the wife has been continuously battered as the domestic violence appears the statement of the suit. Therefore, the judge should have a role of fact-finding in the case of this kind. To ensure fairness and justice to the offending wife, the court should utilize his/her discretion to adjust his/her role from the middleman without role of the fact-finding in the case to avoid the prejudice criticism under the accusatorial system to the role of carrying out increasingly the fact-finding under the inquisitorial system.

Table 4.15 The comparison of the opinions towards legal measure in legal action against the wife murdering her husband as a result of being battered until having mental disorder

Nature of the target group	\bar{x}	S.D.	T-test	P-value
Gender			.507	.603
Male	3.75	0.48		
Female	3.68	0.39		
Others	3.71	0.44		

Table 4.15 The comparison of the opinions towards legal measure in legal action against the wife murdering her husband as a result of being battered until having mental disorder (cont.)

Nature of the target group	\bar{X}	S.D.	T-test	P-value
Marital status				
Single	3.76	.45	1.140	.256
Married	3.68	.44		
อายุ			f-Test	
25-30 years	3.81	0.49	1.239	.296
31-35 years	3.77	0.48		
36-40 years	3.61	0.36		
41-45 years	3.65	0.40		
Over 46 years	3.68	0.40		
Education level				
Bachelor's	3.69	.42	.540	.707
Master's	3.75	.43		
Ph.D.	3.79	.46		
Barrister-at-law	3.59	.23		
Others	3.70	.53		

Table 4.15 Result of comparison of the opinions towards legal measure in legal action against the wife murdering her husband, categorized by nature of the target group

From the table 4.15, for the people those who involved with the battered wife, the male have opinion on legal measure in legal action against the wife murdering her husband more than the female. Mean of the male is at 3.75 and mean of the female is at 3.68 respectively in the more level in both groups. In having a difference test of the opinions between two genders towards legal measure in legal action against the wife murdering her husband by t-test, the result is $t = 0.507$, $P = 0.603$ which is more than 0.05. It is found out the opinions towards legal measure in

legal action against the wife murdering her husband being indifferent between the genders.

For those who involved with the battered wife, mean of the single people having opinion on legal measure in legal action against the wife murdering her husband more than the married people is the highest at 3.76 and followed by mean of the married ones at 3.68 respectively in the more level in both groups. In having a difference test of the opinions between marital status towards legal measure in legal action against the wife murdering her husband by t-test, the result is $t = 1.140$, $P = 0.256$ which is more than 0.05. It is found out the opinions towards legal measure in legal action against the wife murdering her husband being indifferent between the marital status.

For those who involved with the battered wife, mean of the people whose age between 25-30 years having opinion on legal measure in legal action against the wife murdering her husband is the highest at 3.81 in the more level, followed by mean of the people whose age between 31-35 years at 3.77 in the more level. The least mean is at 3.61 in the more level belongs to the people whose age between 36-40 years. In having a difference test of the opinions among the age groups towards legal measure in legal action against the wife murdering her husband by the One-Way Analysis of Variance (ANOVA) and by F-test, the result is $F = 1.239$, $P = 0.296$ which is more than 0.05. It is found out the opinions towards legal measure in legal action against the wife murdering her husband being indifferent among the age groups.

For those who involved with the battered wife, mean of the Ph.D/Doctoral graduates having opinion on legal measure in legal action against the wife murdering her husband is the highest at 3.79 in the more level, followed by mean of the Master's graduates at 3.75 in the more level. The least mean is at 3.59 in the more level belongs to the Barrister-at-law graduates. In having a difference test of the opinions among the education levels towards legal measure in legal action against the wife murdering her husband by the One-Way Analysis of Variance (ANOVA) and by F-test, the result is $F = 0.540$, $P = 0.707$ which is more than 0.05. It is found out the opinions towards legal measure in legal action against the wife murdering her husband being indifferent among the education levels.

Table 4.16 Result of comparison of the opinions towards legal measure in legal action against the wife murdering her husband, categorized by occupation

Occupation	\bar{x}	S.D.	F-Test	P-value
Inquiry official	3.61	.39	11.337	.000
Public prosecutor	4.26	.51		
Judge	3.72	.45		
Lawyer	3.73	.35		
Academics	3.76	.22		
Physician	3.71	.40		
NGOs officers relating to the domestic violence/ operative officers of the OSCC	3.36	.26		
Social worker	3.61	.30		

From the table 4.16, for those who involved with the battered wife, mean of the public prosecutor having opinion on legal measure in legal action against the wife murdering her husband is the highest at 4.26 in the most level, followed by mean of the academics at 3.76 in the more level. The least mean is at 3.36 in the moderate level belongs to the NGOs officers relating to the domestic violence/ operative officers of the OSCC. In having a difference test of the opinions among the occupation groups towards legal measure in legal action against the wife murdering her husband by the One-Way Analysis of Variance (ANOVA) and by F-test, the result is $F = 11.337$, $P = 0.000$ which is less than 0.05. It is found out the opinions towards legal measure in legal action against the wife murdering her husband being materially different at 0.05 among the occupation groups.

In summary, from the result of this part of study in comparison of the sample groups' opinion in classification of their gender, age period, marital status and education level, there is no statistical difference. Such indifference may come from the same groups have opinion in the same way i.e. views that laws and judicial process that are being applied to the wife having the battered wife syndrome murdering her husband have still been inappropriate. But when considering the opinions towards

legal measure in legal action against the wife murdering her husband the difference is materially at 0.05 among the occupation groups. This indicates different opinion in each occupation because role and nature of work and occupation involving in this kind of case are different that reflects unequal acquisition of information and unequal acknowledgement of the actual nature of the domestic violence problem and the legal restrictions.

The researcher presents qualitative information derived from an in-depth interview to the qualified people. Such information reflect nature of problems, appropriateness, restriction of substantive law and procedure in relation to protection of the offending wife having the battered wife syndrome. The researcher divides analysis into 7 sides as follows:

1. Inquiry process and evidence collection
2. Role of attorney-at-law in the case
3. Enforcement of the Protection of Domestic Violence Victims Act B.E.2550
4. Enforcement of the Penal Code
5. Enforcement of the Criminal Procedure Code
6. Inflicting Penalty
7. Others

Inquiry and evidence collection process

First issue: Problem of inquiry process

Most qualified people view that the applicable inquiry process has not yet been suitable because not only loaded work burden of the inquiry official with limited period of time by law and procedure under the Protection of Domestic Violence Victims Act B.E.2550 perceived as escalating work burden but also lack of inter-agency coordination. Accordingly, the inquiry of the domestic violence does not in accordance with the intent of law. Examples of opinions related to this issue are as follows:

The inquiry officials have coincident opinion in this regard “The existing inquiry process in current effect is not suitable on account of this process designed under the Protection of Domestic Violence Victims Act has sensitivity and necessity

for multi-disciplinary working in interrogating the damaged person and lack of capacity building to be the inquiry personnel in specific field. As such inquiry process has more steps, lasting long period and personnel than ordinary case, the inquiry official usually avoid application of the domestic violence law and carry out inquiry as the ordinary case. Therefore, such way of inquiry does not find out the ground of offending and the damaged person is not protected in line with the intent of law.”

A lawyer views that “The current inquiry process does not explore ground of the act, being defective. As the police also have limit of time and a number of cases in hands, the police only look at the act’s consequence.”

A public prosecutor views that “Problems of the inquiry official include this process being perceived as complicated works and work of social development officers (psychologist, social workers), at present, insufficiency of coordination between the inquiry official and the ministry of social development and human security.”

Problem of evidence collection

Most qualified people agree that a collection of evidence is the most important stage of commencing the case against the wife murdering her husband as a result of having the battered wife syndrome because the collection of evidence at the place of incident or other evidences which are significant to the case configuration such as verification of habitual circumstances or behaviors of the husband murdered by his wife, surrounding witness, medical treatment record of the alleged before the murder incident to be assembled in the inquiry statement would be certainly ensure mounting justice to the alleged.

A qualified person from the ministry of social development and human security views that “The legal proceedings in this case had better explore nature of behaviors and any related factors rather than ordinary cause in the event that the family member commits a domestic violence.”

Existing problems in collection of evidence are similar to the problem of inquiry process such as immense work burden of the inquiry official and limited period by law in completion of the inquiry statement to be submitted to the public prosecutor, lack of inter-agency coordination which would rather support investigation of habitual behaviors of the husband and the wife commit such act. As the inadequate

number of the multi-disciplinary personnel, taking actions to collect evidence other than evidence at the place of incident are difficult in practical way. Examples of opinions related to this issue are as follows:

The inquiry official views that “There are problem and obstacle in the collection of other evidence aside from the evidence at the place of incident. The necessary evidence include the medical certificate appearing former medical treatment but the inquiry official cannot wait for such result of medical check-up during the inquiry’s limited period. Therefore, in lack of it, the inquiry official has to submit the inquiry statement to the public prosecutor for prosecution. In case of the police’s daily incidence report normally record circumstances of the violent incident, such report does not record and show the unreported habitual behavior of the husband. The wife does not meet the physician as per the inquiry official’s referral for medical check-up; therefore, the inquiry has to hear the close person-witness who usually are the relatives neither daring to speak out and being obstacle in the collection of evidence.”

A lawyer views that “To investigate behavior from close-person, related person, physician is usually impeded by personal habit in related procedure. Accordingly, the officials do not want to waste the time, like chaos and complication from the police to other personnel in the process. The law is good but the law is not enforced; therefore, the problems have not been solved.”

Second issue: Role of attorney-at-law in the case

Most qualified people view that the case of domestic violence and the case of wife murders the husband as a result of the wife having the battered wife syndrome are essential to supply the specialized lawyer in specific field. As the lawyer in general criminal case or the pro bono lawyer appointed by the court for the defendant wife may not have experiences in the legal proceedings of this kind of case, there are impacts on way of defense, case planning, presentation of evidence in the case and fair treatment in the defense. Examples of opinions supporting supply of the specialized lawyer in specific domestic violence are as follows:

A lawyer views that “This kind of case must have the specialized lawyer in carrying out the legal services in advantages of proper care, weighing the witness, petition to reduction of punishment, pointing out extenuating circumstance better than general lawyer. This kind of case has complex in relationship, therefore the alleged

needs a delicate qualified lawyer. Some pro bono lawyers who are still young and have none of their own family may not view clearly relationship in the family.”

However, the specialized lawyer in specific field charges high rate of professional fee pursuant to experience and professional skill of each lawyer including expenses of which the lawyer spend for carrying out to search and collect evidence that would be beneficial to the case configuration. It is expected the defendant wife has to bear such expenses and those who have financial deprivation would encounter difficulties to acquire money for such expenses.

Third issue: Enforcement of the Protection of Domestic Violence Victims Act B.E.2550

Every qualified people views that the Protection of Domestic Violence Victims Act B.E.2550 has pleasant principle and intent to help solve and protect the domestic violence. This law was developed from a perspective of the parties of the domestic violence are not the same nature as general party who has hatred and anger. Accordingly, various means and procedure were developed so as to maintain relationship in the family, to solve, remedy and ensure safety of family member but do not spotlight on punishment.

In the meantime most qualified people view that procedure under the Protection of Domestic Violence Victims Act B.E.2550 is quite complicated and unable to truly take action because number of personnel who know this law are less, personnel participating in the multi-disciplinary team that are essential to implement this law are inadequate and do not cover all over the country. Even the wife who has been battered or acted with violence would have to abide by many steps in procedure under this law, therefore such wife has usually denied request for legal protection. Moreover, such denial links to a pity on the perpetrator who is her own husband or being worried about impact from abiding by the Protection of Domestic Violence Victims Act B.E.2550. Sometimes, therefore, such wife merely requests the inquiry official to summon the husband perpetrator against her for warning. Examples of opinions supporting the ongoing problem of enforcement of the Protection of Domestic Violence Victims Act B.E.2550 are as follows:

An inquiry official views that “The inquiry process under this Act has a number of steps and personnel, time-consuming action than other general case.

Therefore, the inquiry officials generally evade enforcement of the domestic violence law. Consequently, the damaged person is not protected in conformity with the intent of law.”

A lawyer views that “In practical way, procedure under the Act has not truly been applicable and inaccessible to the protected rights. Several problems include the witness protection, making report to the police required before obtaining protection, inadequate multi-disciplinary personnel, presence of this law being unaware by the women, insufficient protection process, absence of personnel in many areas, the husband denying entering into an agreement or even entering but the husband neither performing in line with the covenants, less couples that observing the covenants, the convicted husband being liable to pay damages affecting to financial condition of the family, not being worthy to travel for claim and receipt of the compensated money.”

An OSCC officer views that “The law is good but cannot be implemented in practice. The law has wonderful principles but being defective in its procedure.”

Fourth issue: Enforcement of the Penal Code

Most qualified people concur that the statutes of Penal Code on the offenses relating to life and body are already good but the problems are arisen by too strict interpretation. As a result, some groups of people have to lose their rights to legal protection under criminal law. Examples of opinions supporting this regard are as follows:

A public prosecutor views that “Lawyers are embedded to apply the law only. This should be adjusted in mind of other sides to ensure fairness such as social, social benefits from application of law, welfare and security.”

After questioning the qualified people concerning application of Section 65 of Penal Code to the wife murdering her husband as a result of having the battered wife syndrome, most qualified people agree to apply section 65 because such wife is viewed as the person truly having a mental disorder at the time of commission. As Section 65 paragraph 1 provides exemption of punishment and Section 65 paragraph 2 provides reduction of punishment, there must be a vivid check-up whether such wife has the mental disorder or not in order to be protected by law. Most qualified people concur to application of Section 65; however, there must be referral of such wife who

commits the offense to have mental check-up and testimony of the expert witness to prove such wife's mental disorder before the court.

Meanwhile, some qualified people do not concur with the application of Section 65 of Penal Code to the wife murdering her husband as a result of having the battered wife syndrome in the following reasons:

A judge views that "Section 65 of Penal Code should not be applied, although some countries are applying the preemptive protection principle or the other words the commission is preemptive or stealing a march on before being committed. This qualified person does not agree to this principle."

The two lawyers do not concur with the application of Section 65 of Penal Code. One of them views that "to this Section, the court normally interpret the statutes strictly and from the legal work experience, it should apply heat of blood provision instead on account of the wife is being under pressure and becomes so angry whenever the wife thinks about the battery incident. If an application of self-defense, it is perceived as inappropriate due to too distant hazard."

Another lawyer views that "Section 65 of Penal Code should not be applied. The measure under the Protection of Domestic Violence Victims Act is preferred by having the suspension period to wait for inflicting penalty. At present, even though murder is not enforced under this Act but the measure under this Act can be adjusted to use. The court may suspend punishment by having an order to obtain therapy and remedy. If the wife fails to do so, actual punishment will be later inflicted."

The researcher is of opinion that although the application of Section 65 of Penal Code in this case results the wife having not been inflicted a punishment due to the unsound mind person under Section 65 paragraph 1 or reduced punishment under Section 65 paragraph 2 which the court may inflict a penalty as less as the court deems appropriate, in practical way in criminal case which has lawful penalty and impacts to the damaged person in the case the court normally strictly interpret and apply the provision of law to the fact of the case. Accordingly, the battered wife syndrome is not conformity with the mental disorder to deserve exemption of punishment and consequently, such wife having the battered wife syndrome cannot get benefit of the exemption or reduction of punishment.

Fifth issue: Enforcement of the Criminal Procedure Code

All qualified people view that the legal action against the wife murdering the husband as a result of having battered wife syndrome are necessary for being distinctive from ordinary legal proceeding because it is a sensitive case in the couple relationship between the opponents. The multi-disciplinary personnel who particularly understand the domestic violence are necessary for providing information about ground of offending. Examples of the opinions supporting this issue are as follows:

An inquiry official views that “A procedure being distinctive from ordinary legal proceedings should be applied on account of being the sensitive matter and a need for eligible judge who have knowledge and understanding in the matter of this kind.”

A lawyer views that “a specialized court of the domestic violence should be separated so as to comprehend nature of incident and relationship of the opponents.”

A judge views that “this kind of case should not have ordinary hearing and other supplementary measures should be added with presence of the defendant’s witness, probation, reporting herself to the officer, healing, provision of various conditions.”

A worker of NGOs working involved in the domestic violence views that “should add more knowledge in these matters to the concerned officers and have the expert witness in trial in this kind of case.”

A delegate of the Ministry of Social Development and Human Security views that “should add more multi-disciplinary means to help in the trial of this kind.”

Sixth issue: Inflicting Penalty

Most qualified people view that inflicting imprisonment under the Penal Code is not suitable for the case of offending by the wife murdering her husband as a result of being battered until having the battered wife syndrome because such wife does not have truly wicked intention in offending. They also view that cause of the offending is pressure from the husband or being continuously battered as the domestic violence until having mental disorder. Therefore, the appropriate means is referral to have therapy to recover from the syndrome and application of other measures in lieu of inflicting a penalty under the Protection of Domestic Violence Victims Act

B.E.2550. Example of the opinions supporting other measures in lieu of inflicting a penalty are as follows:

A judge views that “should amend the law to build the accommodation such as the half-way home or NGOs involvement such as the religious organization in Korea that hosts a mental discipline in other living place out of the prison during term of imprisonment. The women may ask for assistance from the monk abbey or the nun abbey which is a means in compliance with Thai lifestyle and both places providing works to do and being full of food stuff.”

Last issue: Others

Some qualified people view that period of time in the inquiry process is too tight to able to collect necessary and beneficial evidence sufficiently for legal action against the wife murdering her husband as a result of having the battered wife syndrome. In addition, inadequate number of personnel and overloaded works cause the inquiry officials to overlook some evidences that need more time or attempts to gather to be part of the inquiry statement. Moreover, capacity of the wife to defend the allegation is lessened by the so long period of the court trial and consideration, complicated steps and means to ask for assistance to the public sector, financial scarcity of the wife defendant. The qualified person who is the wife murdering her husband as a result of being continuously battered with violence has some views that:

“In long-lasting period of the court trial, may the court please takes shorter period of time because I am poor and have to borrow money to defend the allegation in the suit such as I and my family spend a lot of money for travel to be present in the court in Petchaboon province and why the court hearing is not done in Bangkok, as such expense is high in spite of presence of witness in Bangkok but such witness’s address pursuant to the household registration is in Petchaboon province.”

“Wish for the government’s contribution in part of bail money and legal advice as well as accommodation at the time of travel to the court”

“Wish for the government’s contribution for accommodation and counseling to the female survivor of the domestic violence before the severe incident occurred as same as her case.”

Many qualified people concur with the multi-disciplinary personnel’s increasing help in various stages of the procedure so as to provide protection of the

survivor of the domestic violence would prevent the worse violent incident better than waiting until the breaking out and occurrence of the bad situation of this kind.

The 3rd objective: To find a guideline on the appropriate legal action against the wife having the battered wife syndrome murders her own husband

Part IV. Suggestion relating to legal measure to take legal action against the wife murdering her husband as a result of having the battered wife syndrome (BWS)

Table 4.17 Suggestion of the people involved in the battered wife syndrome in legal aspects

Description	number (people)	percentage (%)
1. To amend the Penal Code to enable to exemption /reduction of punishment	25	28.74
2. To amend the procedural law in part of the legal proceedings, evidence, proof of offense	19	21.84
3. To amend the Protection of Domestic Violence Victims Act / other law on protection of security of man and woman	14	16.09
4. To rectify penalty / apply other measures in lieu of punishment such as therapy	11	12.64
5. To apply Section 65 of the Panel Code with the wife murdering her husband at the time of having the battered wife syndrome	6	6.90
6. To enforce the current effective laws	4	4.60
7. To amend statutes of law to able to reduce punishment to be petty penalty or the heat of blood	2	2.30

Table 4.17 Suggestion of the people involved in the battered wife syndrome in legal aspects (cont.)

Description	number (people)	percentage (%)
8. Should not take the criminal procedural law into application	2	2.30
9. Protection of the alleged's rights to able to ask for the trustworthy person / psychologist / social worker joining judicial process by notification of rights before prosecution and take measure of therapy in lieu of imprisonment/ execution	1	1.15
10. To establish a court division of the domestic violence	1	1.15
11. Should have statues that could have better protection of women's rights	1	1.15
12. Provide the multi-disciplinary personnel with Ministry of Justice as the focal point	1	1.15
Total	87	100.00

From the table 4.17, the most proportion of suggestion in legal aspect is to amend the Penal Code to enable to exemption/ reduction of punishment at 28.74%, followed by amending the procedural law in part of the legal proceedings, evidence, proof of offense at 21.84%, then followed by amending the Protection of Domestic Violence Victims Act / other law on protection of security of man and woman at 16.09% and followed by rectifying penalty/apply other measures in lieu of punishment such as therapy at 12.64%.

Table 4.18 Suggestion of the people involved in the battered wife syndrome in justice administration aspect

Description	number (people)	percentage (%)
1. To revise inquiry and collection of evidence	18	23.08
2. To escalate budget, personnel training, inter-agency collaboration to provide rapid assistance	16	20.51
3. To revise the procedural proceeding	14	17.95
4. To have medical personnel been the expert witness and participate in therapy, rehabilitation of mental condition of the damaged person and family	12	15.38
5. To disseminate way of practice to the law enforcers to differentiate between the domestic violence and ordinary case	11	14.10
6. To establish new government agency in relation to the process	2	2.56
7. To make increasingly understanding in this kind of case	1	1.28
8. Should some government agencies in judicial process participating in assistance on account of the wife is both offender and domestic violence survivor	1	1.28
9. Should be mercy to the wife	1	1.28
10. To take existing legal proceedings is adequate	1	1.28
11. To coordinate both intra-agency and inter-agency	1	1.28
Total	78	100.00

From the table 4.18, the most proportion of suggestion in judicial administration aspect is to revise inquiry and collection of evidence at 23.08%, followed by escalating budget, personnel training, inter-agency collaboration to provide rapid assistance at 20.51%, followed by revising the procedural proceeding at 17.95%, followed by having medical personnel been the expert witness and participate in therapy, rehabilitation of mental condition of the damaged person and family at 15.38% and followed by disseminating way of practice to the law enforcers to differentiate between the domestic violence and ordinary case at 14.10%.

Table 4.19 Suggestion of the people involved in the battered wife syndrome in social aspect

Description	number (people)	percentage (%)
1. Should conduct public relations to enhance more understanding and accurate attitudes towards protection of women and termination of the domestic violence	36	45.58
2. The society should not ignore the domestic violence and the public sector must provide assistance to develop additional means of complaint and ensure fair treatment	24	30.38
3. Should have coordination among psychologist, social worker and physician for counseling when the problem arises	11	13.92
4. The community should set up a watch group and provide an abrupt assistance	6	7.59
5. Should be cautious where the wife cites this reason for murdering the husband and defends by false witness	1	1.27
6. Should require the society's participation in recover and remedy the female offender of this kind	1	1.27
Total	79	100.00

From the table 4.19, the most proportion of suggestion in social aspect is to conduct public relations to enhance more understanding and accurate attitudes towards protection of women and termination of the domestic violence at 45.58%, followed by suggesting the society not ignoring the domestic violence and the public sector must provide assistance to develop additional means of complaint and ensure fair treatment at 30.38%, followed by suggesting coordination among psychologist, social worker and physician for counseling when the problem arises at 13.92%.

Table 4.20 Suggestion of the people involved in the battered wife syndrome in aspect of assistance to the female survivor of the domestic violence

Description	number (people)	percentage (%)
1. Should assist in systematic integration manner including legal, medical and well-being of the battered woman/wife both before and after the disastrous incident such as accommodation and new career	35	42.68
2. Should establish a special organization/agency to provide counseling, assistance and remedy the woman victim	15	18.29
3. Should have the Social Development and Welfare or the Ministry of Social Development and Human Security \ or other government agencies to intervene for mounting care and protection	8	9.76
4. Should take the multi-disciplinary measure to provide directly care in this kind of case	4	4.88
5. Should rectify the penalty inflicted to the perpetrator of domestic violence to the women and the indemnification to the woman survivor	3	3.66
6. Should have family and community to intervene for monitoring so as to help prevention and assistance	3	3.66
7. Should conduct public relation or campaign to the people and the concerned government officers to be aware of their rights and duties in protection of the domestic violence survivor/victim	2	2.44
8. Should set up a foundation or non-profit organization in which the government subsidize or otherwise involve an international agency by arranging the concern officers to work jointly with both before, at the time and after of the incident	1	1.22

Table 4.20 Suggestion of the people involved in the battered wife syndrome in aspect of assistance to the female survivor of the domestic violence (cont.)

Description	number (people)	percentage (%)
9. Should allow, by law, the wife who is survivor of the domestic violence to prosecute against her husband to the Juvenile and Family Court	1	1.22
10. Should adjust channel of receiving request for assistance from the domestic violence survivor to include application in smartphone, helpline, social media or even patrol police or community police etc.	2	2.44
11. Should require local people or community close to the family to contribute money to the fund for indemnifying for the domestic violence survivor	1	1.22
12. Should have specific provision to permit the court to exercise particularly discretion	1	1.22
13. Should have a department in Ministry of Justice to take immediate actions in response to the incident	2	2.44
14. Should raise respect of others' rights and reduce molest and malice in consciousness rather than the law amendment	1	1.22
15. Should have center for detention or therapy or mental rehabilitation particularly better than detaining such wife to live with other inmates in the prison as well as provide full-time physician or social worker on duty in the therapy or mental rehabilitation center	1	1.22
16. Should have provisions of law protect such wife, based on a main principle of equality among men and women	1	1.22
17. Should elevate support personnel and budget to the responsible government agency for more efficiency	1	1.22
Total	82	100.00

From the table 4.20, the most proportion of suggestion in aspect of assistance to the female survivor of the domestic violence is to assist in systematic integration manner including legal, medical and well-being of the battered woman/wife both before and after the disastrous incident such as accommodation and new career at 42.68%, followed by suggesting establishment of a special organization/agency to provide counseling, assistance and remedy the woman victim sector at 18.29%.

Table 4.21 Suggestion of the people involved in the battered wife syndrome in other aspects

Description	number (people)	percentage (%)
1. Should adjust attitudes in judicial process and prescribe specific court proceeding	15	39.47
2. Should provide campaign to disseminate knowledge to family and people so as to diminish severity, prevent and solve the domestic violence by family and community	14	36.84
3. Should determine such proceeding being in jurisdiction, consideration and judgment of the juvenile and family court	2	5.26
4. Should provide appropriate measure to conduct therapy and behavior adjustment for the husband committing violence	2	5.26
5. Utilize information derived from research in solving the domestic violence seriously	2	5.26
6. Should establish a specific organization/agency	1	2.63
7. Should examine mental disorder of such wife before and provide medical treatment until recovery to prevent the society	1	2.63
8. If stipulation to exempt such wife from punishment, such wife may seek for legal benefit to murder her husband	1	2.63
Total	38	100.00

From the table 4.21, the most proportion of suggestion in other aspects is to adjust attitudes in judicial process and prescribe specific court proceeding at 39.47%, followed by providing campaign to disseminate knowledge to family and people so as to diminish severity, prevent and solve the domestic violence by family and community at 36.84%.

The researcher highlights qualitative information derived from the in-depth interview to the qualified people that indicates suggestion about way of practice in taking appropriate proceeding to the wife murdering her husband as a result of having the battered wife syndrome as follows:

(1) The qualified people concur with paying attention to disseminate knowledge about the battered wife syndrome to personnel in judicial process because it is believable that a number of people involved in the legal proceedings and judicial process do not have knowledge in this regard at all. Many qualified people used to encounter problem relating to contact to ask for assistance and coordination with the state officials so as to seek for protection pursuant to the Protection of Domestic Violence Victims Act B.E.2550 for the wife survivor of the domestic violence but those qualified people have not obtained assistance under legal rights on account of some state officials have denied to apply or enforce such law. Many of others do not know about their own duties under Thai law and procedure under the Protection of Domestic Violence Victims Act B.E.2550 at all, although this law has been in effect several years ago.

(2) The qualified people believe that attitudes and attention of the law enforcers and personnel in judicial process in relation to the legal proceedings in the domestic violence case in details of the case would vastly affect to configuration of the case and justice of the defendant wife.

(3) The qualified people concur with development of government agency to be responsible for protection of the domestic violence survivor by setting up new specific government agency including setting up the domestic violence division in each concerned government agency.

(4) The qualified people propose to escalate budget and multi-disciplinary personnel to take role of prevent in and counseling in domestic violence case and expand network of community and NGOs which work for women and children to be the radical and abrupt assistance network.

(5) The qualified people support performing duties of the female inquiry official in the domestic violence case to be more concerned of delicacy or sensitivity in interrogation and fact-finding on family relationship than it is at present.

In this chapter's conclusion, the sample group responding the questionnaires and the qualified people responding in the in-depth interview have similar opinions that the domestic violence problem exists in Thai society and affects to the family institution and social institution. In addition, the legal actions against the wife murdering her husband as a result of the battered wife syndrome have problems of statutes of law which are inappropriate and too strictly. In enforcement of the Penal Code it causes the wife murdering her husband under these circumstances is not legally protected by exemption, reduction and alleviation of punishment. The law that directly relate to the domestic violence and is appropriate to be applied in order to solve this problem is the Protection of Domestic Violence Victims Act B.E.2550. But this law cannot be enforced to the case of the wife murdering her husband as a result of having the battered wife syndrome because scope of this Act does not include the act causing danger to "life" of the family member. Therefore, in the event that the wife murdering her husband is not legally protected by this law.

Aside from the problem of statutes of law, another problem in protection and assistance is that carrying out works in various steps in judicial process, attitudes and readiness of personnel in judicial process and government agency having duties relating to the domestic violence survivor. Accordingly, prevention, solution and even protection of the domestic violence survivor cannot be done in hurried manner and in sufficiency in line with nature of actual incident and problem.

In this chapter's conclusion, the sample group responding the questionnaires and the qualified people responding in the in-depth interview concur to have physician and psychologist to participate in adding their point of view and opinion before the court and to have the multi-disciplinary to intervene for assistance and remedy to the wife offender. There should be development of the collection of evidence system by exploring various evidence other than the evidence in the place of incident. Moreover, in benefit of justice, there should have a requirement for the court to conduct the fact-finding in conformity with the inquisitorial system to include background and habitual behaviors of both the husband and the wife in order to

broaden knowing for further weighing in consideration based on every sides of the facts before making decision. Beside, in issue of inflicting a penalty against the murderer under the Penal Code, the respondents of questionnaires and the qualified people coincidentally concur to omit inflicting the penalty in this case because the offender having the battered wife syndrome as a result of being continuously battered by her own husband before the murder incident. Accordingly, there should have a finding to the ground of the act and to take consideration of mental condition whether at the time of committing murder, the offender can control herself or not. It is deemed appropriate and fair to have an order to protect security under the Protection of Domestic Violence Victims Act B.E.2550, in application to this kind of case.

CHAPTER V

RESULT OF THE STUDY

From the previous description of concept, criminology theory and legal theory relating to the domestic violence, inflicting a penalty against the offender and the previous data analysis, this chapter is the description of the study's result as follows:

5.1 Matters of fact in Thai society in issue of the murder of a husband by the battered wife

5.1.1 Ground of the act

The wife who commits murder has a ground or motivation in murdering her own husband from being formerly battered or acted violence in the family. Most of the people in sample group and qualified people view that a social belief of superiority of the man over the woman in Thai society engender bringing up the child until growing up filled with attitudes and implantation of difference between the man and the woman i.e. the man is the person taking lead, power and decision or determination of life of family members. This could result act in violent way to punish the family members whenever any person does not satisfy the leader's desire or to instruct the family members to believe in the leader in compliance with the patriarchal society perspectives theories and the research results of Pasatane Sittisoradetch, Napaporn Hawanon, Peungthong Kruemangkorn and the research result of Penology Development Section, Corrections Department.

Form of the domestic violence has been changed from the former means of main bodily and mental harm to the current form of more severe than before such as acid attack, burning, abuse of power to coerce the close women for having sexual intercourse, revile against the wife in public place or the wife's working place and

other new forms of violence relating to technology or social media such as recording a video while having sexual intercourse, sharing or disseminating pornography of woman to the public or threatening to share or disseminate the wife's pornography to the public etc.

As regards the woman has repeatedly and continuously been acted with violence and cannot flee from the domestic violence until being the battered wife syndrome, the learned helplessness theory can be referred in explanation that such wife have to tolerate to cohabit with the husband who commits violence, mythology and implanted belief to be patient in the family life and to conceal direful or ashamed matters in the family. As a result, a number of women have not dared to ask for assistance or end couple relationship because they are worried about condemnation against her as origin of breaking-up which in conformity with the research result of Napaporn Hawanon.

5.1.2 In occurrence of the wife murdering her husband at the time of having the battered wife syndrome

People in the sample group comprehend meaning of the battered wife syndrome, being aware of problem and obstacles in the current criminal proceedings and having attitudes of understanding and sympathy to the offender, as its cause comes from symptoms of a mental disorder. Most people view that psychologist and physician would rather have important role in this kind of case because the current applicable trial process and inflicting a penalty are inappropriate and unfair to the offender, in line with the Jean-Gabriel De Tarde's theory and the Raymond Saleilles's theory as well as the research result of Peungthong Kruemankorn and Pipat Chanmekhar.

The sample group and the qualified people in this study comprehend that the matter of the wife murdering her husband at the time of having the battered wife syndrome is not the commission by a wicked intention which is distinct from the murder in other ordinary case and the prior contemplation which is a ground of punishment increment. It actually comes from the former distress as a result of being continuously battered and a belief that she herself has not been able to flee from the violence and being scared of protective danger. When having a satisfactory chance at

the time of her husband is not be cautious, in the meantime the wife also cannot control herself due to fear and mental distress, the murder is committed. This is in conformity with the research result of Leonore E.A.Walker.

5.1.3 The period after the incident of the wife murdering her husband at the time of having the battered wife syndrome lapsed.

The sample group and the qualified people in this study comprehend and suggest that the appropriate means of taking care of this kind of offender include the medical opinion or proof. As to the wife offender can prove the commission of murder at the time of having the battered wife syndrome, such wife should obtain assistance and treatment like the patient which is distinct from other alleged people in ordinary case. This is in conformity with the due process of law and the research result of Pipat Chanmekhar.

In case of the husband commits violence continuously until the wife murdering her husband as a result of the battered wife syndrome, it is sound explanation that even though the husband is a damaged person or victim in this case but the husband also is the victim more guilty than the offender. In other words, the husband instigates others to commit the crime. In its origin, the wife is physically and mentally weak, therefore the husband abuses and harm her until in tense situation of the wife murdering her husband.

5.2 To study legal restrictions in relation to the protection of the wife having the battered wife syndrome murders her own husband

As regards the study of foreign laws such as England and 31 states of the United States of America, the battered woman/wife syndrome has been accepted in the court trial that the wife is the defendant who is alleged of murdering her husband in other time when having not being encountered the domestic violence such as a murder while the husband is sleeping or unconscious. It is considered as the doer carried out a self-defense against long-lasting torture (Hale & Menniti, 2003). In the Phillippines, there are the provisions that protect the offender having the battered wife syndrome by formulating that where the domestic violence survivor is decided that such person

has the battered wife syndrome is not have both criminal and civil liabilities although a lack of legal element in citation to the self-defense under the Penal Code. It merely needs a consultation with psychiatrist or psychologist in taking into consideration of such syndrome.

In an arguing issue of the murder is not committed at the moment of violence against the wife, this is vastly considered whether it is admissible to be the wife's legal defense in benefit of exemption or alleviation of punishment or not. In many countries especially in the country of jury legal proceedings like USA where the jury comprise with ordinary people whose background and life experience having variety, it is viewed that the wife murdering her husband at the time of having the battered wife syndrome. The expert testimony is required in check-up of the wife's mental symptom to assess whether the wife's citation of having the syndrome is true or not because the wife encountering and having the battered wife syndrome is not apparently the unsound mind merely having such syndrome on temporary manner and at anytime. There must be cautious in check-up and assessment of such syndrome.

For Thailand, in murdering someone to death the offender generally is convicted and must be inflicted by severe punishment to life sentence. However, Thai Penal Code stipulates some circumstances that can be not guilty on account of the doer has a power to do that under specific circumstance and that are ground of exemption, reduction and alleviation of punishment. Those are taken into study and analysis in relation to the restriction in the event that the wife murdering her husband as a result of having the battered wife syndrome as follows:

5.2.1 Restriction under the Penal Code

5.2.1.1 Exemption of offense or the offender having a power to do by law in case of legitimate self-defense and consent

1. Legitimate self-defense In taking into consideration of section 68 of the Penal Code, the legitimate self-defense that can be referred thereto has the following elements:

- (1) A danger arising out of violence against the law
- (2) Such danger being imminent

(3) Any person is to commit any act for defending his/her own right or other person's right in order to escape from the danger

(4) Having reasonably committed under the circumstances

In case of the wife having the battered wife syndrome murders her own husband that being reasonably under the circumstances at the time of the husband commits violence against herself or others by her intention to defend her own right or other person's rights in order to escape from the danger caused by her own husband. In addition, such self-defense is reasonably committed under the circumstances. Such wife can defend by referring to the legitimate self-defense under Section 68 of the Penal Code so as to be exempted in offense by law. But, a problematic issue in consideration of "such danger being imminent" and "the self-defense having reasonably committed under the circumstances" cannot be applied to the case of the wife murdering her own husband in the time other than the moment of committing domestic violence at all, although most of the wife facing pressure and distress by battery or torture in any form by her husband. As the wife cannot combat or resist the man's power at the time of domestic violence, such wife has to let the violence happened with her for survival at that moment. But the violence finished, the man is no longer in nature to defend himself or batter the wife such as while sleeping or drunken with lost consciousness. When the wife has symptom of the battered wife syndrome and has an idea to murder her husband so as to free from the distressful condition. Nevertheless, at that moment there is no danger being imminent approaching the wife at all. Such danger being imminent has covered from the danger being actual imminent to the danger coming to an end.

But if the wife murders the husband, it will be prior contemplation which is not potential lawful self-defense. Besides, the way of murdering her own husband could be perceived that the wife's act is not cruel in her blood and relates to her physical power that is inferior to the man. Therefore, the wife usually uses weapon to do that such as gun, knife, poisoning etc. in the meantime the husband merely has his sole body or other equipment nearby him such as belt, bloom to fight back or harm by nature. Such harm or fighting back does not comply with elements of "the self-defense having reasonably committed under the circumstances"

because its principle must be the act in the least means being necessary and proportionate to the danger.

As the law enforcer must normally consider the time of commission, circumstances, weapon or means in murdering the husband, accordingly, the wife having the battered wife syndrome cannot be referred to be an excuse to the lawful self-defense under Section 68.

2. Consent The damaged person's consent given before or after the offending, such commission shall not be guilty. But this cannot be applied to the wife murdering her husband as a result of having the battered wife syndrome.

5.2.1.2 Exemption of punishment In case of commission of an act completing elements of an offense and the doer has neither authority to do that, accordingly, the doer shall inflict a penalty. However, punishment to this kind of people is not beneficial to the social benefit at all because the offender does not have a wicked intention, possibly has no other choice, awareness of responsibility for its result, relationship as husband and wife. Such act is the offending but the law exempts its punishment (Taweekiet, 2007:167-182). In taking into consideration of this exemption applied to the wife murdering her husband as a result of having the battered wife syndrome, the analysis is described below:

1. Act by necessity Section 67 of the Penal Code stipulates that the person offends by necessity by these following elements: (1) being under compulsion or influence of a force such that such person cannot avoid or resist or (2) in order to make himself or another person to escape from an imminent danger which could not be avoided by any other means (3) when such person did not cause to exist through his own fault on reasonable basis, the doer is not punished.

A citation to this necessity to defend the allegation must complete the element of "being under compulsion or influence of a force such that such person cannot avoid or resist" or "being in imminent danger which could not be avoided by any other means". In such situation, the doer has no other choice, except offending. A legal defense by citation to this necessity to defend the allegation cannot be applied to the case of the wife murdering her husband as a result of having the battered wife syndrome. In this case, the wife mostly does not murders her husband

while or at the time of being menaced or tortured by the husband because the wife realizes in her power that being unable to fight back the man or may be fearful to combat with her husband. Moreover, the wife has other option by avoidance of committing the murder. The incident does not comply with the elements prescribed by the law, as the act by necessity must be the unavoidable situation and circumstances of the imminent danger. Therefore, as far as the law focuses on the time of offending to evaluate the act by necessity, this cannot be applied to the wife murdering her husband in this case.

2. The doer having mental deficiency, psychosis or mental infirmity In this case, Section 65 paragraph 1 of the Penal Code would be considered to know whether the doer deserves exemption of the offense in relation to appreciating the nature of illegality of his/her act. The law stipulated that “any person commits an offense at the time of not being able to appreciate the nature of illegality of his act or not being able to control himself” on account of mental deficiency, psychosis or mental infirmity, such person shall not be punished for such offense.

But where it is emotion disorder such as anger, lust, excitement, fear that is not caused by mental disorder, it is not the unsound mind under this Section. Analysis to the wife having the battered wife syndrome, in strict interpretation, results such syndrome does not reach level of “unsound mind”. The legal interpretation is narrower than the medical diagnosis because the legal interpretation must be strict and not be broad or flexible as it engender the offender being exempted of punishment and otherwise any person can refer this to be able to avoid legal punishment and to be unfair to victim or the damaged person in the case. By the aforementioned reason, Section 65 paragraph 1 cannot be referred or applied in the case of the wife murdering her husband in these circumstances.

5.2.1.3 Reduction and alleviation of punishment are as follows:

(1) Offending by sudden heat of blood Section 72 of Penal Code provides a nature of offending by sudden heat of blood that “any person is hot blooded by being maltreated seriously by unjust cause comes to commit an offense”. There must be “offending to the maltreating person at that time. This is a legal defense only in case of the wife murdering her husband by sudden heat of blood at the

time of her husband battering severely in any unfair cause. This incident must be closely continuing period without interruption. Therefore, this reduction by law cannot be applied to this case, the wife murdering her husband as a result of having the battered wife syndrome under the fact that most of the incident the wife does not dare to offend or immediately murder her husband at the time of being severely battered by such husband.

(2) Reduction of punishment to the mental deficiency, the psychosis or the mental infirmity under Section 65 paragraph 2 of Penal Code, its clear definition of to the mental deficiency, the psychosis or the mental infirmity link to acceptance of the battered wife syndrome and in connection with a proof of the offender is still partially able to appreciate the nature of illegality of his act, or is still partially able to control herself. If the law enforcer has not accepted or provided an opportunity to have proof on the battered wife syndrome, exercise of rights to obtain legal protection of the wife murdering her husband under these circumstances cannot be certainly done and applicable.

(3) Extenuating/Alleviation circumstance The court's can exercise discretion to extenuate punishment to the wife murdering her husband as a result of having the battered wife syndrome in many cases because such wife does not have cruelty in her origin or blood but the offending is resulted by pressure and distressful condition of being constantly, repeatedly and long-lasting battered or tortured by her husband. After the offending, most of all wives confess at the stage of arrest, inquiry or court trial or ever take the murdered husband to the hospital, surrender or allow easily to the arrest. To such extenuating/Alleviation circumstance is under section 78 of Penal Code, the Court may, as deems appropriate, reduce the punishment to be inflicted on the offender by not more than one-half. Actually, in the way of the woman is lack of wicked intention to offend and must serve sentence by half penalty, it may be too rigid and unreasonable because the woman/wife is also the victim of former continuous and long-lasting violence. Taking the domestic violence victim/survivor who has a mental disorder to serve sentence in the prison is not relevant and accurate solution at all. Such domestic violence victim/survivor has not only neither been remedied but also been stigmatized as the convicted in the case.

5.2.2 Restriction under Criminal Procedure Code

Provisions of the Criminal Procedure Code that relate to the case of the wife murdering the husband having the battered wife syndrome include the alleged's capacity in defending the case under Section 14, suspend the execution of imprisonment under Section 246 and suspend the execution of life sentence under section 248. For the aforementioned benefit, a legal protection of the alleged or defendant must be considered and decided firstly to be an unsound mind. But in case of the wife having the battered wife syndrome, such syndrome is normally only temporary mental symptom; therefore, such wife cannot be protected by the aforementioned provisions.

In addition, Section 138 of the Criminal Procedure Code authorizes the inquiry official to carry out the inquiry by his/her own or to have referral for others' inquiry in specific issue so as to know background and habitual behavior of the alleged. Section 143 paragraph 2 (a) stipulate the public prosecutor has an authority to require as deems appropriate the inquiry official to carry out additional inquiry or arrange any witness to be questioned by the public prosecutor for further directive. These authorities and actions by law are beneficial to the fact-finding in taking into consideration of motivation, ground and behavior of the husband before the murder incident. Such derived information would be extremely beneficial to consideration and infliction of a penalty against the wife murdering the husband having the battered wife syndrome but, in practical way, the inquiry official and the public prosecutor have very less enforcement to both Sections.

5.2.3 Restriction under the Protection of Domestic Violence Victims Act B.E.2550

The Protection of Domestic Violence Victims Act B.E.2550 is stipulated based on the criminal law having its intention to inflict a penalty against the offender rather than to rehabilitate the offender or protect the domestic violence survivor. There must have designation of form, means and procedure that should be distinctive from the ordinary criminal case. To the nature, such wife offender has an opportunity to turn over and restrain re-offending as well as maintain good relationship in the family. If such Act can be applied in consideration of offending and inflicting a penalty against the wife murdering her own husband at the time of having the battered wife syndrome, such wife's act that may be nature in relation to the domestic violence by cause, action, offender, victim should result more fairness and appropriateness than the court proceedings in ordinary criminal case especially its Section 12 provides in case of the court adjudges the perpetrator convicted, the court has a power to rehabilitate, therapy, control the offender's behaviors, indemnify for relief operation and public service or be subject to parole in lieu of punishment against the offender.

However, there are some restrictions that the Protection of Domestic Violence Victims Act B.E.2550 cannot be applied to the wife murdering her own husband at the time of having the battered wife syndrome due to definition, meaning and nature of "Domestic Violence". Section 3 of this Act defines "Domestic Violence" in 3 extents i.e. 1. Any act aiming to endanger body, mind, gender or health of a person in the family 2. Act by intention being likely to endanger body, mind or health of a person in the family 3. To exert coercion or immoral influence over a family member in order to wrongfully cause him to do, not to do or yield to any act but not including negligent act for instance forcing the child to keep staying on limited area without reasonable ground. From scope of definition, the act of the wife murdering her own husband at the time of having the battered wife syndrome does not comply with the definition of "Domestic Violence" under this Act because such act aims to target the husband's life and does not aim to be detrimental to body, mind, gender or health of a person in the family.

Although some people in the sample group and the qualified people view that the Protection of Domestic Violence Victims Act B.E.2550 can be applied in case

of offense to life because it is a part of causing detrimental to body. But in the reality, the researcher and many people in the sample group view that interpretation of the definition cannot cover the offense to life in these circumstances. Moreover, this Act has still had problem in its enforcement in many ways.

In seeking for assistance measure for the victim/survivor and the affected people of the domestic violence, the senior competent official having an authority to have directive on measure or any means to relieve distress of the domestic violence survivor on temporary basis in stage of inquiry under Section 10, the court having an authority to have directive on measure or any means to relieve distress under Section 11, the victim/survivor and the affected people are required to make complaint and accuse the person. In many events of the domestic violence, the survivor or the witness merely need a protection but are not desirous of prosecution in full scale due to impact to family relationship. Therefore, in fact, there has not been complaint and accusation made hereto, they are not legally protected by law.

Furthermore, the sample group and the qualified people who used to involve in the legal proceedings under this Act view in the same way that the legal proceedings have too many steps and complication until sometimes the damaged person, the inquiry official and the related official do not want to enforce the law. The related officials in the proceedings have still been lack of knowledge and comprehension in the domestic violence, being lack of the focal person in taking proceeding. The inquiry officials have also loaded works in hands. Number of the multi-disciplinary personnel in the provincial as required by law are not sufficient. Accordingly this Act cannot be applied or constantly enforced in effective way to implement the intent of law.

5.2.4 Restriction under the Mental Health Act B.E.2551

This law defines “mental disorder” means any symptom of mental disorder exposed through behavior, mood, thought, memory, intelligence, neuro-perception or perception of time, place or person, including any symptom of mental disorder resulting from alcoholic drinks or other psychotropic substances but not including abnormal behavior resulting from anti-social personality. It is apparent that this law protects the mental ill patient in the broader scope than the specific protection to the

mental deficiency, the psychosis, the mental infirmity or the unsound mind pursuant to the Penal Code and the Criminal Procedure Code.

From this definition, the battered wife syndrome can be regarded as a legal mental disorder. However, such syndrome does not normally occur all the time. The wife may have nature and behave like normal people but can have such disorder at the time of being with the husband who has thoroughly committed the domestic violence against her. Therefore, it is difficult for any person or competent official to inform or is knowing of indication and to provide treatment as prescribed in the Mental Health Act i.e. (1) Person being in threatening condition (2) Person having requirement for treatment and such person being lack of capacity to make decision to give consent for treatment.

In addition, even though the woman having the battered wife syndrome is considered as a patient by this Act, whether the wife commits a crime by murdering her own husband as a result of the battered wife syndrome will be treated as the case patient under this Act or not. As this Act applies Section 14 of the Criminal Procedure Code that stipulates a condition to take the case patient to the proper treatment, such person must be firstly diagnosed or decided as a unsound mind. But in case of the wife having the battered wife syndrome, this syndrome is the temporary mental disorder. Therefore, such wife is not legally protected under this Section.

5.2.5 Restriction under the Regulation of the Office of Attorney-General on the criminal proceedings of the public prosecutor B.E.2547

In clause 94 (3) of such regulation stipulates principle of statement description in the suit, aside from principle in the Criminal Procedural Code, “as deems appropriate and for benefit of justice”, description of the fact in the inquiry statement to be beneficial and harmful to the defendant for the court use in consideration, judgment and determination of the penalty as well as other measure to be applicable towards the offender as far as it could be done such as in the case where the facts in the inquiry statement being found beneficial and extenuating circumstance under section 64, 65, 66, 67, 69, 72 and 78 of Penal Code, description must be in conformity with such facts and indication of related section in the end part of the suit.” This principle is applicable to the criminal offense in relation to the domestic violence.

The case of the wife having the battered wife syndrome murders her own husband that relates to Section 65, offending by the unsound mind, Section 67, offending by necessity, Section 72, offender by sudden heat of blood and Section 78, extenuating/alleviation of punishment. In the applications to such aforementioned provisions of law are distinctive among them, they depend on discretion of the public prosecutor who may be distinctive on case-by-case basis and in each individual. Therefore, description of the factual statement in the suit in benefit of the wife having the battered wife syndrome murders her own husband may be overlapped and derive justice in legal proceedings based on unequal norm.

In comparative analysis in respect of protection under the Penal Code, other related law and the feminism theory that believes in the domestic violence formerly perpetrated by the husband before the wife murdering him in order to prevent worse scenario, it finds out that the wife murdering her husband as a result of being battered or tortured in the family has not legally protected in appropriate and fair manner in defending the allegation. This kind of women have to be victimized by the battery of her husband and re-victimized by judicial process when such wife's murder as a result of having the battered wife syndrome because interpretation of law in the exemption, reduction of punishment or even the exemption of offense does not in compliance with the mental disorder and nature of the acts of this kind of woman. As a result, at present the woman has to serve sentence as same as the other ordinary criminal convicted are serving.

Only in some cases, the court may take into account based on knowledge and experience of the domestic violence during cohabiting with the husband to be applied for alleviate the punishment against these women of this kind but this application and decision are not applied in every cases. This is different from the result of legislation into the law that requires the law enforcer or the involved people must take into account of experience of long-lasting distressful women caused by their own husband to help such woman to be treated justly and to ensure increasingly fairness in defending the allegation. If inflicting a penalty to this group of woman who murdering the husband at the time of the battered wife syndrome would not be in conformity with the intent of criminal punishment. To drive and ensure justice in

effective way, there should have exploration to find any appropriate measure in line with this kind of case.

5.3 To find a guideline on the appropriate legal proceedings against the wife having the battered wife syndrome murders her own husband

The study find out that the appropriate legal proceedings with the case of wife murdering her husband at time of having the battered wife syndrome should be in these following issues.

5.3.1 To improve the inquiry and collection of evidence process

This process is the initial stage that the criminal incident reported and is the most significant process affecting to the case configuration of the domestic violence. If evidence is found only from the place of incident would not clarify and conclude occurrence of the domestic violence from the past to the present between the opponents i.e. the murdered husband and the murdering wife. The acquired evidence are only surface of the murder incident at that time but stress and pressure of the wife who is continuously battered that pushes the wife to commit the criminal act would not be found in the place of incident. In this kind of problem, origin of the incident and commission cannot be proved due to the loaded works and duties of the police official and the inquiry official. Moreover, the Protection of Domestic Violence Victims Act B.E.2550 add more works to the inquiry official although its legal proceedings has pleasant intent but the Act is still lack of mechanism or instrument in good working and is hard to move implementation forward. The inquiry official is in the initial stage of the judicial process and visitor to the place of incident where the murder takes place. Only collection of evidence from the place of incident cannot truly prove the cause of such act. Therefore, provision of support to the inquiry official is necessary in inquiry and collection of significant evidence in the murder incident which the wife commits it while having the battered wife syndrome. Other evidence should be found out such as to examine habitual circumstances and behaviors of the murdered husband,

the surrounding witness, the medical record of the alleged before occurrence of the incident, medical opinion in case of the inquiry official makes referral to have the murdering wife mentally checked up to complete the inquiry report. All of these other evidence could facilitate justice to the wife defendant. To explore such other evidence other than the evidence found in the place of incident should be the direct duty of the Ministry of Social Development and Human Security to help coordination and support these important information to the inquiry official so as to complete the inquiry report for further submission to the public prosecutor. In respect of insufficient number of the related personnel that are insufficient to perform duties and responsibilities under the laws, the government should elevate budget and number of personnel to related government agencies so as to set up the specific domestic violence division in separation of this kind of case in order to enhance skill and expert in this duty and responsibility as well as to enlarge network of coordination, exchange of information and inter-agency assistance in definite and efficient manner. Accordingly, problems of loaded work and limited term would also be solved.

5.3.2 Role of attorney-at-law in the case

The attorney-at-law who is the specialized in the domestic violence should take the domestic violence case because such attorney-at-law has capacity to comprehend point of view, attitudes, nature of relationship and nature of defending the allegation in benefit of planning to conduct the defense in the case and to present necessary evidence in the case. A problem of having the specialized attorney-at-law in the case is higher retainer fee or professional fee because such lawyer has specialty in knowledge and experience of this kind of case. However, such high fee may be unaffordable to hire the lawyer by the offending wives who mostly are poor and financially scarce. Sometimes, the offending wife has to petition to the court for the appointed lawyer or pro-bono lawyer who is lack of knowledge and experience in the domestic violence or probably the wife defendant does not have knowledge to communicate to reflect reality of being long-lasting under pressure and distressed at the time of cohabitation with her husband until being mental disorder. Therefore, there has been lack of the knowledge and specialized lawyer who can handle this kind of case and help effectively the wife defendant. Moreover, the information in relation to

the habitual circumstances or behavior are not been in the inquiry report on account of the attorney-at-law/lawyer is lack of experience and expertise in finding the important facts and being mistake in the planning for defending the allegation for example advice the client to confess in order to get benefit of extenuating the penalty under Section 78 of the Penal Code. Despite such extenuating the penalty, sentence is still high and unfair to the wife alleged having the battered wife syndrome and being battered or tortured. Accordingly, in having the court's appointed lawyer in the case, the government agency should organize the training course to be capacity-building by providing intensive knowledge and expertise resources in relation to the domestic violence in benefit of and in protection of the rights in defending in various cases for every levels of the people in the society.

5.3.3 Revision of the Protection of Domestic Violence Victims Act B.E.2550

Revision to the provisions As previously mentioned that this Act has pleasant intent but, significantly, this Act cannot be applicable to the case of the wife murdering her husband as a result of having the battered wife syndrome because definition of "Domestic Violence" does not cover any act aiming to endanger "life" of a person in the family. Therefore, for trial and enforcement of measure in the appropriate and necessary way, a revision to the definition of the domestic violence in Section 3 should be as follows:

"Domestic Violence" means any act by intention aiming to endanger life, body, mind, gender or health of a person in the family, the act by intention being likely to endanger life, body, mind or health of a person in the family 3. To exert coercion or immoral influence over a family member in order to wrongfully cause him to do, not to do or yield to any act but not including negligent act for instance forcing the child to keep staying on limited area without reasonable ground."

The revision to the definition of the Protection of Domestic Violence Victims Act B.E.2550 does not provide an opportunity for the offender to exercise rights by law so as to serve less punishment because Section 8 of this Act stipulates on commission of the domestic violence being the same offending as other law stipulated. In this case, there is a commission of murder to death which is an offense under the

Penal Code having penalty higher the penalty provided in the domestic violence offense, the court that has jurisdiction over the case merely applies the provision in this Act *mutatis mutandis*. This way would be beneficial to an appropriate inflicting a penalty in the domestic violence case where its ground complicates especially the case of the wife murdering her husband as a result of having the battered wife syndrome. The court may exercise an discretion under Section 12 to take measure of rehabilitation, therapy, control of the offender's behavior, indemnification to contribute relief operation and public service works, omission of the act in relation to the domestic act or taking parole pursuant to means and term determined by the court in lieu of punishment of the offender.

In consideration of penalty under the Penal Code in the offense of murder by intention to death are the life sentence by maximum and the imprisonment by minimum, the penalty is relevantly inflicted against the criminal who has wicked intention. The penalty has an objective to isolate such criminal to be out of the society either permanently or temporarily i.e. execution or imprisonment in long-term is believed to ensure safety and peace of the society as well as to have correction of the convicted' behavior. To the case of the wife murdering her husband as a result of having the battered wife syndrome, the ground of murder is victimization of the domestic violence until having a mental disorder. From the syndrome, we must view condition of this kind of woman as the patient rather than the criminal. Hence, detainment of the patient in the same detention facility together with other criminal is not right and be beneficial to anything. Other measure should be applied to this kind of offender in lieu of original punishment.

Giving an opportunity to the offending wife having the battered wife syndrome who is lack of the wicked intention is in conformity with the criminal punishment theory on the rehabilitation especially a therapy on the mental condition. The court may take other measures in parallel in benefit of rehabilitation to such offender, family and relatives of the damaged person and the society as a whole in lieu of punishment under the Penal Code which causes damage to the offender in a way of labeling in the Labeling Theory. The labeling to such wife would cause problem of adjustment to the society, restarting the life after completion of sentence and a worse impact to her family member such as the child who not only lost the father but also

encounter various problems if the mother has to serve imprisonment by offending without wicked intention in mind.

Revision to the enforcement A problem of law enforcement is a lack of connection between concerned government agencies under various procedure, means and measures to provide protection of the domestic violence victim/survivor. It is essential to engage cooperation among concerned government agencies to provide multi-disciplinary personnel. As this Act does not have the specific government agency to be responsible for handling inter-agency coordination, such preliminary act has to be borne by the inquiry officials who are in initial stage of the judicial process. After taking the case, actually, the inquiry officials are annoyed to find out the other agency/organization to which the inquiry officials would forward the case or seek for cooperation. As a result, the inquiry officials avoid enforcing this Act. Besides, steps in seeking for protection are not easy to be followed in practical way. Consequently, the state personnel and the people have not fully taken benefits from this Act.

5.3.4 Improvement of the court role in the fact-finding

The Thai court system is the accusatorial system. The court under this system does not have duty to search and find facts and evidence. Only the litigants have directly role of the fact-finding and presenting evidence to prove various issues. The court's position is strictly impartial and acts like the referee to supervise both parties' observance to the rules and procedure under the witness provisions. In case of the prosecutor is in default, the court will dismiss the case. The court's role in the fact-finding is very less. For the case of the wife murdering her husband as a result of having a mental disorder, the fact-finding to the mental disorder is needed especially in the event that the police inquiry report and the suit do not include or refer to the mental abnormality or disorder of the defendant who may murder at the time of or as a result of having the battered wife syndrome. Although the law allows the court to require additional trial on arbitrary manner or upon the litigants' petition under Section 228 of the Criminal Procedure Code, in practice the court hardly process that action as it should be. In this regard, the court seems to be reluctant to exercise such authority, as the court may be questioned by the litigants about impartiality of the court.

In the domestic violence case, it will be good if the court adjusts to have role of the fact-finding pursuant to the inquisitorial system instead. Other than the former regular practice, the court may take more involvement in legal proceedings by a self-finding of the facts to both litigants when the ground of offending is suspicious. In nature of this kind of case, this fact-finding will help access deeper to ensure justice of both litigants in conformity with the Due Process of Law which highlights the defendant's rights, enforcement based on statutes of law, justice ensured in each steps of the judicial process. Accordingly, the formal fact-finding in examination or trial to the allegation is highly recommended in order to ensure the most justice.

5.3.5 Improvement of the court unity in exercise of discretion in trial and inflicting a penalty and the judge's attitudes

People in the sample group reflect exercise of the court's discretion in the trial and the inflicting a penalty by law as well as the court's attitudes towards trial of the domestic violence case affect to the case configuration and the court's decision. Subject to the individual judge, the court's attitudes towards the case of the wife murdering her husband as a result of having the battered wife syndrome will directly affect to the consideration on offense, the wife's intention and elements of the offense as well as discretion to extenuate the punishment. In case the judge has knowledge and comprehension in the ground of offending that neither comes from the wife's wicked intention but it is the battered wife syndrome, such judge will keep in mind of those issues for consideration and decision of the case. On the other hands, if the judge does not have knowledge and comprehension in the ground of the wife's act, the judge will view that the wife having the wicked intention in her mind. The result will be distinctive and will not concur in the same norm i.e. the ordinary way of adjudging such wife as the severe culprit murdering others to death.

5.3.6 Improvement of the expert testimony in the case of the wife murdering her husband at the time of having the battered wife syndrome

In this kind of case, the most important person in the case is the psychiatrist who will provide the expert testimony before the court in order to prove whether the wife defendant offending as a result of having the battered wife syndrome

or not. Its result will relate to the legal benefit. A note is the problem of ambiguity because the syndrome does not appear all the time but it occurs occasionally. Therefore, burden on proof of this syndrome rendered to the psychiatrist is so important. The researcher views that the expert testimony made by the psychiatrist to the court should not be solely in writing. The psychiatrist should be present and give testimony in the court trial due to complexity of the syndrome and in order to have a chance for the judge and the litigants to question and cross-examine until being free of suspicion. This way is in line with the forensic psychiatry principle that requires application of the forensic psychiatry knowledge to help check-up and diagnose the alleged for fairness and in accordance with the legal principle in relation to “the legal act”. Accordingly, the court should require the psychiatrist who can provide the expert testimony to conduct diagnosis and then to notify the court of its result or the court may summon the psychiatrist to provide the psychiatrist in the court trial.

As mentioned all above, the researcher describe the matters of fact, the matters of law and the guideline for appropriate legal proceedings so as to protect the wife murdering her husband at the time of having the battered wife syndrome. The suggestions will be further indicated in the chapter 6.

CHAPTER VI

SUMMARY AND SUGGESTIONS

This research namely “The Battered Wife Syndrome: Legal Proceedings in Thailand” has an objective to develop a guideline on the appropriate legal proceedings against the wife having the battered wife syndrome murders her own husband for having a summary leading to the revision of laws and regulations on performing duties of concerned government agency for efficient solution.

This research includes the quantitative means and the qualitative means by studying documents, interviewing eligible people related to judicial process and utilizing questionnaires. The research aims to study matters of law and legal restriction concerning the protection of the wife murdering her husband as a result of having the battered wife syndrome. For the quantitative means, the convenient sampling is used in this research by selecting 201 people from Royal Thai Police, Office of the Attorney General, Court of Justice, Lawyers Council of Thailand, physicians, counseling psychologists, NGOs relating to the domestic violence, academic and OSCC officers. These groups are efficient for this study due to their well-knowledge and skill in prosecution process, handling domestic violence or having direct experience so they tend to cooperate with giving answers for gathering the accurate information as per this research’s objectives. For the quantitative means, the key informants are selected from the qualified people having knowledge, expertise and experience in works in relation to the domestic violence for total 18 people who represent Royal Thai Police, Office of the Attorney General, Court of Justice, Lawyers Council of Thailand, physicians, NGOs relating to domestic violence, academic, OSCC officers and the battered wife who murders her own husband. The purposive sampling is applied to select the qualified people as the key informants by taking into account of acquisition of information covering important issues in connection with the legal proceedings against the wife having the battered wife syndrome murders her own husband. In addition, an interview schedule/form is also applied in data collection.

The instrument for quantitative means is the questionnaires and the instrument for qualitative means is the in-depth interview.

In analysis of quantitative information, the descriptive statistics is utilized to classify frequency, to find percentage, mean, standard deviation so as to explain opinion and attitudes towards legal measure in the legal proceedings against the wife having the battered wife syndrome murders murder her own husband. Besides, the inferential statistics and the T-test is utilized in the test of legal measure on legal proceedings against the wife having the battered wife syndrome murders her own husband in distinction between mental disorder of gender and marital status. The One – Way Analysis of Variance: ANOVA by the F-test made a test of legal measure on legal proceedings against the wife having the battered wife syndrome murders her own husband in distinction between mental disorder among age, education level and occupation. In analysis of qualitative information, a technical means of the content analysis is utilized.

6.1 Summary of this research is briefed as follows:

Part I. Matters of fact in Thai society in issue of the battered wife murdering her own husband who has battered or tortured such wife.

1.1 From a belief of the male being superior than the female, the way of bringing up in different manner between the male child and the female child causes distinction of role and power of family member and in the society and bringing up the child until growing up filled with attitudes and implantation of difference between the man and the woman i.e. the man is the person taking lead, power and decision or determination of life of family members. In the belief of superiority of the man over the woman could result act in violent way to punish the family members whenever any person does not satisfy the leader's desire or to instruct the family members to believe in the leader in compliance with the patriarchal society perspectives theories. The wife who commits murder has a ground or motivation in murdering her own husband from being formerly battered or acted violence in the family. Most people in the sample group view that there have been incidents of torture

or battery until critical point, the public sector and the community should intervene to provide assistance and solution in this problem or the domestic violence incidents.

1.2 Form of the domestic violence has been changed to be more severe than before such as acid attack, burning, abuse of power to coerce the close women for having sexual intercourse, revile against the wife in public place or the wife's working place and other new forms of violence relating to technology or social media such as record forcibly a video while having sexual intercourse, sharing or disseminating pornography of woman to the public or threatening to share or disseminate the wife's pornography to the public etc. that damaging the woman's reputation and being ashamed.

1.3 The woman cannot flee from the domestic violence until being the battered wife syndrome, as the woman/wife has to tolerate to cohabit with the husband who commits violence, mythology and implanted belief to be patient in the family life and to conceal direful or ashamed matters in the family. As a result, a number of women have not dared to ask for assistance or end couple relationship because they are worried about condemnation against her as origin of breaking-up.

1.4 As for problem and obstacle in criminal proceedings against the wife murdering her husband as a result of the battered wife syndrome, the finding from most people in the sample group and analysis is the legal actions against the wife murdering her husband as a result of the battered wife syndrome have problems, inappropriateness and unfairness to the offender. As the ground of offending come from situation of being strangled by former constant battery or torture by the husband and a belief of being able to flee from such domestic violence and fearful to detriments arisen in the future, the wife commits murder when a good time comes up i.e. her husband does not watch out and while she cannot also control herself due to fear and mental distress. By this situation, the psychiatrist and the psychologist should have important role in this kind of case in potential proof that the woman committed murder at the time of having the battered wife syndrome, then such wife deserve assistance and treatment as the patient but not the general criminal.

1.5 As regards a problem of unawareness of the legal rights, the interview to the domestic violence victim/survivor finds out the survivor woman does not know of the person or government agency whom the survivor can approach

and ask for assistance. Her own original family or relatives has not been approached and asked for assistance because of these following three reasons 1) Not wish for the original family to know of being battered or tortured because the survivor being disgraceful to failure of family and fearful to be forcible separated from the husband 2) Where the survivor relocates to work or settle in distant area away from the original family, travel to ask for assistance or flee from such domestic violence being hard to do and having to spend a lot of money. Therefore the survivor has to endure to cohabit with the perpetrator. 3) The survivor having concern of the child's well-being and security if the survivor has to flee the place to reunite with her original family. If the survivor is being aware of her legal rights and opportunity, the survivor can cope with any restriction and obstacle at least fleeing from the domestic violence. In the meantime, the survivor can approach government agency and NGOs such as a charity foundation that provides helpline or complaint center and emergency home for the domestic violence female survivor where the survivor is also allowed to live with her child, to attend vocational training and the systematic assistance regardless of the woman will then return to reunite with her husband who commits the domestic violence against her. From the interview, the wife murdering her husband is aware of the foundation which can help her from the TV program but having never known the government agency provided for assistance in every province in Thailand. Accordingly, the public sector must review their role and carry out public relation to get access to the people so as to utilize the existing mechanism to respond effectively to the need people.

1.6 As regards a problem of unawareness of the legal duties, the people view that domestic violence is ordinary and acceptable. When it occurs and comes to their knowledge, the people do not want to intervene or involve in it due to perception of internal affairs of the family. If anybody intervenes or involve in it and the couple recover their relationship, either of them or both will blame or hate such person. The people, actually, are not aware of their legal duties at least notification or report the competent officer when the people know about the domestic violence. Otherwise, the people may not be sure of whether the derived information is accurate or not and worried about reporting to the competent officer. If they know afterward that the incident is not the domestic violence at all, they can be accused of making the

false statement and report. Section 5 of the Protection of Domestic Violence Victims Act B.E.2550 provides a duty and a protection of the informant in case of faithful act. The public sector should intensively carry out public relation and campaign to raise awareness of the people's duty to report when knowing of any domestic violence and realizing not to neglect all forms of the domestic violence.

Part II. Legal problems in protection of the wife murdering her husband as a result of having the battered wife syndrome

2.1 As for the protection problem under the Penal Code, it is found out that the case of the wife murdering her husband as a result of having the battered wife syndrome is not potential to legal benefits of exemption of offense, exemption of punishment, reduction and extenuating of punishment under the Penal Code at all because the element of murdering the husband is not in line with nature and cause of protection. In addition, referring on account of being unsound mind under Section 65 cannot be applied to this case arising out of the unclearness and coverage of definition of being mental deficiency, mental psychosis or mental infirmity and the unclearness of definition and legal acceptance of the battered wife syndrome.

2.2 As for the protection problem under the Protection of Domestic Violence Victims Act B.E.2550, it is found out that the protection under this Act cannot be applied to the case of the wife murdering her husband as a result of having the battered wife syndrome by the reason of such offending act is beyond scope of "Domestic Violence" as prescribed in the Act i.e. the offending act targeting the husband's life, not body, mind or health of a person in the family. Most people in the sample group view that the Protection of Domestic Violence Victims Act B.E.2550 can protect the woman the best from the domestic violence.

2.3 As for the protection problem under other laws, the unclearness of definition and legal acceptance of the battered wife syndrome is found out. Interpreting such wife to be an unsound mind who is protected under the Criminal Procedure Code, the Mental Health Act B.E.2551 and the Regulation of the Office of Attorney-General on the criminal proceedings of the public prosecutor B.E.2547 cannot be done. The law enforcers cannot also interpret broadly, as it would

affect the damaged person's rights in the case. People in the sample group view that Thai laws have not yet efficiently remedied the people affected by the domestic violence.

2.4 As for the problem of performing duties of personnel in judicial process, it is found out that the legal proceedings against the wife murdering her husband at the time of having the battered wife syndrome have such problem in various stages from the inquiry, the evidence collection, the public prosecutor's decision to prosecute, the court role in the trial, the skill of lawyer in the domestic violence case and the attitudes of people involved in the domestic violence. The research result indicates the opinions towards the legal proceedings against such wife murdering her husband are statistically different at the significant level. These problems impact on the way of legal proceedings that do not protect such wife murdering her husband at the time of having the battered wife syndrome to obtain fairness in the status of the domestic violence survivor as well.

2.5 As for the penalty under the Penal Code, it is found out that people in the sample group do not concur with imprisonment or execution inflicting to the wife murdering her husband at the time of having the battered wife syndrome and various measures under the Protection of Domestic Violence Victims Act B.E.2550 are appropriately preferred to apply.

6.2 Suggestions

The researcher has these following three suggestions.

6.2.1 Laws and regulations

1) To revise the definition as prescribed in the Protection of Domestic Violence Victims Act B.E.2550 to include an offense to life "life" of a person in the family because the wife murdering her husband in this case is a domestic violence in respect of cause, action, perpetrator and victim. The definition in the Act is limited to body, mind or health of a person in the family only; therefore, a revision to the definition of the domestic violence in Section 3 should be as follows:

“Domestic Violence” means any act by intention aiming to endanger life, body, mind, gender or health of a person in the family, the act by intention being likely to endanger life, body, mind or health of a person in the family, to exert coercion or immoral influence over a family member in order to wrongfully cause him to do, not to do or yield to any act but not including negligent act for instance forcing the child to keep staying on limited area without reasonable ground.”

This revision to cover aiming to endanger life would be appropriate and fair in trial and inflicting a penalty. The inquiry official should charge the domestic violence offense aside from the charge of murder to death under Section 288 of the Penal Code, as one action being offense under several laws. This way would be beneficial to enable the court can take into account of provisions and procedure under the Protection of Domestic Violence Victims Act B.E.2550 into application especially the court may exercise an discretion under Section 12 to take measure of rehabilitation, therapy, control of the offender’s behavior, indemnification to contribute relief operation and public service works, omission of the act in relation to the domestic act or taking parole pursuant to means and term determined by the court in lieu of punishment of the offender.

2) To include the domestic violence by intention aiming to endanger life so as to oblige the inquiry official to handle referral of the alleged to the psychiatrist for the mental check-up and assessment in all cases. At present, the inquiry official has discretion to carry out a referral of the alleged to a mental check-up but the battered wife syndrome of the wife murdering her husband has not been appeared all the time. It is quite hard to know or notice.

3) To record motion picture and voice of the offending wife in her condition proximate to the time of such incident after the inquiry official obtained the report of such wife murdering her husband, in benefit of analysis or consideration by the public prosecutor and the court of mental condition of how many level of the battered wife syndrome are.

4) To promulgate the court ordinance in relation to consideration and judgment in the domestic violence case by comparison to the Thonburi Criminal Court’s ordinance on the guideline on the protection of the domestic violence survivor B.E.2552 which classifies specifically the domestic violence case in the register. The

court may have directive to provide the provisional measure and the court should examine to find the facts in the case. Where necessity and cause likely to believe are found the defendant having the battered wife syndrome at the time of offending, the court requires a referral of the defendant to be physically and mentally checked-up and the expert testimony to prove whether the defendant having the battered wife syndrome. If the defendant is found convicted with wicked intention and without the battered wife syndrome at the time of commission, the defendant must be inflicted as ordinary criminal convicted. But the defendant is found convicted while having the battered wife syndrome; the court can apply measures under Section 12 of the Protection of Domestic Violence Victims Act B.E.2550 as other appropriate means in lieu of inflicting a penalty against the offender.

5) To lessen steps of the petition to acquire protection under the Protection of Domestic Violence Victims Act B.E.2550 by omission of making complaint and accusation because, occurrence of the domestic violence, the involved people do not wish for prosecution or legal proceedings against the domestic violence perpetrator.

6) To have the Lawyers Council of Thailand provided the training on the legal proceedings of the domestic violence case which is delicate and sensitive with several details for proof before the court to ensure fairness to the litigants. Moreover, the pro-bono lawyers who have knowledge and experience in relation to the legal proceedings of the domestic violence should be seriously provided upon request for taking action in the domestic violence.

6.2.2 Policy

1) As to the domestic violence is delicate, caused by many factors and have multi-dimension to consider, the personnel in judicial process who have duties in this kind of case must have appropriate knowledge, skill and attitudes in order to prevent, assist and facilitate justice to the people affected by the domestic violence. The domestic violence division should also be set up in concerned government agency i.e. Ministry of Social Development and Human Security which have direct responsibility, the Royal Thai Police which has important role in initial stage of judicial process, the Office of Attorney General and the Court of Justice.

2) Investigation to explore behavior of the wife murdering her husband at the time of having the battered wife syndrome, the murdered husband and evidence such as the medical record are all significant to prove the battered wife syndrome appeared in the inquiry report and the court trial. To require the responsible inquiry official in charge of the case to take such action for those evidences may be difficult due to the loaded work in general criminal cases. A focal government agency should act as coordinator with the inquiry official and act as investigator to find details of circumstances and various evidences mentioned above. The specialized officers in field of domestic violence incident and adequate budget should be provided. Such appropriate authority should be under Ministry of Social Development and Human Security having direct duty on this and have its offices in every province of Thailand.

3) The public sector should conduct public relation and dissemination of knowledge about nature of the battered wife syndrome, procedure and concerned agencies/organizations to the officials in judicial process. The public sector should conduct public relation, campaign and dissemination of knowledge about termination of the domestic violence, equality between man and women, rights and access to legal rights in occurrence of the domestic violence

4) The public sector should set up the community organization, supporting financially to be a watchdog center on the domestic violence in order to provide advice, counseling, preliminary assistance, coordination with the government agency and the private sector and to be information center to explore or investigate behaviors in collaboration with the inquiry official, multi-disciplinary team or probation officers.

5) The public sector should set up a fund for operation to provide protection of the domestic violence survivor such as compensation, transportation fee, accommodation fee etc. including the financial support provided to the community organization in form of a specific fund with its own budget or a fund having right to money allocation from other fund under the law on promotion of social welfare, the law on child protection, the law on aged people, the law on anti-human trafficking, the law on promotion and development of the disabled's quality of life in order to avoid overlap in utilization of the budget for the same objective or similar objective.

6) The public sector should develop the way of complaint or report by utilization of modern technology for quick receipt of the report and assistance such as

on-line complaint, social media network, GPS system installed in the mobile phone to report precise location or place of incident

7) The public sector should increasingly provide assistance on integration manner by covering before and after the incident, in legal, medical and well-being coverage for the battered or tortured woman such as new accommodation and occupation.

6.2.3 Social

1) Should support people to realize in legal rights and duties and to pay attention to the domestic violence incident and situation that is no longer the private affairs or family affairs, accordingly every ones in the society have duty by law and to participate in prevention and end of the domestic violence.

2) Should conduct public relation to the public to encourage personal or surrounding technology such as mobile phone to record picture/motion picture and voice of the domestic violence incident arisen or committed constantly by the husband to be evidence of report and prosecution, analysis or assessment of mental condition of the wife having the battered wife syndrome who murders her husband

3) The media should cooperate with public relation and campaign to have social adjustment in relation to the domestic violence and mythology of inequality between genders under the principle that nobody in whatever status or condition deserves the violent act.

6.2.4 Academic

1) Access to the sample group who are the wife murdering her husband and the husband committing the domestic violence is difficult because of their concealment of identity and circumstances

2) Should continue study to top up knowledge and finding in issue of efficiency of the application of Section 12 of the Protection of Domestic Violence Victims Act B.E.2550 that authorizing the court to take measure of rehabilitation, therapy, control of the offender's behavior, indemnification to contribute relief operation and public service works, omission of the act in relation to the domestic act or taking parole pursuant to means and term determined by the court in lieu of

punishment of the offender into application with the wife murdering her husband as a result of having the battered wife syndrome.

3) Should continue study to top up knowledge and finding in issue of problems and obstacles in coordination among personnel in judicial process and multi-disciplinary team involved in the domestic violence case by the detailed comparative study into each occupation.

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APPENDIX

แบบสอบถาม
งานวิจัยเรื่อง “การฆาตกรรมโดยภรรยาที่ถูกทารุณจากสามี
: กรณีศึกษามาตรการดำเนินคดีในประเทศไทย”

คำชี้แจง

แบบสอบถามนี้ ใช้เพื่อศึกษาสภาพข้อเท็จจริงในปัจจุบัน ปัญหาและอุปสรรคของการคุ้มครองภรรยาที่สามีขณะที่มีอาการของภรรยาที่ถูกทำร้าย (Battered Wife Syndrome) เพื่อศึกษาหาแนวทางการดำเนินคดีที่เหมาะสมและเป็นธรรมแก่ภรรยา กลุ่มที่กระทำผิด ข้อมูลการศึกษานี้จะนำเสนอเป็นภาพรวม และการตอบของท่านจะถูกเก็บไว้เป็นความลับ ขอขอบพระคุณเป็นอย่างสูง

นางสาวสุรีย์ฉาย พลวัน

ตอนที่ 1 ข้อมูลส่วนบุคคล

คำชี้แจง โปรดทำเครื่องหมาย ✓ ในช่อง [] และ/หรือ กรอกข้อมูลตามความเป็นจริงของท่าน

1. เพศ [] 1. ชาย [] 2. หญิง
2. อายุ
[] 25-30 ปี [] 31-35 ปี [] 36-40 ปี [] 41-45 ปี [] 46 ปีขึ้นไป
3. สถานภาพสมรส
[] 1. โสด [] 2. แต่งงานมีบุตร คน [] 3. หม้าย/หย่า มีบุตร คน
4. ระดับการศึกษาสูงสุด [] 1. ประถมตรี [] 2. ประถมโท [] 3. ประถมเอก
[] 4. ประกาศนียบัตรเนติบัณฑิตไทย [] 5. อื่นๆ ระบุ.....
5. ข้อมูลด้านการทำงาน
อาชีพ [] 1. พนักงานสอบสวน
[] 2. พนักงานอัยการ
[] 3. ผู้พิพากษา
[] 4. ทนายความ
[] 5. นักวิชาการ
[] 6. แพทย์ ระบุสาขา.....
[] 7. องค์กรเอกชนที่เกี่ยวข้องกับความรุนแรงในครอบครัว
[] 8. ผู้ปฏิบัติงานที่ศูนย์พึ่งได้, ศูนย์ช่วยเหลือสังคม (OSCC)
[] 9. นักสังคมสงเคราะห์
[] 10. นักจิตวิทยาที่ปรึกษา
6. ประสบการณ์การทำงาน
[] 1. น้อยกว่า 5 ปี [] 2. ทำงาน 6-10 ปี [] 3. ทำงาน 11-15 ปี [] 4. ทำงาน 16 ปีขึ้นไป

ตอนที่ 2 ความคิดเห็นทั่วไป

1. ท่านเข้าใจความหมายของกลุ่มอาการภรรยาที่ถูกทำร้าย(Battered Wife Syndrome) หรือไม่
 1. ทราบ 2. ไม่ทราบ
2. ท่านทราบกระบวนการดำเนินคดีอาญาแก่ผู้กระทำผิดตามประมวลกฎหมายวิธีพิจารณาความอาญาหรือไม่
 1. ทราบ 2. ไม่ทราบ
3. ท่านเคยมีประสบการณ์โดยตรงหรือเกี่ยวข้องกับคดีภรรยาที่ฆ่าสามีขณะที่มีอาการภรรยาที่ถูกทำร้ายหรือไม่ทั้งนี้
 อาการภรรยาที่ถูกทำร้าย(Battered Wife Syndrome-BWS) หมายความว่ากลุ่มอาการทางจิตที่เป็นแบบชั่วคราวซึ่ง
 มักจะพบในผู้หญิงที่เคยถูกกระทำทารุณทางร่างกายทางเพศทางเสรีภาพหรือได้รับการกระทำทารุณทางจิตใจอย่าง
 ร้ายแรงโดยคู่สมรสของตนมาก่อน
 1. เคยมีประสบการณ์ 2. ไม่เคยมีประสบการณ์
4. ท่านทราบหรือไม่ว่าการดำเนินคดีอาญากับภรรยาที่ฆ่าสามีขณะที่มีอาการภรรยาที่ถูกทำร้ายในปัจจุบันนี้มีปัญหา
 และอุปสรรค
 1. ทราบ 2. ไม่ทราบ
5. ท่านมีแนวคิดในการแก้ไขปัญหาคือข้อบกพร่องในการดำเนินคดีตามข้อ 4. อย่างไร

6. ในเบื้องต้นท่านมีทัศนคติอย่างไรกับภรรยาที่ฆ่าสามีในขณะที่มีอาการภรรยาที่ถูกทำร้าย(Battered Wife
 Syndrome)และต้องอยู่ในฐานะผู้ต้องหาและผู้เสียหายในเวลาเดียวกัน

7. ท่านคิดว่าควรมีแนวทางในการช่วยเหลือผู้หญิงกลุ่มนี้อย่างไร

8. ท่านเห็นด้วยหรือไม่ที่ให้มีการแก้ไขกฎหมายที่เกี่ยวข้องกับการดำเนินคดีกับภรรยาที่ฆ่าสามีขณะที่มีอาการ
 ภรรยาที่ถูกทำร้าย
 1. เห็นด้วย 2. ไม่เห็นด้วย

ตอนที่ 3 ข้อมูลความเห็นเกี่ยวกับมาตรการทางกฎหมายในการดำเนินคดีกับภรรยาที่ฆ่าสามีขณะที่มีอาการภรรยาที่ถูกทำร้าย

ถ้าชี้แจง โปรดทำเครื่องหมาย ✓ ในช่องว่างตามความคิดเห็นของท่านและให้คะแนนดังนี้

- 5 ถ้าท่านเห็นด้วยในข้อความ ในระดับมากที่สุด
- 4 ถ้าท่านเห็นด้วยในข้อความ ในระดับมาก
- 3 ถ้าท่านเห็นด้วยในข้อความ ในระดับปานกลาง
- 2 ถ้าท่านไม่เห็นด้วยในข้อความ
- 1 ถ้าท่านไม่เห็นด้วยอย่างมากในข้อความ

ความเห็นเกี่ยวกับมาตรการทางกฎหมายในการดำเนินคดีกับภรรยาที่ฆ่าสามีขณะที่มีอาการภรรยาที่ถูกทำร้าย(Battered Wife Syndrome- BWS)	ระดับความคิดเห็น				
	5 เห็นด้วยมากที่สุด	4 เห็นด้วยอย่างมาก	3 เห็นด้วยปานกลาง	2 ไม่เห็นด้วย	1 ไม่เห็นด้วยอย่างมาก
1.ท่านเห็นด้วยเพียงใดว่าความรุนแรงในครอบครัวเป็นปัญหาที่มีผลกระทบต่อความเป็นอยู่ของครอบครัวไทย					
2.ท่านเห็นด้วยเพียงใดว่าความรุนแรงในครอบครัวเป็นปัญหาที่มีผลกระทบต่อความเป็นอยู่ของชุมชน					
3.ท่านเห็นด้วยเพียงใดว่าความรุนแรงในครอบครัวเป็นปัญหาสำคัญของประเทศไทย					
4.ท่านเห็นด้วยเพียงใดว่าในสังคมไทยมีความเชื่อเรื่องชายมีอำนาจเหนือผู้หญิงจนเป็นเหตุให้มีการกระทำด้วยความรุนแรงในครอบครัว					
5.ท่านเห็นด้วยเพียงใดว่าในสังคมไทยยังคงให้ความสำคัญเรื่องปัญหาภายในครอบครัวควรเก็บเป็นความลับไม่ให้บุคคลภายนอกรับรู้					
6.ในกรณีที่มีปัญหาหรือสถานการณ์รุนแรงในครอบครัวถึงขั้นวิกฤต (เช่น มีการทารุณกรรมหรือการทำร้ายร่างกาย) ท่านเห็นด้วยเพียงใดว่าทั้งรัฐและชุมชนควรเข้ามาให้ความช่วยเหลือ					
7.เมื่อผู้หญิงที่ตกอยู่ในภาวะอาการภรรยาที่ถูกทำร้าย(BWS)ได้กระทำการตอบโต้สามีที่ทำร้ายตน ผู้หญิงมักจะถูกตั้งข้อหาฆ่าคนตายตามประมวลกฎหมายอาญาม.288 ดังนั้นท่านเห็นด้วยเพียงใด					
8.เมื่อผู้หญิงที่ตกอยู่ในภาวะอาการภรรยาที่ถูกทำร้าย(BWS)ได้กระทำการตอบโต้สามีที่ทำร้ายตน ผู้หญิงมักจะถูกตั้งข้อหาทำร้ายผู้อื่นจนเป็นเหตุให้ผู้อื่นถึงแก่ความตายตามประมวลกฎหมายอาญาม.290 ดังนั้นท่านเห็นด้วยเพียงใด					
9.เมื่อผู้หญิงที่ตกอยู่ในภาวะอาการภรรยาที่ถูกทำร้าย(BWS)ได้กระทำการตอบโต้สามีที่ทำร้ายตน ผู้หญิงมักจะถูกตั้งข้อหาพยายามฆ่าตามประมวลกฎหมายอาญาม.80 ดังนั้นท่านเห็นด้วยเพียงใด					
10.ท่านเห็นด้วยเพียงใดบทบัญญัติในประมวลกฎหมายอาญาม.65วรรค 1 ที่มีกรณขเว้น โทษ/ลดโทษให้แก่ผู้กระทำความผิดที่มีจิตบกพร่อง เป็นโรค					

ความเห็นเกี่ยวกับมาตรการทางกฎหมายในการดำเนินคดีกับภรรยาที่ฆ่าสามี ขณะที่มีอาการภรรยาที่ถูกทำร้าย(Battered Wife Syndrome- BWS)	ระดับความคิดเห็น				
	5 เห็นด้วย มากที่สุด	4 เห็นด้วย อย่างมาก	3 เห็นด้วย ปานกลาง	2 ไม่เห็น ด้วย	1 ไม่เห็น ด้วย อย่างมาก
จิต หรือจิตฟั่นเฟือน ควรนำมาใช้กับผู้หญิงที่ได้ฆ่าสามีในขณะที่มีอาการภรรยาที่ถูกทำร้าย(BWS)					
11. ท่านเห็นด้วยเพียงใดกับบทบัญญัติในประมวลกฎหมายอาญามา.65 วรรค 2 ที่มีการลดโทษให้แก่ผู้กระทำผิดที่มีจิตบกพร่อง เป็น โรคจิต หรือจิตฟั่นเฟือนแต่ยังสามารถรู้ผิดชอบอยู่บ้างหรือบังคับตนเองได้บ้าง ควรนำมาใช้กับผู้หญิงที่ได้ฆ่าสามีในขณะที่มีอาการภรรยาที่ถูกทำร้าย (BWS)					
12. ท่านเห็นด้วยเพียงใดกับกฎหมายอาญาที่ใช้อยู่ในปัจจุบันว่ามีความ เหมาะสมกับการกระทำผิดของภรรยาที่ฆ่าสามีเนื่องจากถูกกระทำด้วยความ รุนแรงในครอบครัว					
13. ท่านเห็นว่ากฎหมายวิธีพิจารณาความอาญาที่ใช้อยู่ในปัจจุบันนี้ มีความเหมาะสมเพียงใดกับการกระทำผิดของภรรยาที่ฆ่าสามีเนื่องจาก ถูกกระทำด้วยความรุนแรงในครอบครัว					
14. ท่านเห็นด้วยเพียงใดกับบท โทและขั้นตอนการดำเนินคดีตาม ประมวลวิธีพิจารณาความอาญาที่ใช้ในการดำเนินคดีอาญาเป็นการ ทั่วไปกับภรรยาที่ฆ่าสามีในขณะที่มีอาการภรรยาที่ถูกทำร้าย(BWS)					
15. ท่านเห็นด้วยเพียงใดว่าพระราชบัญญัติคุ้มครองผู้ถูกกระทำด้วย ความรุนแรงในครอบครัว พ.ศ.2550 สามารถคุ้มครองหญิงมิให้ถูก กระทำด้วยความรุนแรงได้					
16. ในภาพรวมท่านเห็นว่ากฎหมายของประเทศไทยสามารถป้องกัน และแก้ไขปัญหาคความรุนแรงในครอบครัวได้					
17. ในภาพรวมท่านเห็นว่ากฎหมายของประเทศไทยสามารถเยียวยาผู้ ได้รับผลกระทบจากความรุนแรงในครอบครัวได้อย่างเหมาะสม					
18. ท่านเห็นด้วยเพียงใดกับการกำหนดให้เจ้าหน้าที่ตำรวจที่ไปถึงที่ เกิดเหตุที่มีกระทำความรุนแรงในครอบครัวบันทึกสภาพจิตใจและ พฤติการณ์ของภรรยาผู้ก่อเหตุฆ่าสามี					
19. ท่านเห็นด้วยเพียงใดกับการกำหนดให้พนักงานสอบสวนแสวงหา พยานหลักฐานเกี่ยวกับความเป็นมาแห่งชีวิตและพฤติการณ์อันเป็น อาชญากรรมของผู้ก่อเหตุฆ่าสามี					
20. ท่านเห็นด้วยเพียงใดกับการกำหนดให้พนักงานสอบสวนแสวงหา พยานหลักฐานเกี่ยวกับความเป็นมาแห่งชีวิตและพฤติการณ์อันเป็น อาชญากรรมของผู้ก่อเหตุฆ่าสามี					
21. ท่านเห็นด้วยเพียงใดกับการกำหนดให้พนักงานสอบสวนตรวจสอบ ประวัติความเจ็บป่วยทางจิตและ โรคทางกายที่เกี่ยวข้องของภรรยาผู้ก่อ เหตุฆ่าสามี					
22. ท่านเห็นด้วยเพียงใดกับการกำหนดให้พนักงานสอบสวนตรวจสอบ ประวัติความเจ็บป่วยทางจิตและ โรคทางกายที่เกี่ยวข้องของสามีที่ถูก ภรรยาฆ่า					
23. ท่านเห็นด้วยเพียงใดกับการกำหนดให้พนักงานสอบสวน ดำเนินการส่งภรรยาที่ฆ่าสามีไปหาแพทย์และจิตแพทย์ที่สถาน บำบัดรักษาที่เป็นที่ยอมรับและได้มาตรฐาน โดยไม่ชักช้าเพื่อรับการ					

ความเห็นเกี่ยวกับมาตรการทางกฎหมายในการดำเนินคดีกับภรรยาที่นำสามี ขณะที่มีอาการภรรยาที่ถูกทำร้าย(Battered Wife Syndrome- BWS)	ระดับความคิดเห็น				
	5 เห็นด้วย มากที่สุด	4 เห็นด้วย อย่างมาก	3 เห็นด้วย ปานกลาง	2 ไม่เห็น ด้วย	1 ไม่เห็น ด้วย อย่างมาก
ตรวจวินิจฉัยและประเมินอาการเบื้องต้นว่าภรรยาที่นำสามีอยู่ในกลุ่ม อาการภรรยาที่ถูกทำร้าย(BWS)หรือไม่					
24. ท่านเห็นด้วยเพียงใดกับการกำหนดให้พนักงานอัยการบรรยาย ข้อเท็จจริงเกี่ยวกับความเป็นมาแห่งชีวิตและพฤติกรรมอันเป็นอาชญาใน ส่วนการสอบสวนที่เป็นคุณเป็นโทษแก่ภรรยาที่นำสามีเพื่อให้ศาล ใช้ประกอบดุลยพินิจในการกำหนดโทษ การลงโทษ หรือกำหนด มาตรการอื่นใด					
25. ท่านเห็นด้วยเพียงใดกับการกำหนดให้ผู้พิพากษาใช้หลักการค้นหา ความจริง(fact-finding) แบบระบบไต่สวน เกี่ยวกับความเป็นมาแห่ง ชีวิตและพฤติกรรมอันเป็นอาชญาของภรรยาที่นำสามี หากศาลเห็นเป็น การสมควรหรือเพื่อประโยชน์แห่งความยุติธรรม					
26. ท่านเห็นด้วยเพียงใดกับการกำหนดให้ผู้พิพากษาใช้หลักการค้นหา ความจริง(fact-finding) แบบระบบไต่สวน เกี่ยวกับความเป็นมาแห่ง ชีวิตและพฤติกรรมอันเป็นอาชญาของสามีที่ถูกภรรยาทำ หากศาลเห็น เป็นการสมควรหรือเพื่อประโยชน์แห่งความยุติธรรม					
27. ท่านเห็นด้วยเพียงใดกับการกำหนดระเบียบการดำเนินคดีของศาล ใหม่เพื่อให้เกิดความเป็นธรรมมากยิ่งขึ้น					
28. ท่านเห็นด้วยเพียงใดกับการกำหนดให้ผู้พิพากษาในคดีภรรยานำสามี เรียกพนักงานแพทย์มาให้ถ้อยคำหรือให้การเกี่ยวกับพฤติกรรมของ ภรรยาที่นำสามีว่าอยู่ในกลุ่มอาการภรรยาที่ถูกทำร้าย(BWS) หรือไม่					
29. ท่านเห็นด้วยเพียงใดกับการใช้โทษจำคุกหรือประหารชีวิตกับ ภรรยาที่นำสามีขณะที่มีอาการภรรยาที่ถูกทำร้าย (BWS)					
30. ท่านเห็นด้วยเพียงใดกับการใช้มาตรการอื่นแทนการรับโทษจำคุก หรือประหารชีวิต เช่น การบังคับบำบัด กับภรรยาที่นำสามีขณะที่มี อาการภรรยาที่ถูกทำร้าย (BWS)					

**ตอนที่ 4. ข้อคิดเห็นและข้อเสนอแนะเกี่ยวกับมาตรการทางกฎหมายในการดำเนินคดีกับภรรยาที่ฆ่าสามีขณะที่มี
อาการภรรยาที่ถูกทำร้าย(Battered Wife Syndrome)**

4.1 ประเด็นกฎหมาย

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4.2 ประเด็นการบริหารกระบวนการยุติธรรม

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4.3 ประเด็นสังคม

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4.4 ประเด็นที่เกี่ยวข้องกับการช่วยเหลือผู้หญิงที่เป็นเหยื่อความรุนแรงในครอบครัว

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4.5 ประเด็นอื่นๆ

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ขอขอบคุณเป็นอย่างสูงที่ให้ความร่วมมือ

งานวิจัยเรื่อง “การฆาตกรรมโดยภรรยาที่ถูกทารุณจากสามี : กรณีศึกษามาตรการดำเนินคดีในประเทศไทย”

แบบสัมภาษณ์พนักงานสอบสวน

1. ท่านมีความคิดเห็นอย่างไรในกรณีที่ภรรยาฆ่าสามีเนื่องจากถูกสามีทำร้าย
2. ท่านคิดว่ากระบวนการสอบสวนที่ใช้อยู่ในปัจจุบัน เหมาะสมกับคดีที่มีลักษณะของการกระทำด้วยความรุนแรงในครอบครัวหรือไม่เพราะเหตุใด
3. การที่ท่านได้รับแจ้งความกรณีภรรยาที่ถูกสามีทำร้ายร่างกาย ท่านได้นำ พ.ร.บ. คู่สมรสผู้ถูกกระทำด้วยความรุนแรงในครอบครัว พ.ศ. 2550 มาใช้ในการสอบสวนด้วยหรือไม่เพราะเหตุใด
4. การที่ท่านได้รับแจ้งความกรณีภรรยาฆ่าสามีเนื่องจากถูกสามีทำร้ายท่านได้นำ พ.ร.บ. คู่สมรสผู้ถูกกระทำด้วยความรุนแรงในครอบครัว พ.ศ. 2550 มาใช้ในการสอบสวนด้วยหรือไม่เพราะเหตุใด
5. เมื่อพนักงานสอบสวนได้ไปถึงที่เกิดเหตุที่ภรรยาฆ่าสามีเนื่องจากถูกสามีทำร้าย ท่านได้ประเมินสภาพร่างกายและจิตใจของภรรยาผู้ก่อเหตุฆ่าสามีหรือไม่เพราะเหตุใด
6. หากท่านได้ประเมินสภาพจิตใจของภรรยาผู้ก่อเหตุฆ่าสามีแล้วเห็นว่ามีความผิดปกติ ท่านจะส่งตัวผู้ต้องหาไปพบแพทย์เพื่อตรวจพิสูจน์สภาพจิตใจอันจะทำให้ผู้ต้องหาเข้าลักษณะของการกระทำตามประมวลกฎหมายอาญา มาตรา 65 หรือไม่
7. จากข้อ 6. พนักงานสอบสวนจะใช้หลักเกณฑ์ใดในการประเมินสภาพจิตใจของผู้ต้องหามีความผิดปกติทางจิตใจ เพื่อที่จะส่งตัวไปพบแพทย์ต่อไป
8. ท่านเห็นว่า การแสวงหาพยานหลักฐานอื่น นอกเหนือจากที่พบในที่เกิดเหตุ (เช่น การตรวจสอบพฤติการณ์หรือความประพฤติอันเป็นอาชิมของสามีที่ถูกภรรยาฆ่า, พยานแวดล้อม, บันทึกการรักษาพยาบาลของผู้ต้องหา ก่อนหน้าที่จะเกิดเหตุ) เพื่อให้ประกอบสำนวนการสอบสวนเป็นสิ่งที่ช่วยอำนวยความสะดวกให้แก่ผู้ต้องหามากขึ้นหรือไม่เพราะเหตุใด
9. ในการดำเนินการตามข้อ 8. มีปัญหาหรืออุปสรรคใดในการรวบรวมพยานหลักฐานดังกล่าวหรือไม่
10. เมื่อภรรยาผู้ก่อเหตุได้ให้การว่าตนได้ฆ่าสามีขณะที่มีอาการภรรยาที่ถูกทำร้าย แนวทางการสอบสวนเพื่อให้เกิดความเป็นธรรมแก่ทุกฝ่ายควรเป็นอย่างไร

11. ท่านเห็นว่ากลุ่มอาการกรรยาที่ถูกทำร้าย ควรได้รับความคุ้มครองทางกฎหมายหรือไม่ เพราะเหตุใด
- 12.การนำม.65 แห่งประมวลกฎหมายอาญาเรื่องการยกเว้นความผิดและการลดโทษแก่บุคคลจิตบกพร่องมาใช้กับกรณีของกรรยาที่ฆ่าสามีขณะที่มีอาการกรรยาที่ถูกทำร้าย ท่านเห็นว่ามีความเหมาะสมหรือไม่ เพราะเหตุใด
- 13.การนำมาตราการตามพ.ร.บ คุ้มครองผู้ถูกกระทำ ความรุนแรงในครอบครัว พ.ศ.2550 มาใช้กับกรณีของกรรยาที่ฆ่าสามีขณะที่มีอาการกรรยาที่ถูกทำร้าย ท่านเห็นว่ามีความเหมาะสมหรือไม่เพียงใด
- 14.การดำเนินคดีกับกรรยาที่ฆ่าสามีเนื่องจากถูกสามีทำร้ายขณะที่มีอาการกรรยาที่ถูกทำร้ายจำเป็นต้องได้รับการพิจารณาคดีที่แตกต่างไปจากการดำเนินคดีปกติหรือไม่ เพราะเหตุใด
15. เพื่ออำนวยความสะดวกให้แก่ผู้ความในคดีอย่างแท้จริงตามบริบทข้อเท็จจริงทางคดี ควรมีแนวทางการแก้ไขกฎหมายหรือปรับปรุงกระบวนการยุติธรรมแก่กรรยาที่ฆ่าสามีขณะที่มีอาการกรรยาที่ถูกทำร้ายอย่างไร

งานวิจัยเรื่อง “การขาดกรรมโดยภรรยาที่ถูกทารุณจากสามี : กรณีศึกษามาตรการดำเนินคดีในประเทศไทย”
แบบสัมภาษณ์พนักงานอัยการ

1. ท่านมีความคิดเห็นอย่างไรในกรณีที่ภรรยาฆ่าสามีเนื่องจากถูกสามีทำร้าย
2. ท่านคิดว่าการดำเนินคดีทั้งกระบวนการที่ใช้อยู่ในปัจจุบัน เหมาะสมกับคดีที่มีลักษณะของการกระทำด้วยความรุนแรงในครอบครัวหรือไม่เพราะเหตุใด
3. เมื่อท่านได้รับสำนวนที่พนักงานสอบสวนส่งให้ ท่านได้นำท่านได้นำพ.ร.บ. คู่สมรสของผู้ถูกกระทำด้วยความรุนแรงในครอบครัว พ.ศ. 2550 มาใช้ในการพิจารณาสำนวนคดีกรณีของภรรยาที่ฆ่าสามีเนื่องจากถูกสามีทำร้ายด้วยหรือไม่
4. เมื่อท่านได้รับสำนวนการสอบสวนลักษณะนี้ ท่านมีหลักเกณฑ์การใช้ดุลยพินิจในการสั่งฟ้องหรือไม่ฟ้องอย่างไร
5. ท่านเห็นว่าการแสวงหาพยานหลักฐานอื่น นอกเหนือจากที่พบในที่เกิดเหตุ (เช่น การตรวจสอบพฤติการณ์หรือความประพฤตินั้นเป็นอาชญากรรมของสามีที่ถูกภรรยาฆ่า, พยานแวดล้อม, บันทึกการรักษาพยาบาลของผู้ต้องหา ก่อนหน้าที่จะเกิดเหตุ) เพื่อให้ประกอบสำนวนการสอบสวนเป็นสิ่งที่ช่วยอำนวยความสะดวกให้ผู้ต้องหาหรือไม่เพราะเหตุใด
6. เมื่อได้รับสำนวนจากพนักงานสอบสวนแล้ว หากท่านเห็นว่ายังมีพยานหลักฐานบางประการที่อาจเป็นประโยชน์ในการพิจารณาคดีแต่ไม่ปรากฏอยู่ในสำนวน ท่านจะใช้อำนาจตาม ม. 143 แห่งประมวลกฎหมายวิธีพิจารณาความอาญาในการสั่งให้พนักงานสอบสวนดำเนินการสอบสวนเพิ่มเติมหรือไม่ เพราะเหตุใด
7. ท่านเห็นว่าการนำระเบียบสำนักงานอัยการสูงสุดว่าด้วยการดำเนินคดีอาญาของพนักงานอัยการ พ.ศ. 2547 ในข้อ 94 (3) ที่กำหนดหลักในการบรรยายฟ้องไว้ว่า “เมื่อเห็นสมควรและเพื่อประโยชน์แห่งความยุติธรรม ให้บรรยายข้อเท็จจริงในสำนวนการสอบสวนที่เป็นคุณเป็นโทษแก่จำเลย เพื่อให้ศาลใช้ประกอบดุลยพินิจในการกำหนดโทษ การลงโทษ รวมทั้งมาตรการอื่นที่ศาลจะใช้แก่ผู้กระทำผิดเท่าที่สามารถจะทำได้ เช่น หากปรากฏข้อเท็จจริงในสำนวนการสอบสวนที่เป็นคุณและเป็นเหตุบรรเทาโทษตามประมวลกฎหมายอาญา มาตรา 64,65,66,67,69,72 และ 78 ให้บรรยายฟ้องให้ตรงข้อเท็จจริงนั้นๆ และต้องระบุมาตรา

ดังกล่าวในคำขอท้ายฟ้องด้วย" จะสามารถนำมาใช้ในกรณีของภรรยาที่ฆ่าสามีขณะที่มีอาการภรรยาที่ถูกทำร้ายได้หรือไม่ เพราะเหตุใด

8. การนำเหตุยกเว้นความผิด ยกเว้นโทษ หรือบรรเทาโทษตามม.65 แห่งประมวลกฎหมายอาญามาใช้กับกรณีของภรรยาที่ฆ่าสามีขณะที่มีอาการภรรยาที่ถูกทำร้าย ท่านเห็นว่ามีความเหมาะสมหรือไม่เพียงใด

9. การนำมาตรการตามพ.ร.บ. คุ้มครองผู้ถูกกระทำ ความรุนแรงในครอบครัว พ.ศ.2550 มาใช้กับกรณีของภรรยาที่ฆ่าสามีขณะที่มีอาการภรรยาที่ถูกทำร้าย ท่านเห็นว่ามีความเหมาะสมหรือไม่เพียงใด

10. การดำเนินคดีกับภรรยาที่ฆ่าสามีขณะที่มีอาการภรรยาที่ถูกทำร้าย จำเป็นต้องได้รับการพิจารณาคดีที่แตกต่างไปจากการดำเนินคดีปกติหรือไม่ เพราะเหตุใด

11. ท่านคิดว่าอะไรเป็นปัญหาในการดำเนินคดีในลักษณะนี้

12. เพื่ออำนวยความสะดวกให้แก่คู่ความในคดีอย่างแท้จริงตามบริบทข้อเท็จจริงทางคดี ควรมีแนวทางการแก้ไขกฎหมายหรือปรับปรุงกระบวนการยุติธรรมแก่ภรรยาที่ฆ่าสามีขณะที่มีอาการภรรยาที่ถูกทำร้ายอย่างไร

งานวิจัยเรื่อง “การฆาตกรรมโดยภรรยาที่ถูกทารุณจากสามี : กรณีศึกษามาตรการดำเนินคดีในประเทศไทย”
แบบสัมภาษณ์ผู้พิพากษา

1. ท่านมีความคิดเห็นอย่างไรในกรณีที่ภรรยาฆ่าสามีเนื่องจากถูกสามีทำร้าย
2. ท่านคิดว่า การดำเนินคดีทั้งกระบวนการที่ใช้อยู่ในปัจจุบัน เหมาะสมกับคดีที่มีลักษณะของการกระทำด้วยความรุนแรงในครอบครัวหรือไม่เพราะเหตุใด
3. จากประสบการณ์ของท่านหลักการพื้นฐานในการพิจารณาาคดีอาญาในความคิดที่เกี่ยวกับชีวิตร่างกายเป็นอย่างไร
4. หากคดีที่มีแง่มุมข้อเท็จจริงของการกระทำโดยภรรยาที่กระทำคตินั้นมีลักษณะของกลุ่มอาการภรรยาที่ถูกทำร้าย (Battered Wife Syndrome) ท่านเห็นว่ากระบวนการพิจารณาควรเป็นอย่างไร
5. ในการนำสืบพยานหลักฐานในคดีอาญาในฐานะความคิดต่อชีวิตร่างกายท่านมีหลักเกณฑ์ในการรับฟังพยานหลักฐานอย่างไร
6. ในการนำสืบพยานหลักฐานในคดีภรรยาที่ฆ่าสามีมีขณะที่มีอาการภรรยาที่ถูกทำร้าย ศาลจะยึดถือบัญญัติระบุพยานเป็นสำคัญ โดยมีดุลยพินิจในการ ให้นำหนักกับพยานหลักฐานในบัญญัติระบุพยานอย่างไร
7. ในกรณีที่จำเลย/ทนายจำเลยในคดีลักษณะนี้เห็นว่าพยานหลักฐานที่ระบุไว้ในบัญญัติระบุพยานมีความสำคัญต่อรูปคดี แต่ศาลเห็นว่าเป็นพยานฟุ่มเฟือยหรือพยานนอกประเด็นแห่งคดี ซึ่งฝ่ายจำเลยยื่นยันที่จะนำสืบ เช่นนี้ศาลจะทำอย่างไร
8. การรับฟังพยานดังกล่าวข้างต้น (ข้อ7) ศาลจะให้ความสำคัญหรือไม่เพียงใด
9. การชักค้ำพยานในคดีลักษณะนี้ จากประสบการณ์ในวิชาชีพของท่าน ท่านเห็นว่าประเด็นสำคัญในเรื่องใดที่ทั้งทนายจำเลยและพนักงานอัยการมักจะชักค้ำ
10. ในกรณีที่จำเลยเป็นผู้มีฐานะชัดเจนศาลจะมีบทบาทสำคัญในการตั้งทนายความให้ในทางปฏิบัติอย่างไร
11. การพิจารณาาคดีแบบไม่เผชิญหน้าระหว่างโจทก์และจำเลยมีความสำคัญหรือไม่ในคดีลักษณะนี้ เพราะเหตุใด

12. ในคดีภรรยาที่ฆ่าสามีเนื่องจากถูกสามีทำร้ายอย่างต่อเนื่องจนมีขณะที่มีอาการภรรยาที่ถูกทำร้ายจากประสบการณ์ของท่าน ท่านมีหลักการในการชี้แจงน้ำหนักพยานหลักฐานอย่างไรในทางปฏิบัติ
13. การนำเหตุยกเว้นความผิด ชกเว้นโทษ หรือบรรเทาโทษตามม.65 แห่งประมวลกฎหมายอาญามาใช้กับกรณีของภรรยาที่ฆ่าสามีขณะที่มีอาการภรรยาที่ถูกทำร้าย ท่านเห็นว่ามีความเหมาะสมหรือไม่เพียงใด
14. การนำมาตรการตามพ.ร.บ.คุ้มครองผู้ถูกกระทำรุนแรงในครอบครัว พ.ศ.2550 มาใช้กับกรณีของภรรยาที่ฆ่าสามีขณะที่มีอาการภรรยาที่ถูกทำร้าย ท่านเห็นว่ามีความเหมาะสมหรือไม่เพียงใด
15. คดีลักษณะนี้มีภาระอุทธรณ์ ฎีกามากน้อยเพียงใด จากประสบการณ์ของท่าน
16. การดำเนินคดีกับภรรยาที่ฆ่าสามีขณะที่มีอาการภรรยาที่ถูกทำร้าย จำเป็นต้องได้รับการพิจารณาคดีที่แตกต่างไปจากการดำเนินคดีปกติหรือไม่ เพราะเหตุใด
17. ท่านคิดว่าอะไรเป็นปัญหาในการดำเนินคดีในลักษณะนี้
18. เพื่ออำนวยความสะดวกหรือให้แก่คู่ความในคดีอย่างแท้จริงตามบริบทข้อเท็จจริงทางคดี ควรมีแนวทางการแก้ไขกฎหมายหรือปรับปรุงกระบวนการยุติธรรมแก่ภรรยาที่ฆ่าสามีขณะที่มีอาการภรรยาที่ถูกทำร้ายอย่างไร

งานวิจัยเรื่อง “การฆาตกรรมโดยภรรยาที่ถูกทารุณจากสามี : กรณีศึกษามาตรการดำเนินคดีในประเทศไทย”
แบบสัมภาษณ์ทนายความ

1. ท่านมีความคิดเห็นอย่างไร ในกรณีที่ภรรยาฆ่าสามีเนื่องจากถูกสามีทำร้าย
2. ท่านคิดว่ากระบวนการสอบสวนและดำเนินคดีที่ใช้อยู่ในปัจจุบัน เหมาะสมกับคดีที่มีลักษณะของการกระทำด้วยความรุนแรงในครอบครัวหรือไม่เพราะเหตุใด
3. ท่านเห็นว่าการดำเนินคดีแก่ภรรยาที่ฆ่าสามีขณะที่มีอาการภรรยาที่ถูกทำร้าย (Battered Wife Syndrome) จำเป็นต้องให้ทนายความที่มีความเชี่ยวชาญเฉพาะเรื่องความรุนแรงในครอบครัวท่านนั้นหรือไม่ เพราะเหตุใด
4. ในคดีลักษณะนี้ ท่านมีความคิดเห็นอย่างไรกับกรณีของทนายที่ศาลตั้งให้จำเลย ในประเด็นด้านความเชี่ยวชาญในคดี ด้านค่าตอบแทนที่ได้รับ มีความเหมาะสมหรือไม่ เพียงใด
5. ท่านเห็นว่าพยานหลักฐานใดที่มีความสำคัญในการดำเนินคดีกับภรรยาที่ฆ่าสามีขณะที่มีอาการภรรยาที่ถูกทำร้าย เพื่อให้ได้รับความเป็นธรรมอย่างยิ่งในการพิจารณาและพิพากษาคดี
6. ความสามารถของทนายความในการสืบเสาะ สอดส่องข้อเท็จจริง อันเป็นประโยชน์ในคดีลักษณะนี้จะมีส่วนช่วยให้ภรรยาที่กระทำผิด ได้รับความเป็นธรรมมากยิ่งขึ้นหรือไม่ อย่างไร
7. การนำเหตุยกเว้นความผิด ยกเว้นโทษ หรือบรรเทาโทษตามม.65 แห่งประมวลกฎหมายอาญามาใช้กับกรณีของภรรยาที่ฆ่าสามีขณะที่มีอาการภรรยาที่ถูกทำร้ายท่านเห็นว่ามีเหมาะสมหรือไม่เพียงใด
8. การนำมาตราการตามพ.ร.บ. คู่ครองผู้ถูกกระทำความรุนแรงในครอบครัว พ.ศ.2550 มาใช้กับกรณีของภรรยาที่ฆ่าสามีขณะที่มีอาการภรรยาที่ถูกทำร้าย ท่านเห็นว่ามีเหมาะสมหรือไม่เพียงใด
9. จากประสบการณ์ของท่าน คดีลักษณะนี้จะมีการยื่นอุทธรณ์ ฎีกา มากน้อยเพียงใด
10. การดำเนินคดีกับภรรยาที่ฆ่าสามีขณะที่มีอาการภรรยาที่ถูกทำร้าย จำเป็นต้องได้รับการพิจารณาคดีที่แตกต่างไปจากการดำเนินคดีปกติหรือไม่ เพราะเหตุใด
11. ท่านคิดว่าอะไรเป็นปัญหาหรืออุปสรรคในการดำเนินคดีในลักษณะนี้
12. เพื่ออำนวยความสะดวกหรือบรรเทาภาระให้แก่คู่ความในคดีอย่างแท้จริงตามบริบทข้อเท็จจริงทางคดี ควรมีแนวทางการแก้ไขกฎหมายหรือปรับปรุงกระบวนการยุติธรรมแก่ภรรยาที่ฆ่าสามีขณะที่มีอาการภรรยาที่ถูกทำร้ายอย่างไร

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แบบสัมภาษณ์แพทย์/จิตแพทย์

1. ท่านมีความคิดเห็นอย่างไรในกรณีที่ภรรยาฆ่าสามีเนื่องจากถูกสามีทำร้าย
2. บทบาทของแพทย์ในการเป็นพยานบุคคลในคดี ท่านมีทัศนคติอย่างไร ท่านเคยเป็นพยานบุคคลในคดีที่เกี่ยวข้องกับความรุนแรงในครอบครัวหรือไม่
3. ท่านเคยเป็นพยานในคดีที่ผู้กระทำความผิดมีลักษณะอาการภรรยาที่ถูกทำร้าย หรือไม่มากนักน้อยเพียงใด
4. จากประสบการณ์ของท่านบทบาทในการประกอบวิชาชีพของแพทย์จะมีส่วนเกี่ยวข้องกับคดีลักษณะนี้ในแง่มุมใด
5. ในกรณีที่ท่านได้รักษาพยาบาลผู้หญิงที่ได้รับบาดเจ็บมา โดยมีลักษณะบาดแผลที่อาจเป็นการโดนกระทำด้วยความรุนแรงในครอบครัวมา ท่านจะดำเนินการอย่างไรต่อไป
6. ท่านเห็นว่าอาการภรรยาที่ถูกทำร้าย มีลักษณะพื้นฐานในทางจิตเวชอยู่ในข่ายของอาการโรคกลุ่มใด ระหว่าง โรคจิต จิตบกพร่อง จิตฟั่นเฟือน หรือไม่ได้เป็นอะไรเลย
7. ท่านมีความเห็นว่าอาการภรรยาที่ถูกทำร้าย มีลักษณะพิเศษที่แตกต่างไปจากโรคทางจิตเวชอย่างอื่นอย่างไร
8. ท่านมีความเห็นว่าอาการภรรยาที่ถูกทำร้าย ผู้ป่วยสามารถใช้ชีวิตได้ตามลำพังโดยไม่เป็นอันตรายต่อสังคมได้หรือไม่เพียงใด
9. ท่านเห็นว่ามาตรการในการรักษาความปลอดภัยให้แก่บุคคลใกล้ชิดของอาการภรรยาที่ถูกทำร้าย ควรเป็นอย่างไร
10. การบำบัดรักษาผู้ป่วยอาการภรรยาที่ถูกทำร้าย ในทางการแพทย์มีขั้นตอนการรักษาอย่างไร
11. การฟื้นฟูผู้ป่วยอาการภรรยาที่ถูกทำร้าย ควรมีการดำเนินการอย่างไรจึงจะได้ผลเป็นที่น่าพอใจ
12. จากประสบการณ์ของท่าน ท่านพบเห็นผู้ป่วยในอาการภรรยาที่ถูกทำร้ายมากน้อยเพียงใด (เป็นผู้ป่วยใน/ผู้ป่วยนอก)

13. ในสภาพสังคมยุคปัจจุบันท่านมีความเห็นว่าผู้ป่วย อาการกรรยาที่ถูกทำร้ายมีไม่น้อยเพียงใดและมีแนวโน้มจะเป็นอย่างไร ด้วยเหตุใด
14. อะไรเป็นสัญญาณ โรคเบื้องต้นหรือบุคลิกภาพบางอย่างของผู้ป่วยที่ทำให้ท่านตั้งสมมติฐานว่าอาจมีอาการเจ็บป่วยด้วยโรคนี
15. ท่านเห็นว่าระดับความรุนแรงของอาการกรรยาที่ถูกทำร้าย เป็นภัยอันตรายต่อสังคมหรือไม่อย่างไร
16. การนำเหตุยกเว้นความคิด ยกเว้น โทษ หรือบรรเทาโทษตามม.65 แห่งประมวลกฎหมายอาญามาใช้กับกรณีของกรรยาที่ฆ่าสามีนะที่มีอาการกรรยาที่ถูกทำร้าย ท่านเห็นว่ามีความเหมาะสมหรือไม่เพียงใด
17. การนำมาตราการตามพ.ร.บ.คุ้มครองผู้ถูกระทำ ความรุนแรงในครอบครัว พ.ศ.2550 มาใช้กับกรณีของกรรยาที่ฆ่าสามีนะที่มีอาการกรรยาที่ถูกทำร้าย ท่านเห็นว่ามีความเหมาะสมหรือไม่เพียงใด
18. การดำเนินคดีกับกรรยาที่ฆ่าสามีนะที่มีอาการกรรยาที่ถูกทำร้าย จำเป็นต้องได้รับการพิจารณาคดีที่แตกต่างกันไปจากการดำเนินคดีปกติหรือไม่ เพราะเหตุใด
19. ท่านคิดว่าอะไรเป็นปัญหาหรืออุปสรรคในการดำเนินคดีในลักษณะนี้
20. เพื่ออำนวยความสะดวกหรือให้แก่อุทธรณ์ในคดีอย่างแท้จริงตามบริบทข้อเท็จจริงทางคดี ควรมีแนวทางการแก้ไขกฎหมายหรือปรับปรุงกระบวนการยุติธรรมแก่กรรยาที่ฆ่าสามีนะที่มีอาการกรรยาที่ถูกทำร้ายอย่างไร

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แบบสัมภาษณ์นักวิชาการ

1. ท่านมีความคิดเห็นอย่างไร ในกรณีที่ภรรยาฆ่าสามีเนื่องจากถูกสามีทำร้าย
2. ท่านเห็นว่า โครงสร้างทางสังคมไทยที่ปลูกฝังเรื่องบทบาทของผู้ชายและผู้หญิงไว้แตกต่างกัน มีส่วนก่อให้เกิดปัญหาความรุนแรงในครอบครัวหรือไม่ อย่างไร
3. ท่านคิดว่าการดำเนินคดีทั้งกระบวนการที่ใช้อยู่ในปัจจุบัน เหมาะสมกับคดีที่มีลักษณะของการกระทำด้วยความรุนแรงในครอบครัวหรือไม่ เพราะเหตุใด
4. ท่านเห็นว่าหากมีกรณีภรรยาที่ฆ่าสามีขณะที่มีอาการภรรยาที่ถูกทำร้าย (Battered Wife Syndrome) พยานหลักฐานใดควรนำมาใช้ประกอบการพิจารณาคดีบ้าง
5. การแสวงหาพยานหลักฐานอื่น นอกเหนือจากที่พบในที่เกิดเหตุ (เช่น การตรวจสอบพฤติกรรมหรือความประพฤติอันเป็นอาชญากรรมของสามีที่ถูกภรรยาฆ่า, พยานแวดล้อม, บันทึกการรักษาพยาบาลของผู้ต้องหา ก่อนหน้าที่จะเกิดเหตุ) เพื่อใช้ประกอบการสำนวนการสอบสวนเป็นสิ่งที่ช่วยอำนวยความสะดวกให้แก่ผู้ต้องหา มากขึ้นหรือไม่ เพราะเหตุใด
6. การนำเหตุยกเว้นความผิด ยกเว้นโทษ หรือบรรเทาโทษตามม.65 แห่งประมวลกฎหมายอาญามาใช้กับกรณีของภรรยาที่ฆ่าสามีขณะที่มีอาการภรรยาที่ถูกทำร้าย ท่านเห็นว่ามีความเหมาะสมหรือไม่เพียงใด
7. การนำมาตราการตามพ.ร.บ. คุ้มครองผู้ถูกกระทำด้วยความรุนแรงในครอบครัว พ.ศ.2550 มาใช้กับกรณีของภรรยาที่ฆ่าสามีขณะที่มีอาการภรรยาที่ถูกทำร้าย ท่านเห็นว่ามีความเหมาะสมหรือไม่เพียงใด
8. การดำเนินคดีกับภรรยาที่ฆ่าสามีขณะที่มีอาการภรรยาที่ถูกทำร้าย จำเป็นต้องได้รับการพิจารณาคดีที่แตกต่างไปจากการดำเนินคดีปกติหรือไม่ เพราะเหตุใด
9. ท่านคิดว่าอะไรเป็นปัญหาในการดำเนินคดีในลักษณะนี้
10. เพื่ออำนวยความสะดวกให้แก่ผู้ความในคดีอย่างแท้จริงตามบริบทข้อเท็จจริงทางคดี ควรมีแนวทางการแก้ไขกฎหมายหรือปรับปรุงกระบวนการยุติธรรมแก่ภรรยาที่ฆ่าสามีขณะที่มีอาการภรรยาที่ถูกทำร้ายอย่างไร

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แบบสัมภาษณ์ภรรยา

1. ขอทราบข้อมูลส่วนตัวของผู้ให้ข้อมูล (ชื่อ อายุ การศึกษา อาชีพ รายได้ ลักษณะอุปนิสัยใจคอ คนใกล้ชิดมองท่านว่าเป็นคนอย่างไร)
2. ขอทราบข้อมูลของคู่ชีวิต (ชื่อ อายุ การศึกษา อาชีพ รายได้ ลักษณะอุปนิสัยใจคอ)
3. ขอทราบประสบการณ์ชีวิตคู่ (สถานภาพสมรส จำนวนบุตร สถานที่พักอาศัยระหว่างการใช้ชีวิตคู่)
4. ในขณะที่ใช้ชีวิตคู่ นั้น เคยถูกกระทำด้วยความรุนแรงในครอบครัวหรือไม่
5. หากมีประสบการณ์ตาม ข้อ 5. ขอทราบรูปแบบของความรุนแรงและความถี่ที่เกิดความรุนแรง
6. ความรุนแรงที่เกิดขึ้น ท่านคิดว่าเกิดจากสาเหตุใดและท่านมีวิธีการแก้ปัญหาที่เกิดขึ้นอย่างไร
7. เมื่อเกิดเหตุความรุนแรงหรือไม่ ท่านเคยขอความช่วยเหลือจากบุคคลหรือหน่วยงานใดบ้างหรือไม่ และได้รับความช่วยเหลือหรือไม่ อย่างไร
8. คนในครอบครัว หรือคนที่อยู่ใกล้ตัวมีปฏิกิริยาอย่างไรกับความรุนแรงที่เกิดขึ้นกับท่าน
9. ขอให้ท่านช่วยเล่าเหตุการณ์ในวันที่เกิดเหตุร้ายด้วย
10. เมื่อเกิดเหตุร้ายขึ้นแล้ว กระบวนการดำเนินคดี เป็นอย่างไรบ้าง ในส่วนของ
 - พนักงานสอบสวน
 - อัยการ
 - ศาล
 - ราชทัณฑ์
 - ทนายความ
11. ท่านเห็นว่ากระบวนการพิจารณาคดีที่ใช้อยู่ในขณะนี้มีความเหมาะสมกับความผิดที่เกี่ยวข้องกับการกระทำด้วยความรุนแรงในครอบครัวหรือไม่
12. ท่านคิดว่าท่านได้รับความยุติธรรมในการดำเนินคดีหรือไม่ อย่างไร
13. ท่านเห็นว่าการดำเนินคดีกับภรรยาที่มาสามีขณะที่มีอาการภรรยาที่ถูกทำร้าย จำเป็นต้องได้รับการพิจารณาที่แตกต่างไปจากการดำเนินคดีปกติหรือไม่ เพราะเหตุใด
14. ท่านคิดว่าอะไรเป็นปัญหาหรืออุปสรรคในการดำเนินคดีในลักษณะนี้
15. ภายหลังจากเกิดเหตุร้ายแล้ว ท่านได้รับการติดต่อหรือได้รับการช่วยเหลือจากใครบ้าง ในรูปแบบใด (เช่น ค่าใช้จ่ายในการต่อสู้คดี เงินประกันตัว)
16. ท่านคิดว่าความช่วยเหลือที่ได้รับตามข้อ 15 เพียงพอหรือไม่
17. ท่านคิดว่าอุปสรรคหรือปัญหาที่เกิดขึ้นภายหลังเกิดเหตุร้ายขึ้นมีอะไรบ้าง (ปัญหาทางด้าน การดำเนินคดี/ปัญหาด้านจิตใจ/ปัญหาด้านอื่นๆ)

- 18.ภายหลังจากเกิดเหตุร้าย ท่านได้รับผลกระทบอย่างไรบ้าง (เช่น ความสัมพันธ์ทางเครือญาติ/ด้านสังคม/ด้านจิตใจ/ด้านความเป็นอยู่)
- 19.ความช่วยเหลือที่ท่านที่ต้องการได้รับมีอะไรบ้าง (จากรัฐ/จากสังคม/จากหน่วยงานอื่น)
- 20.ท่านมีข้อเสนอแนะเกี่ยวกับการดำเนินคดีกระบวนการยุติธรรม ความคุ้มครองที่ควรจะได้รับ หรือในเรื่องการจัดการปัญหาความรุนแรงในครอบครัวอย่างไรบ้าง

งานวิจัยเรื่อง “การฆาตกรรม โดยภรรยาที่ถูกทารุณจากสามี : กรณีศึกษามาตรการดำเนินคดีในประเทศไทย”

แบบสัมภาษณ์

องค์กรเอกชนที่เกี่ยวข้องกับความรุนแรง/ผู้ปฏิบัติงานศูนย์พึ่งได้/ศูนย์ช่วยเหลือสังคม

1. ท่านมีความคิดเห็นอย่างไรในกรณีที่ภรรยาฆ่าสามีเนื่องจากถูกสามีทำร้าย
2. ท่านคิดว่าการดำเนินคดีทั้งกระบวนการที่ใช้อยู่ในปัจจุบัน เหมาะสมกับคดีที่มีลักษณะของการกระทำด้วยความรุนแรงในครอบครัวหรือไม่เพราะเหตุใด
3. จากประสบการณ์ของท่าน มีผู้หญิงที่ถูกกระทำด้วยความรุนแรงมากน้อยเพียงใด ในรูปแบบใดบ้าง
4. ลักษณะของผู้หญิงที่ถูกกระทำด้วยความรุนแรงในครอบครัว โดยถูกสามีทำร้ายจากประสบการณ์ของท่าน เป็นอย่างไร
5. ผู้หญิงที่ถูกกระทำด้วยความรุนแรง จะร้องขอความช่วยเหลือในกรณีใดบ้าง และรูปแบบของความช่วยเหลือที่ต้องการคือรูปแบบใด
6. แนวทางในการให้ความช่วยเหลือเบื้องต้นแก่ผู้หญิงกลุ่มนี้ ในทางปฏิบัติเป็นอย่างไร จากประสบการณ์ของท่าน
7. แนวทางในการให้ความช่วยเหลือเบื้องต้นแก่ผู้หญิงกลุ่มนี้ อย่างเป็นทางการเป็นอย่างไร (หน่วยงาน/ขั้นตอนที่เกี่ยวข้อง)
8. จากประสบการณ์ของท่าน ท่านเคยทำงานเกี่ยวข้องกับผู้ที่มีความเจ็บป่วยทางจิตมากน้อยเพียงใด
9. จากประสบการณ์ของท่านผู้หญิงที่ถูกสามีทำร้ายอย่างสลับเนืองบ่อยครั้งจนมีอาการเจ็บป่วยทางจิตเรื้อรังมีจำนวนมากน้อยเพียงใด
10. ท่านเคยเข้าร่วมเป็นพยานในคดีที่เกี่ยวข้องกับความรุนแรงในครอบครัวหรือไม่ ท่านมีบทบาทอย่างไร และมีความคิดเห็นว่าการมีส่วนร่วมดังกล่าวนี้ของท่านจะทำให้เกิดความยุติธรรมได้อย่างไร

11. ท่านเห็นว่าการแสวงหาพยานหลักฐานอื่น นอกเหนือจากที่พบในที่เกิดเหตุ (เช่น การตรวจสอบ พฤติการณ์หรือความประพฤตินันเป็นอาชญาของสามีที่ถูกภรรยาฆ่า, พยานแวดล้อม, บันทึกการ รักษาพยาบาลของผู้ต้องหา ก่อนหน้าที่จะเกิดเหตุ) เพื่อใช้ประกอบสำนวนการสอบสวนเป็นสิ่งที่ช่วย อำนาจความยุติธรรมให้แก่ผู้ต้องหา มากขึ้นหรือไม่ เพราะเหตุใด
12. การดำเนินคดีกับภรรยาที่ฆ่าสามีขณะที่มีอาชญากรรมที่ถูกทำร้าย จำเป็นต้องได้รับการพิจารณา คดีที่แตกต่างไปจากการดำเนินคดีปกติหรือไม่ เพราะเหตุใด
13. ท่านคิดว่าอะไรเป็นปัญหาในการดำเนินคดีในลักษณะนี้
14. เพื่ออำนาจความยุติธรรมให้แก่คู่ความในคดีอย่างแท้จริงตามบริบทข้อเท็จจริงทางคดี ควร มีแนวทางการ แก้ไขกฎหมายหรือปรับปรุงกระบวนการยุติธรรมแก่ภรรยาที่ฆ่าสามีขณะที่มีอาชญากรรมที่ถูกทำร้าย อย่างไร



ระเบียบศาลอาญานบุรี
ว่าด้วยแนวปฏิบัติคดีคุ้มครองผู้ถูกกระทำด้วยความรุนแรงในครอบครัว พ.ศ. ๒๕๕๒

โดยที่พระราชบัญญัติคุ้มครองผู้ถูกกระทำด้วยความรุนแรงในครอบครัว พ.ศ. ๒๕๕๐ ซึ่งมีผลใช้บังคับตั้งแต่วันที่ ๑๒ พฤศจิกายน ๒๕๕๐ ด้วยมีเจตนารมณ์เพื่อคุ้มครองผู้ถูกกระทำด้วยความรุนแรงในครอบครัว แต่มาตรา ๘ วรรคสอง แห่งพระราชบัญญัติดังกล่าวกำหนดให้การกระทำความรุนแรงในครอบครัวตามมาตรา ๘ วรรคหนึ่ง เป็นกรรมเดียวกับความผิดตามกฎหมายอื่น ก็ให้ดำเนินคดีต่อศาลที่มีอำนาจพิจารณาความผิดตามกฎหมายอื่นที่มีอัตราโทษสูงกว่าซึ่งหมายความรวมถึงศาลอาญานบุรีด้วย ดังนั้น เพื่อให้การพิจารณาคดีของศาลเป็นไปในแนวทางที่เหมาะสมคุ้มครองผู้ถูกกระทำด้วยความรุนแรงในครอบครัว ยับยั้งการกระทำผิดซ้ำ แก้ไขฟื้นฟูผู้กระทำความผิด และรักษาไว้ซึ่งความสัมพันธอันดีในครอบครัว ตามเจตนารมณ์ของกฎหมายดังกล่าว อธิบดีผู้พิพากษาศาลอาญานบุรีจึงออกระเบียบไว้ดังต่อไปนี้

ข้อ ๑. ระเบียบนี้เรียกว่า “ ระเบียบศาลอาญานบุรี ว่าด้วยแนวปฏิบัติคดีคุ้มครองผู้ถูกกระทำด้วยความรุนแรงในครอบครัว พ.ศ. ๒๕๕๒ ”

ข้อ ๒. ระเบียบนี้ให้ใช้บังคับตั้งแต่วันประกาศเป็นต้นไป

ข้อ ๓. ในระเบียบนี้

“ อธิบดี ” หมายความว่า อธิบดีผู้พิพากษาศาลอาญานบุรี

“ รองอธิบดี ” หมายความว่า รองอธิบดีผู้พิพากษาศาลอาญานบุรี

“ เจ้าหน้าที่ ” หมายความว่า ข้าราชการและลูกจ้างในศาลอาญานบุรี

“ ศาล ” หมายความว่า ศาลอาญานบุรี

“ ผู้พิพากษา ” หมายความว่า ผู้พิพากษาในศาลอาญานบุรี

“ พนักงานเจ้าหน้าที่ ” หมายความว่า พนักงานเจ้าหน้าที่ตามพระราชบัญญัติ

คุ้มครองผู้ถูกกระทำด้วยความรุนแรงในครอบครัว พ.ศ. ๒๕๕๐

หมวด ๑**ลักษณะคดีคุ้มครองผู้ถูกกระทำด้วยความรุนแรงในครอบครัว**

ข้อ ๔. คดีคุ้มครองผู้ถูกกระทำด้วยความรุนแรงในครอบครัวซึ่งอยู่ในอำนาจพิจารณาพิพากษาของศาลนี้ คือ

(๑) คดีความผิดฐานกระทำความรุนแรงในครอบครัวตามมาตรา ๔ วรรคหนึ่ง แห่งพระราชบัญญัติคุ้มครองผู้ถูกกระทำด้วยความรุนแรงในครอบครัว พ.ศ. ๒๕๕๐ และเป็นกรรมเดียวกับความผิดตามประมวลกฎหมายอาญาหรือกฎหมายอื่น ที่อยู่ในอำนาจพิจารณาพิพากษาของศาลอาญาธนบุรี และ

(๒) ผู้กระทำผิดฐานกระทำความรุนแรงในครอบครัวและผู้ถูกกระทำด้วยความรุนแรงในครอบครัวตามข้อ (๑) เป็นบุคคลในครอบครัวเดียวกันตามพระราชบัญญัติคุ้มครองผู้ถูกกระทำด้วยความรุนแรงในครอบครัว ฯ

ข้อ ๕. เมื่อมีการยื่นคำร้องขอฝากขัง หรือคำฟ้องคดีความผิดต่อชีวิต ร่างกาย เพศ หรือเสรีภาพ หากเป็นคดีตาม ข้อ ๔ ให้เจ้าหน้าที่งานรับฟ้องลงสารบบแยกประเภทคดีต่างจากคดีทั่วไป โดยให้กำหนดรหัสสำนวนคำฟ้องชื่อย่อว่า “ อ. คร./..... ” สำหรับสำนวนฝากขัง ชื่อย่อว่า “ ผ. คร./..... ”

ข้อ ๖. ในกรณีมีปัญหาหรือข้อขัดแย้งเกี่ยวกับการปฏิบัติตามระเบียบนี้ให้อธิบดี หรือรองอธิบดีที่ได้รับมอบหมายเป็นผู้วินิจฉัยชี้ขาด เมื่อได้วินิจฉัยแล้วให้ถือปฏิบัติ

หมวด ๒**การตรวจคำร้องขอฝากขัง**

ข้อ ๗. ให้ผู้พิพากษาตรวจคำร้องขอฝากขังว่าผู้กระทำความรุนแรงในครอบครัวและผู้ถูกกระทำด้วยความรุนแรงในครอบครัวเป็นบุคคลในครอบครัวเดียวกันตามคำนิยาม มาตรา ๓ แห่งพระราชบัญญัติคุ้มครองผู้ถูกกระทำด้วยความรุนแรงในครอบครัว ฯ ข้อกล่าวหา

เป็นกรรมเดียวกับความผิดตามมาตรา ๔ วรรคหนึ่ง แห่งพระราชบัญญัติคุ้มครองผู้ถูกระทำด้วยความรุนแรงในครอบครัว ฯ หรือไม่ และพนักงานสอบสวนได้แจ้งข้อกล่าวหาฐานกระทำความรุนแรงในครอบครัวตามมาตรา ๔ วรรคหนึ่ง แห่งพระราชบัญญัติคุ้มครองผู้ถูกระทำด้วยความรุนแรงในครอบครัว ฯ หรือไม่ ถ้ายังไม่ได้แจ้งก็ให้แนะนำพนักงานสอบสวนปฏิบัติให้ถูกต้องตามกฎหมาย

ข้อ ๘. ในกรณีมีการร้องขอปล่อยชั่วคราวไม่ว่าในชั้นสอบสวนหรือชั้นพิจารณาของศาล เมื่อศาลพิจารณาแล้วเห็นสมควรให้ปล่อยชั่วคราวก็ให้กำหนดมาตรการคุ้มครองชั่วคราวหรือวิธีการเพื่อบรรเทาทุกข์เบื้องต้นตามข้อ ๑๓ เป็นเงื่อนไขการปล่อยชั่วคราวตามระเบียบศาลอาญาธนบุรี ว่าด้วยแนวทางปฏิบัติเกี่ยวกับการปล่อยชั่วคราวและการกำกับให้ปฏิบัติตามสัญญาประกัน เว้นแต่มีการออกคำสั่งกำหนดมาตรการคุ้มครองชั่วคราวหรือวิธีการบรรเทาทุกข์แล้ว

หมวด ๓

การออกคำสั่งกำหนดมาตรการคุ้มครองชั่วคราว

ข้อ ๙. ในกรณีที่พนักงานเจ้าหน้าที่ซึ่งมีฐานะเทียบได้ไม่ต่ำกว่าพนักงานฝ่ายปกครองหรือตำรวจชั้นผู้ใหญ่ตามประมวลกฎหมายวิธีพิจารณาความอาญาและได้รับมอบหมายจากรัฐมนตรีได้ออกคำสั่งกำหนดมาตรการคุ้มครองชั่วคราว หรือวิธีการเพื่อบรรเทาทุกข์ให้แก่ผู้ถูกระทำด้วยความรุนแรงในครอบครัวตามมาตรา ๑๐ วรรคหนึ่ง แห่งพระราชบัญญัติคุ้มครองผู้ถูกระทำด้วยความรุนแรงในครอบครัว ฯ เมื่อพนักงานสอบสวน หรือพนักงานเจ้าหน้าที่หรือผู้ออกคำสั่งยื่นคำร้องต่อศาลพร้อมหลักฐานการออกคำสั่ง รายงานประมวลข้อเท็จจริง หรือหลักฐานอื่น ๆ เสนอศาลพิจารณาให้ความเห็นชอบตามมาตรา ๑๐ วรรคสอง ตามแบบคำร้อง อ.คร. ๑ ห้ายระเบียบ

เมื่อศาลได้รับคำร้องแล้วหากพิจารณาเห็นว่ามีความจำเป็นและสมควรในการออกคำสั่งกำหนดมาตรการคุ้มครองชั่วคราวหรือเพื่อการบรรเทาทุกข์ก็มีคำสั่งให้ความเห็นชอบหรือศาลจะเรียกผู้ร้อง หรือผู้ออกคำสั่งมาสอบถามเพิ่มเติมก่อนมีคำสั่งแล้วแต่เห็นสมควรก็ได้

ในกรณีที่ศาลไม่เห็นชอบด้วยกับคำสั่งดังกล่าวทั้งหมดก็ให้สั่งเพิกถอนคำสั่งกำหนดมาตรการคุ้มครองชั่วคราวหรือวิธีการเพื่อบรรเทาทุกข์นั้นเสีย แต่ถ้าเห็นชอบด้วยบางส่วนก็ให้มีคำสั่งเพิกถอนบางส่วนแล้วแจ้งคำสั่งให้ผู้ร้องทราบ

ข้อ ๑๐. เมื่อศาลมีคำสั่งเห็นชอบกับคำสั่งกำหนดมาตรการคุ้มครองชั่วคราวหรือวิธีการเพื่อบรรเทาทุกข์แล้ว ภายหลังปรากฏจากรายงานของพนักงานเจ้าหน้าที่ หรือปรากฏต่อศาลเองว่าข้อเท็จจริงหรือพฤติการณ์ที่เป็นเงื่อนไขในการออกคำสั่งกำหนดมาตรการคุ้มครองชั่วคราวหรือวิธีการบรรเทาทุกข์ได้เปลี่ยนแปลงไป ให้ทำการไต่สวนและมีคำสั่งแก้ไขเพิ่มเติมเปลี่ยนแปลงหรือเพิกถอนคำสั่งกำหนดมาตรการคุ้มครองชั่วคราวหรือวิธีการเพื่อบรรเทาทุกข์หรือออกคำสั่งใด ๆ รวมทั้งกำหนดเงื่อนไขเพิ่มเติมก็ได้

ข้อ ๑๑. ในกรณีผู้มีส่วนได้เสียเกี่ยวกับคำสั่งกำหนดมาตรการคุ้มครองชั่วคราวหรือวิธีการบรรเทาทุกข์ ยื่นคำร้องคัดค้านคำสั่งกำหนดมาตรการคุ้มครองชั่วคราวหรือวิธีการบรรเทาทุกข์เพื่อให้ศาลทบทวนคำสั่ง ให้ศาลตรวจดูเสียก่อนว่าได้ยื่นคำร้องคัดค้านภายใน ๓๐ วัน นับแต่ได้รับทราบคำสั่งหรือไม่ แล้วสั่งให้ส่งสำเนาคำร้องให้พนักงานเจ้าหน้าที่หรือผู้ออกคำสั่งทราบพร้อมกำหนดวันนัดไต่สวน

เมื่อศาลทำการไต่สวนแล้วให้มีคำสั่งหรือคำพิพากษาแล้วแต่กรณี

ข้อ ๑๒. ในระหว่างสอบสวนหรือพิจารณาและพนักงานเจ้าหน้าที่ยังไม่ได้ออกคำสั่งกำหนดมาตรการคุ้มครองชั่วคราวหรือวิธีการเพื่อบรรเทาทุกข์ พนักงานสอบสวน พนักงานเจ้าหน้าที่ หรือพนักงานอัยการ หรือผู้ถูกกระทำด้วยความรุนแรงในครอบครัวจะยื่นคำร้องต่อศาลออกคำสั่งกำหนดมาตรการคุ้มครองชั่วคราวหรือวิธีการเพื่อบรรเทาทุกข์ให้แก่ผู้ถูกกระทำด้วยความรุนแรงในครอบครัวหรือบุคคลในครอบครัวเป็นการชั่วคราวก็ได้ ตามมาตรา ๑๑ แห่งพระราชบัญญัติคุ้มครองผู้ถูกกระทำด้วยความรุนแรงในครอบครัว ฯ ตามแบบคำร้อง อ.คร. ๒ ท้ายระเบียบ

เมื่อศาลได้รับคำร้องแล้วให้รับทำการไต่สวนและมีคำสั่ง การรับฟังพยานหลักฐานในชั้นไต่สวนคุ้มครองชั่วคราว ให้ได้ข้อเท็จจริงเพียงว่ามีเหตุน่าเชื่อว่าผู้กระทำความรุนแรงในครอบครัว อาจก่อเหตุกระทำความรุนแรงแก่บุคคลในครอบครัวซ้ำอีก หรือมีเหตุอื่น ๆ จำเป็นต้องกำหนดมาตรการคุ้มครองหรือวิธีการเพื่อบรรเทาทุกข์ให้แก่ผู้ถูกกระทำด้วยความรุนแรงในครอบครัวหรือสมาชิกในครอบครัว ในการนี้ศาลอาจรับฟังความคิดเห็นของผู้ถูกกระทำด้วยความรุนแรงในครอบครัวหรือบุคคลในครอบครัว หรือรายงานประมวลข้อเท็จจริงของพนักงานเจ้าหน้าที่หรือพนักงานคุมประพฤติประกอบด้วยก็ได้

วิธีการไต่สวนและการออกคำสั่งให้ใช้แบบ อ.คร. ๓ ถึง อ.คร. ๔ ท้ายระเบียบ

ข้อ ๑๓. ศาลมีอำนาจออกคำสั่งกำหนดมาตรการคุ้มครองชั่วคราว หรือวิธีการเพื่อบรรเทาทุกข์ดังต่อไปนี้

(๑) ให้ผู้กระทำความรุนแรงในครอบครัวเข้ารับการรักษาอาการป่วยทางกายและหรือทางจิตจากแพทย์

(๒) ให้ผู้กระทำความรุนแรงในครอบครัวชดใช้เงินช่วยเหลือบรรเทาทุกข์เบื้องต้นให้แก่ผู้ถูกกระทำด้วยความรุนแรงในครอบครัวตามสมควรแก่ฐานะ

๕

(๓) ห้ามผู้กระทำความรุนแรงในครอบครัวเข้าไปในที่พำนักของครอบครัวหรือเข้าไปใกล้บุคคลใดในครอบครัวภายในระยะเวลาตามที่เห็นสมควร

(๔) กำหนดวิธีการดูแลบุตรของคู่กรณี

(๕) กำหนดมาตรการคุ้มครองอื่น ๆ ตามที่เห็นสมควร

การห้ามผู้กระทำความรุนแรงในครอบครัวเข้าไปในที่พำนักของครอบครัวหรือเข้าไปใกล้ตัวบุคคลในครอบครัว ให้ศาลใช้ดุลพินิจโดยคำนึงถึงพฤติการณ์แวดล้อมเกี่ยวกับความจำเป็นที่ต้องอยู่อาศัย ความสามารถในการหาที่อยู่อาศัยของผู้กระทำผิดและผู้ถูกกระทำด้วยความรุนแรงในครอบครัว รวมถึงบุตร รายได้ ตลอดจนผลกระทบต่อสุขภาพ ความปลอดภัย และความเป็นอยู่ของครอบครัวด้วย

เมื่อศาลออกคำสั่งกำหนดมาตรการคุ้มครองหรือวิธีการเพื่อบรรเทาทุกข์ให้แก่ผู้ถูกกระทำด้วยความรุนแรงในครอบครัวเป็นการชั่วคราวตามวรรคหนึ่งแล้ว ให้เจ้าหน้าที่แจ้งคำสั่งศาลให้แก่ผู้เกี่ยวข้องทราบโดยไม่ชักช้า ทั้งนี้ให้พนักงานเจ้าหน้าที่ หรือพนักงานคุมประพฤติสอดส่องดูแลการปฏิบัติให้เป็นไปตามคำสั่งศาล โดยให้รายงานศาลถึงผลการปฏิบัติตามเงื่อนไขภายในระยะเวลาที่เห็นสมควร หรือที่ศาลกำหนดแล้วแต่กรณี การแจ้งคำสั่งหรือรายงานให้ใช้แบบหนังสือ อ.คร. ๕ ทำระยะเบียบ

ข้อ ๑๔. เมื่อศาลมีคำสั่งกำหนดมาตรการคุ้มครองชั่วคราว หรือวิธีการเพื่อบรรเทาทุกข์ตามข้อ ๑๒. แล้ว หากความปรากฏต่อศาลเอง หรือปรากฏจากรายงานของพนักงานเจ้าหน้าที่ พนักงานคุมประพฤติ ผู้เสียหาย ผู้ต้องหา หรือจำเลย หรือผู้มีส่วนได้เสียว่าเหตุการณ์หรือพฤติการณ์เกี่ยวกับผู้กระทำความรุนแรงในครอบครัว หรือผู้ถูกกระทำด้วยความรุนแรงในครอบครัวเปลี่ยนแปลงไป ให้ศาลเรียกคู่กรณีมาสอบถามหากเห็นสมควรมีอำนาจแก้ไขเพิ่มเติมเปลี่ยนแปลงหรือเพิกถอนคำสั่งกำหนดมาตรการหรือวิธีการเพื่อบรรเทาทุกข์หรือคำสั่งใด ๆ รวมทั้งกำหนดเงื่อนไขเพิ่มเติมก็ได้ตามมาตรา ๑๑ วรรคสอง แห่งพระราชบัญญัติคุ้มครองผู้ถูกกระทำด้วยความรุนแรงในครอบครัว ฯ แบบรายงานของพนักงานเจ้าหน้าที่ให้ใช้แบบ อ.คร. ๕ ทำระยะเบียบ

หมวด ๔

การสั่งให้ประมวลข้อเท็จจริง

ข้อ ๑๕. ในวันประทับฟ้องหรืออย่างช้าในวันสอบคำให้การจำเลยและตรวจหลักฐาน ให้ศาลสั่งพนักงานเจ้าหน้าที่ หรือพนักงานคุมประพฤติสืบเสาะข้อเท็จจริงเกี่ยวกับพฤติการณ์แห่งคดี อายุ ประวัติ ความประพฤติ สถิติปัญญา การศึกษาอบรม สุขภาพ ภาวะแห่งจิต นิสัย อาชีพ ฐานะของ

๖

จำเลย และผู้ถูกกระทำด้วยความรุนแรงในครอบครัว ความสัมพันธ์ภายในครอบครัว ตลอดจนสภาพแวดล้อมทั้งปวงเกี่ยวกับการกระทำความรุนแรงในครอบครัว สาเหตุของการกระทำความรุนแรงในครอบครัว หากมีเหตุจำเป็นและสมควรศาลจะมีคำสั่งให้พนักงานเจ้าหน้าที่หรือพนักงานคุมประพฤติจัดให้จำเลยเข้ารับการตรวจสุขภาพกายและหรือจิตก็ได้ เพื่อประกอบการพิจารณาคดีของศาล

การแจ้งคำสั่งศาลตามวรรคหนึ่งกรณีพนักงานเจ้าหน้าที่ให้ใช้หนังสือตามแบบ อ.คร. ๖ ท้ายระเบียบ ส่วนกรณีพนักงานคุมประพฤติให้ใช้แบบ คร.คป. ๑ ท้ายระเบียบ

หมวด ๕

การไกล่เกลี่ยประนีประนอม

ข้อ ๑๖. เมื่อได้รับรายงานการประมวลข้อเท็จจริงจากพนักงานเจ้าหน้าที่หรือพนักงานคุมประพฤติแล้ว ก่อนเริ่มพิจารณาคดีหรือสืบพยาน ให้เจ้าหน้าที่ศูนย์ไกล่เกลี่ยเสนอวิธีแต่งตั้งผู้พิพากษาหรือผู้ประนีประนอมทำการไกล่เกลี่ยให้จำเลยและผู้ถูกกระทำด้วยความรุนแรงในครอบครัวได้ประนีประนอมกันตาม มาตรา ๑๖ แห่งพระราชบัญญัติคุ้มครองผู้ถูกกระทำด้วยความรุนแรงในครอบครัว ฯ

วิธีการไกล่เกลี่ย การทำสัญญายอมความให้เป็นไปตามระเบียบศาลอาญารับรู้ว่าด้วยการไกล่เกลี่ยคดีคุ้มครองผู้ถูกกระทำด้วยความรุนแรงในครอบครัว พ.ศ. ๒๕๕๒

หมวด ๖

การปฏิบัติตามสัญญายอมความและถอนฟ้อง

ข้อ ๑๗. กรณีผู้ถูกกระทำด้วยความรุนแรงในครอบครัวและจำเลยยอมความกันไม่ว่าจะเป็นผลจากการไกล่เกลี่ยประนีประนอมหรือไม่ เมื่อคู่ความได้ทำสัญญายอมความ หากศาลเห็นว่าสัญญายอมความไม่ขัดต่อกฎหมายหรือศีลธรรมอันดีของประชาชนก็ให้ศาลมีคำสั่งให้คู่ความปฏิบัติตามสัญญายอมความแล้วแจ้งให้พนักงานเจ้าหน้าที่ หรือพนักงานคุมประพฤติคอยสอดส่องดูแลให้คู่ความปฏิบัติตามสัญญายอมความแล้วรายงานศาลตามระยะเวลาที่เห็นสมควร หรือตามที่ศาลกำหนดแล้วแต่กรณี ในระหว่างที่จำเลยปฏิบัติตามสัญญายอมความศาลจะมีคำสั่งให้จำหน่ายคดีชั่วคราวก็ได้

๘

เมื่อมีการปฏิบัติตามสัญญายอมความครบถ้วนแล้วให้ศาลพิพากษาไปตามรูปคดี แต่ถ้าจำเลยไม่ปฏิบัติตามเงื่อนไขสัญญายอมความ หรือมีพฤติการณ์เปลี่ยนแปลงไปจนไม่มีความจำเป็นต้องปฏิบัติตามสัญญายอมความก็ให้ศาลมีคำสั่งให้ยุติหรือยกเลิกสัญญายอมความแล้วพิจารณาคดีต่อไป

ข้อ ๑๘. เมื่อมีการถอนฟ้องคดีความรุนแรงในครอบครัวกรณีผู้ถูกระทำด้วยความรุนแรงในครอบครัวเป็นโจทก์ฟ้องคดีเอง ศาลจะมีคำสั่งอนุญาตให้ถอนฟ้องได้ต่อเมื่อจำเลยได้ปฏิบัติตามสัญญายอมความแล้ว

หมวด ๗

การพิจารณาพิพากษาคดี

ข้อ ๑๙. การพิจารณาพิพากษาคดีคุ้มครองผู้ถูกระทำด้วยความรุนแรงในครอบครัวอันเป็นกรรมเดียวกับความผิดอื่นที่อยู่ในอำนาจพิจารณาพิพากษาของศาลอาญานบุรีให้ศาลใช้ดุลพินิจโดยคำนึงถึงการคุ้มครองผู้ถูกระทำด้วยความรุนแรงในครอบครัว หรือบุคคลในครอบครัวมิให้ถูกระทำความรุนแรงซ้ำอีก ความสงบสุขและการอยู่ร่วมกันในครอบครัวเป็นสิ่งสำคัญ

การพิจารณาพิพากษาคดีคุ้มครองผู้ถูกระทำด้วยความรุนแรงในครอบครัวตามวรรคหนึ่ง ให้นำบทบัญญัติทั้งหลายแห่งพระราชบัญญัติคุ้มครองผู้ถูกระทำด้วยความรุนแรงในครอบครัว ฯ มาใช้บังคับโดยอนุโลมกับบทบัญญัติแห่งประมวลกฎหมายวิธีพิจารณาความอาญาและประมวลกฎหมายอาญา หรือกฎหมายอื่น แล้วแต่กรณี

ข้อ ๒๐. คดีคุ้มครองผู้ถูกระทำด้วยความรุนแรงในครอบครัวไม่ว่าจำเลยจะให้การรับสารภาพหรือปฏิเสธและไม่ว่าคดีจะดำเนินไปแล้วเพียงใด ก็ให้ศาลสั่งให้ไกล่เกลี่ยเพื่อให้คู่ความได้ยอมความกันตามมาตรา ๑๕ แห่งพระราชบัญญัติคุ้มครองผู้ถูกระทำด้วยความรุนแรงในครอบครัว ฯ

ในการพิพากษานอกจากฟังข้อเท็จจริงในคดีแล้วให้ศาลฟังข้อเท็จจริงจากรายงานประมวลข้อเท็จจริงของพนักงานเจ้าหน้าที่ หรือพนักงานคุมประพฤติ และผลการไกล่เกลี่ยตามสัญญายอม (ถ้ามี) ประกอบดุลพินิจในการกำหนดเงื่อนไขหรือลงโทษ

๘

ข้อ ๒๑. การพิจารณาพิพากษาคดีคุ้มครองผู้ถูกกระทำด้วยความรุนแรง

ในครอบครัวหากคดีอยู่ในวิสัยที่จะรอการกำหนดโทษ หรือรอการลงโทษได้ตามประมวลกฎหมายอาญา มาตรา ๕๖ ก็ให้ศาลกำหนดเงื่อนไขตามมาตรา ๑๒ วรรคหนึ่ง แห่งพระราชบัญญัติคุ้มครองผู้ถูกกระทำด้วยความรุนแรงในครอบครัว ฯ ข้อใดข้อหนึ่งหรือหลายข้อต่อไปนี้

(๑) กำหนดเงื่อนไขให้จำเลยเข้ารับการศึกษา หรือบำบัดรักษาอาการเจ็บป่วยทางกายหรือจิตที่เป็นมูลเหตุก่อให้เกิดความรุนแรงในครอบครัว

(๒) ให้จ่ายเงินช่วยเหลือบรรเทาทุกข์ตามสมควรแก่ฐานะ เช่น ค่าเช่าที่พักอาศัยชั่วคราว ค่ากินอยู่ ค่ารักษาพยาบาล ค่าอุปการะเลี้ยงดูบุตร เป็นต้น

(๓) ให้ละเว้นการกระทำอันเป็นเหตุให้เกิดการใช้ความรุนแรงในครอบครัว เช่น ห้ามเข้าไปในที่พำนักอาศัย หรือเข้าใกล้ตัวบุคคลใดในครอบครัว ห้ามเสพสุราหรือสิ่งมีเมา เป็นต้น

(๔) ให้ทำทัณฑ์บนหรือเรียกประกันทัณฑ์บนตามสมควรแก่ฐานะ

(๕) กำหนดเงื่อนไขคุมประพฤติตามที่เห็นสมควร เช่น ให้ออกใบแจ้งความต่อพนักงานคุมประพฤติ หรือทำงานบริการสาธารณะตามระยะเวลาที่เห็นสมควร

(๖) กำหนดเงื่อนไขอื่น ๆ ตามที่เห็นสมควร

ข้อ ๒๒. เมื่อศาลมีคำสั่งตามข้อ ๑๙ ให้ศาลแจ้งคำพิพากษาหรือคำสั่งให้พนักงานเจ้าหน้าที่ หรือพนักงานคุมประพฤติ คอยสอดส่องดูแลให้จำเลยหรือผู้ถูกกระทำด้วยความรุนแรงในครอบครัวปฏิบัติให้เป็นไปตามคำพิพากษาหรือคำสั่งศาลแล้วรายงานศาลตามระยะเวลาที่เห็นสมควร หรือตามที่ศาลกำหนดแล้วแต่กรณี กรณีพนักงานเจ้าหน้าที่ให้ใช้แบบหนังสือ อ.คร. ๗ ทำระเบียบ ส่วนกรณีพนักงานคุมประพฤติให้ใช้แบบ คร.คป. ๒ ทำระเบียบ

ในกรณีศาลมีคำสั่งให้ทำทัณฑ์บนให้ใช้แบบสัญญา อ.คร. ๘ ทำระเบียบ

หมวด ๘

การปกปิดข้อมูลคดี

ข้อ ๒๓. ห้ามมิให้พิมพ์โฆษณา เผยแพร่ภาพ เรื่องราว หรือข้อมูล เกี่ยวกับคดีความรุนแรงในครอบครัวต่อสาธารณชนตามมาตรา ๘ แห่งพระราชบัญญัติคุ้มครองผู้ถูกกระทำด้วยความรุนแรงในครอบครัว ฯ

การคัดถ่ายคำฟ้อง คำให้การ บันทึกถ้อยคำพยาน คำพิพากษา หรือเอกสารอื่นใดคดีคุ้มครองผู้ถูกกระทำด้วยความรุนแรงในครอบครัวจะกระทำมิได้ เว้นแต่ศาลมีคำสั่งอนุญาตเฉพาะแต่บุคคลที่มีฐานะเป็นโจทก์ จำเลย และผู้ถูกกระทำด้วยความรุนแรงในครอบครัวเท่านั้น

๕

ข้อ ๒๔. ให้ผู้อำนวยการสำนักอำนวยการประจำศาลอาญานบุรีกำกับดูแลการปฏิบัติของเจ้าหน้าที่ให้เป็นไปตามระเบียบนี้

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