



Research Article

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Received: 7 March 2024 / Accepted: 13 May 2024 / Published: xx July 2024

Legitimate Defense in Abused Women who Killed the Abuser: A Case Study Post-Guiding Opinion in China

Liu JingYu¹

Muhamad Helmi Md Said^{1*}

Li Yao Yao^{1,2}

Nurul Hidayat Ab Rahman¹

Nadhilah A.Kadir¹

¹Faculty of Law,
Universiti Kebangsaan Malaysia
43600, Bandar Baru Bangi,
Malaysia

²Jiyang College,
Zhejiang Agriculture and Forestry University,
Zhujiaji 311300, China

*Corresponding Author

DOI: <https://doi.org/10.36941/jesr-2024-0092>

Abstract

In 2020, the Supreme People's Court, the Supreme People's Procuratorate, and the Ministry of Public Security jointly issued Guiding Opinion on the Lawful Application of the Legitimate Defence System (the Guiding Opinion). This article examines the implementation of the Guiding Opinion in respect of abused women who killed their abusers in China. Effectiveness of the implementation of the Guiding Opinion was reviewed through analysis of cases before and after its issuance. This Opinion has given people a deeper understanding of the determination of legitimate defence by elaborating on the issues related to the determination of legitimate defence, but in practice, the opinion has played a limited role in cases of abused women killing abusers, and the status quo of the difficulty of determining legitimate defence has not changed. This is partly attributable to persistent public misunderstandings about legitimate defence and inability of the judiciary to give due consideration to the defendant's position and her surroundings circumstances. This study recommends specialized training for legal professionals to change their misconceptions about abused women.

Keywords: *abused women; legitimate defence; murderers; domestic violence; case study; China Judgements Online*

1. Introduction

The determination of legitimate defence particularly regarding the defences of abused women who case death of their abusers to homicide has been much debated in academia (Huss, 2006; Mingkai,

2022; Nasir, N.F.M et.al 2022a, Nasir, N.F.M et.al 2022b). Chinese scholars have tried to reinterpret the legal provisions of legitimate defence to justify the innocence or mitigation of punishment for abused women (Xingliang, 2022; Xin, 2015). In 2020, the Supreme People's Court, the Supreme People's Procuratorate, and the Ministry of Public Security jointly issued the Guiding Opinion on the Lawful Application of the Legitimate Defence System, a document with detailed explanation of Article 20 of the Criminal Law (the Guiding Opinion or the Opinion) (Wenge & Jiamin, 2023). The Opinion partially adopts the opinions of scholars, considers the psychological state of defenders, clarifies the misunderstanding of infringement, and gives specific explanations of specific situations. This Guiding Opinion was promulgated under the leadership of the China Political and Legal Affairs Commission after numerous controversial defence incidents sparked widespread public discussion. It aims to solve the problems of the specific application of the legitimate defence clause and guide the work of judicial personnel (Qibo et al., 2020). However, when the achievement of the goal was announced, it is necessary to determine how reforms actually operate in practice.

In determining how the Guiding Opinion on legal defence can be used in practice in China, this article reviews the defences available and sentences pronounced on battered women accused of murder from 2019 to September 2020 and September 2020 to 2022. This article begins with an overview of background of the reform and introduces the Guiding Opinion proposed in 2020. It then discusses cases of abused women killing their perpetrators before and after the Guiding Opinion was issued to review the implementation and impact.

2. Background

In China and other Asian countries, women are victims of domestic violence due to patriarchal societies, unequal status of men and women, and women's dependence on men (Md Said & Emmanuel, 2022; Ho, R. T. K., & Chantagul, N, 2017, Said et al, 2022, Nasrul M.A.B.D et al. 2019). Men are the main body of killing, killing tends to be a male behaviour (Odonovan,1991; Deb, 2021, Mohd Zin. N. et al 2015). The loss of control of men over women (extramarital affairs, termination of marriages) is the main reason for the killing of female spouses (Serran & Firestone, 2004; Eriksson & Mazerolle, 2013, Nasir, N.F.M et. Al, 2020, Jamaluddin et al, 2021, Said et al, 2019, Grace et. Al, 2021). Unlike men, women do not routinely employ self-defence (Fitz-Gibbon & Vannier,2017; Adinkrah, 2000, Yahya M.A et al. 2021). They kill their partners only in situation when they endure prolonged domestic violence, have no way to seek help, cannot escape, and are seriously threatened with their own or their children's lives or bodies (Stout, 1995; Deb, 2021; Kaidi, 2022; Serran & Firestone, 2004).

In many common-law jurisdictions, if the defendant is charged with murder, self-defence, provocation, and diminished responsibility are optional defences (Carline, 2006). Self-defence is a complete defence of criminal responsibility, while provocation is a partial defence that can lead to manslaughter rather than more serious offence of murder, and diminished responsibility is a way of mitigating responsibility by admitting that defendant's actions were wrong (Williamson, 2019; McPherson, 2019). Different from the jurisdictions listed above, in cases of abused women killing their abusers, the defendants use legitimate defence to justify their innocence and excessive defence to mitigate their sentence in China.

In China, legitimate defence is currently the main form of defence used by battered women in the trial process, and it is also a legally recognized ground of acquittal for an accused. The law recognizes that "an act taken to stop an unlawful encroachment against a person committing an unlawful infringement and causing damage to the wrongful infringer is a legitimate defence and does not bear criminal responsibility"¹. In cases where abused women fight against the abusers, they are normally required to justify the use of lethal force to repel the attackers, if they wished to defend

¹ Article 20 (1) Criminal Law of the People's Republic of China (Amendment) 2020.

herself in legitimate defence (Lee, K.M. & Hassim, J.Z. (2023). The principle of legitimate defence usually requires that, in the same circumstances, a reasonable person would believe that she was in imminent danger of death or serious bodily injury, and that the force used to repel the attack was reasonable rather than excessive (Dressler, 1995; LaFave & Scott, 1986; Oleson & Darley, 1999; Terrance & Spanos, 2000; Stein & Miller, 2012). Drawing on the experience of common-law jurisdictions, China has developed the concept of legitimate defence. Similarly, China's legitimate defence suffers from the same flaws as in common law jurisdictions.

Gillespie (1989) argued that the principles of self-defence have historically been formulated in terms of male experience. In other words, the example scenario designed by this principle is two men involved in a fight i.e., two sides of the brawl having almost the same strength (Diamond, 2002). Previous studies have shown that self-defence does not fully reflect women's experiences of violence, but rather men's experiences of the same. Against this background, women rarely successfully defend themselves at the trial stage (McPherson, 2022; Mechanic, 2022).

In recent years, with a number of cases of abused women who kill the abusers have been reported by the media, the tragic experience of abused women has won the sympathy of the masses (Pelvin, 2019). This has led to widespread public debate on whether legitimate defence ought to have been made available to battered women to absolve them from criminal responsibility.

In July 2018, the Supreme People's Court issued the Work Plan (No. 14, 2018), which proposed to streamline the judicial interpretation of the applicable laws of justifiable defence and excessive defence. According to the planning requirements, the Research Office of the Supreme People's Court initiated the drafting and research work. In March 2020, 12 criminal law experts in legitimate defence systems were invited to conduct arguments, based on whose arguments and opinions that the draft and work were revised and improved. In April, the Legislative Affairs Committee of the Standing Committee of the National People's Congress (NPCSC) was consulted to ensure that the relevant provisions accurately reflect the legislative spirit of the legitimate defence system. On July 24, 2020, the Supreme People's Procuratorate reviewed the Guiding Opinion. In September, the Supreme People's Court, the Supreme People's Procuratorate, and the Ministry of Public Security jointly issued the Guiding Opinion (Jingfeng & Jiaobin, 2020).

The Guiding Opinion does not only stipulate the issues that were often criticized by many scholars and caused their concerns, but also cover hot issues such as "God's perspective after an accident", "not standing in the defendant's perspective", "unable to understand the defendant's psychology", and "unable to accurately distinguish between mutual fighting and defence", in providing guidance for judicial personnel to apply legitimate defence in the future. This article examines the implementation and role of the Guiding Opinion in practice.

3. Research Design

This study reviews cases from two time periods, the first is from 2018 to September 2020, a period prior to issuance the Guiding Opinion and the second is from September 2020 to 2022 i.e., after its issuance. Through the comparison of these two time periods, the research analyses the trend of occurrence and characteristics of the abused women who kill their abuser cases before and after issuance of the Guiding Opinion to reflect the overall effects of these countermeasures in China. The researchers' definition of abused women who kill the abuser refers to the killing of her husband by a woman who has endured prolonged domestic violence in her marriage. All the cases are obtained from the China Judgements Online, the largest and most authoritative online case inquiry website established by the Chinese government.

The research conducted on the China Judgments Online employs keywords such as "domestic violence", "legitimate defence" and "criminal case". While "domestic violence" was preferred as one of the keywords to prove that the defendant is an abused woman, "legitimate defence" was adopted to test the implementation of the Legitimate Defence Opinion before and after its issuance. In addition to the two keywords, "criminal case" was chosen to create a parallel effect between the keywords and

title of this research murder of the abusers. Two time periods were limited: 2018 to September 2020 and September 2020 to 2022. From 2018 to September 2020, a total of 38 cases were discovered, and from September 2020 to 2022, another 14 cases were detected thus unearthing a total of 52 results. After reading each of these cases, the researchers removed cases of non-marital relationship, husband kills his wife, and non-fatal consequences. After the step-by-step screening, the researchers observed that no one between 2018 and 2022 was acquitted for acting in good defence, and only seven perpetrators were found guilty of excessive defence to reduce their sentences.

4. Limitations

One limitation of studying cases of intimate partner homicide committed by abused women is relatively rare, samples are frequently small and is often not necessarily representative (Serran & Firestone, 2004). Only 23 cases were examined that involved women killing abusive husbands. Of these, 19 occurred between 2018 and 2020 and five occurred between 2020 and 2022². This reflects the fact that women are far less likely to commit homicide than men. Then, this study notes that limitations of the database are that not all cases are published online, as a small number of cases are not heard in public or verdicts are not published online to protect privacy of the individuals involved in the cases. Further, the researchers observed that there are cases pending online websites publications despite the judgements have been rendered, because of the time lag between delivery and publication of those judgements. In addition, the short time window i.e., only two years of its implementation since the Guiding Opinion was promulgated until to date, has resulted in fewer cases to review, which may not accurately reflect the implementation of the Guiding Opinion. Finally, the information of the case is only derived from the judgment, and the singularity of the research sample and high dependence on the same may lead to the inability of this study to fully restore the defence reasons of the defender and the defendant. They will have a certain impact on the case analysis results of this study. However, the analysis of the Legitimate Defence Opinion and the review of the results of its implementation are still meaningful.

5. Case Study

5.1 The General Characteristics of Cases that Occurred between 2018 and 2022

The review of cases that occurred from 2018 to 2022, the five years before and after the release of the Guiding Opinion, reveals that no one was acquitted for acting in legitimate defence, and only seven offenders were found to have acted in excessive defence and had their sentences reduced. Among the cases in which the defendant's actions were consistent with excessive defence and her sentence was reduced, there were six cases from 2018 to September 2020 and only one case from September 2020 to 2022. This research observes that despite having been presented with a failed the application of legitimate defence at the trial stage, it has been a judicial practice for the bench use reasons such as surrender, forgiveness, victim fault, positive compensation to reduce the defendant's sentence, or even sentence them to a suspended sentence (so that the defendant can be spared of imprisonment) (Jun, 2019).

Table 1: The specific circumstances triggering the abused woman to cause death of the abuser

Specific Circumstances		Cases Number	Proportion
Causes for the Conflict	Escalation of Daily Quarrels	13	56.5%
	Husband Beats Wife After Drinking	8	34.7%
	Wife Tries to Get out of her Husband's Control	2	8.6%
	Wife Suspected Her Husband of Infidelity	1	4.3%

² No other case was found reported in 2022 on the China Judgments Online.

Husband Condition	Alcoholism		11	47.8%
	Drug Abuse		1	4.3%
	History of Domestic Violence		20	86.9%
	Attack First		16	69.5%
Wife Condition	Educational Level	Not Involved	2	8.6%
		No Education	5	21.7%
		Primary Education	9	39.1%
		Junior Education Level	7	30.4%
	Use Lethal Weapons (a Knife or a Rope)		22	95.6%

(The data comes from the China Judgements Online)

Since no data were found in 2022, this article reviews 52 cases from 2018 to 2022, with a total of 23 cases eligible for review, accounting for 44.2% of all cases. Table 1 is an analysis of these 23 cases showing the specific circumstances that triggered the abused woman to cause death of her abuser. The data is basically consistent with international literature, but the cases in China also show different characteristics. Analysis of the cases reveals three reasons for the outbreak of family conflicts: escalation of daily quarrels, husband's drinking habit and beating of his wife, and wife's termination of marriage. In 13 of the 23 cases, the outbreak of conflict was caused by family trivial matters, which escalated from verbal quarrels to physical conflicts, forming 46.5% of all cases. This is not reflected in the literature of other countries. There are eight cases (34.7%) that had gone worse as a result of the drunken husband committing domestic violence against the wife. Literatures show that the breakdown of marital relationship is the most dangerous period (Jaffe et al., 2014). Findings of this study are different from international studies. In China, there were only two cases (8.6%) of violent conflicts caused by wives deserting their husbands due to marital relationship breakdown. In addition, there was only one other case of the wife initiated a conflict because of her suspicion over her husband's betrayal. Among all the cases reviewed, the victims in 20 cases i.e., 86.9%, had a history of domestic violence, and 11 victims had alcoholism history, accumulating a percentage of 47.8 of all cases. Only one case showed a history of drug abuse in the part of the husband, in this regard, China is different from foreign countries (e.g., Serran & Firestone, 2004). Women are usually not the initiators of domestic violence, and their purpose of killing their husbands is only to get rid of their husbands' violence against them (Campbell, 1986; Hamilton & Sutterfield, 1998; He & Hang (2013). However, only one case (5%) arose from a wife's protest against an abusive husband to protect the children, which is inconsistent with studies in other countries (e.g., Skinazi, 1997; Deb, 2021). In 16 of the 23 reviewed cases (69.2%), husbands were initiators of the violence, and women were forced to fight back to protect themselves from harm. Due to the difference in size and experience between women and men, women often choose to use weapons to achieve their goals of resisting their abusers (Goetting, 1987; Ho & Chantagul, 2017; Kaidi, 2022; Szalewski & Reckdenwald, 2019; Smith et al., 2014; Moen et al., 2015). In China, it is usually a knife or a rope. The use of weapons may normally be interpreted as "disproportionate" and therefore considered incompatible with the requirement of "reasonableness" (Fitz-Gibbon & Vannier, 2017). Of the 23 cases, 95.6% of the cases (22 cases) involved the battered wives using weapons to cause death of the abusive husbands. Remarkably, only one case involved a wife who strangled her husband with her arms, albeit the latter was in his drunken state. Of the 23 cases, two cases were reported with involvement of outsiders i.e., the woman's family member, in the killing of the husband, and in one case the woman killed the husband, and seriously injured a husband's family member. Almost all the homicide occurred in the course of verbal or physical conflict between husband and wife. Only one homicide occurred at the end of a violent conflict, what was called a post-mortem killing (Guoxiang, 2021; Hongjie & Ligu, 2021).

It is worth noting that the vast majority of the defendants in the 23 cases did not have a high level of education and they in fact had a low level of education. Apart from two judgements that omitted to state the accused's level of education, nine defendants were reported to have had primary education, seven defendants to junior high school and five had never received education. Whether

this factor is related to their choice to kill their abusers-husbands by lethal violence and, if so, how education level affects their choice requires further research.

5.2 Cases Involving Abused Women Who Killed the Abusers, 2018–2020

Table 2: The defendants’ verdict and sentencing results (2018-2022)

			2018-September 2020	September 2020-2022	2018-2022
Verdict	Legitimate Defence		0	0	0
	Excessive Defence		6	1	7
	Intentional Homicide		4	3	7
	Aggravated Assault		8	1	10
	Manslaughter		0	0	0
	Total		18	5	23
Sentencing	Probation		3	2	5
	Fixed-term Imprisonment	0-3 years	0	0	0
		3-5 years	3	0	4
		6-10 years	7	2	9
		more than 10 years	4	1	5
	Life Imprisonment		1	0	1
Total		18	5	23	

(The data extracted from the China Judgements Online)

Table 2 shows the verdicts of 38 cases from 2018 to September 2020. 18 were 47.3% of the cases that fit the theme of this research i.e., abused women killing their abusers. Of the 18 cases reviewed from September 2018 to 2020, no successful defence of legitimate defence was founded. Only six were convicted of excessive defence, two of which were convicted of intentional homicide (excessive defence) and four convictions of intentional wounding (excessive defence). Of the remaining 12 cases, four were convicted of murder and eight were convicted of intentional hurt. Unlike other countries, the review found no case in which defendants were convicted of manslaughter, which was different from other countries that used provocation as a defence to obtain verdicts of manslaughter. The defendants received varying sentences, including probation, imprisonment, and life imprisonment. Three of the defendants did not need to go to prison, three were sentenced to three to five years in prison, seven were sentenced to six to ten years in prison, four were sentenced to more than ten years, and one was sentenced to life imprisonment.

Table 3: The defendant's defence and the judge's grounds for refusal between 2018 and September 2020

Defence		2018- September 2020		September 2020-2022	
		Case Numbers	Proportion	Case Numbers	Proportion
Statutory Elements of Legitimate Defence	To Stop the Ongoing Unlawful Infringement	7	38.8%	2	40%
	The Act is Defensive in Nature	3	16.6%	4	80%
Non-statutory Elements	The Abuser is at Fault	10	55.5%	3	60%
	Protect Child	2	11.1%	0	0
	The Husband is Drunk	4	22.2%	1	20%
	Long-Term Domestic Violence	10	55.5%	3	60%
	No Subjective Intent to Intentionally Injure or Kill	4	22.2%	0	0
The Defence is Ambiguous		4	22.2%	0	0
No Reason was Given		6	33.3%	0	0
No Defence was Raised		0	0	1	20%

Judge's Grounds of Judgment on Refusal		Case Numbers	Proportion	Case Numbers	Proportion
Direct Rejection	Conduct Does Not Meet the Requirements of Legitimate Defence	8	44.4%	3	60%
Legitimate Defence is Excluded	"Exceeding the Limits Necessary" or "Causing Serious Consequences"	5	27.7%	2	40%
	Defendant's Conduct Meets the Constituent Elements of an Intentional Crime	5	27.7%	0	0
Non-statutory Elements	Husband and Wife Beat Each Other	3	16.6%	0	0
	The Abuser Has Fallen to the Ground	3	16.6%	1	20%
	There Was No Obvious Trauma on the Defendant, Which Means There Was No Evidence of Domestic Violence	3	16.6%	3	60%
	The Defendant Suffered Minor Domestic Violence	4	22.2%	0	0
	The Defendant Prepared Weapons in Advance	1	5.5%	1	20%

(The data comes from the China Judgements Online)

Note: The items contained in Table 3 particularly the types of defence in Chinese criminal law require explanation and they are as follows:

Statutory Elements of Legitimate Defence means that the plea advanced by a defendant is because her conduct complies with the legal requirements for acts of legitimate defence. Non-statutory elements means that the defendant's defence is not based on the provisions of the legitimate defence clause in the criminal law but on other factors. The Defence is ambiguous means that the defendant does not explicitly state that his action constitutes legitimate defence or excessive defence, but adopts a vague defence, that is, either the act constitutes legitimate defence or excessive defence. No reason was given means the wrongdoer only argues that his actions constituted legitimate or excessive defence but offers no explanation on causes of the action. No defence was conducted means the defendant neither defend nor explain his actions. Legitimate defence is excluded means judges did not directly justify his refusal to hold on non-existence of legitimate defence, but excluded the defence of legitimate defence by proving that the defendant's conduct constituted a crime or that the defence was excessive.

Table 3 shows the defences advanced by accused persons in the cases under review, the judges' verdict and grounds of judgment. The basis for the legitimate defence put forward by the majority of defendants was relatively concise. In fact, 52.6% of the total cases used the defendant's conduct to meet the constituent elements of legitimate defence, mainly including "to stop the ongoing unlawful infringement" (38.8%) and "the act is defensive in nature" (16.6%), which were time factor and intention factors respectively. However, it should be noted that the defendant did not prove that the defendant's conduct fully complied with the legitimate defence prescribed by law, but rather that the defendant's conduct was based on one or more of the constituent elements of the legitimate defence. In only one case, the defence counsel conducted a complete analysis of all the constituent elements of legitimate defence. Some defendants also used factors other than the statutory elements of legitimate defence to defend themselves, mainly focusing on "the victim is at fault (55.5%)", "to protect their child (11.1%)", "the husband is drunk (22.2%)", and "long-term domestic violence (55.5%)". Some defendants (22.2%) also deny their *mens rea* (intention to commit crime) from the subjective intention to commit intentional injury (homicide) to achieve the purpose of proving legitimate defence. Another 33.3 percent (six cases) of defendants only argued that their actions were justified or excessive but did not offer any explanation³. There are also cases (22.2%) of uncertain

³ Multiple bases of judgment may arise in the same case, so the percentages may add up to more than 100%.

whether the defendant constitutes a crime, whether the defendant establishes legitimate defence or excessive defence, which is mainly reflected in the ambiguity of the opinion of the defendant's defence lawyer. "The defendant's behaviour should constitute legitimate defence, and even if it does not constitute legitimate defence, it is excessive defence (e.g. see the case of Guan Huiming) " The defendant's behaviour is justifiable defence and does not constitute a crime; If the defendant is found guilty of a crime, he has surrendered, confessed, excessive defence and other sentencing circumstances (e.g. see the case of Du Fudan)". To a certain extent, this reflects that the defence lawyer does not have a clear understanding of legitimate defence. Hence their inability to accurately use the legitimate defence clause to conduct defence.

As to the diversity of defence counsel's opinions, defendant's legitimate defence had been refused judges on the following three grounds:

1. Legitimate defence is directly rejected on the grounds that her conduct does not meet the law's requirements.

The Article 20 of Criminal Law of the People's Republic of China provides:

"Criminal responsibility is not to be borne for an act of legitimate defence that is undertaken to stop present unlawful infringement of the state's and public interest or the rights of the person, property or other rights of the actor or of other people and that causes harm to the unlawful infringer."

In criminal law, there is a consensus that five pre-conditions of legitimate defence, namely, existence of unlawful infringement, such infringement act must be one in the present or an ongoing act; defensive intent of the defendant; defensive act of the battered women must be against the aggressor, and that the necessary limits have not been significantly exceeded (Lihua, 2007; Kaijun, 2019). Unfortunately, the researchers found that judgements in 8 cases (44.4%) directly denied the defendant's defence on the grounds that the defendants had failed to meet the five elements of a legitimate defence.

2. Legitimate defence is excluded.

Analysis of the cases has led the findings that legitimate defence is excluded because the actions of defendants "exceeds what is necessary" and "causes serious consequences" (27.7%) or the defendant's conduct meets the constituent elements of an intentional crime (27.7%). The former constitutes excessive defence, which excludes legitimate defence while the latter is not considered legitimate defence because it constitutes a crime. Some judgments used a discussion of the specific constitution of the crime to determine whether the defendant's act constitutes legitimate defence. The verdict first confirmed whether the defendant has committed a crime, and if the defendant's conduct meets the conditions of an intentional crime, it is deemed to be an intentional crime, which naturally negates application of legitimate defence.

3. Additional requirements beyond the statutory constituent elements for legitimate defence, to determine that the defendant's conduct does not constitute legitimate defence.

In addition to the above-mentioned reasons related to the law, "husband and wife beat each other (16.6 %)", "the abuser has fallen to the ground (16.6%)", "there was no obvious trauma on the defendant, which means there was no evidence of domestic violence (16.6%)", "the defendant suffered minor domestic violence (22.2%)" and "the defendant prepared weapons in advance (5.5%)" are also important grounds employed by judges to conclude that the act of defendant constitutes legitimate defence⁴. The results of our case study show that in practice, judicial personnel have added restrictions not stipulated in the law for legitimate defence (Dongyan, 2018; Jun, 2019; Zhijun, 2022; Jialin & Chang, 2021). To some extent, this practice hindered the success of the defendant's acquittal on the grounds of legitimate defence.

⁴ Multiple bases of judgment may arise in the same case, so the percentages may add up to more than 100%.

5.3 Cases Involving Abused Women Who Killed the Abuser, 2020–2022

As shown in Table 2, 14 cases were reviewed from September 2020 to 2022, of which only five met the study criteria for this study. These five cases are the same as the 18 cases from 2018 to September 2020 in terms of the defendant's educational level, causes of the conflict, the initiators of the conflict, the reasons leading to the woman choosing to kill her husband, and the way the battered woman resisted. One of the points that drew our attention was that in one case, it is found that a woman killed her husband with a history of domestic violence after the abuse had ceased to exist, which meant that there was a time lag between the abusive husband's abuse and the abused woman's resistance, and that the battered woman was held an afterthought act of defence (e.g. see the case of Qinglan Gu case). However, examples of this behaviour were not found in our database from 2018 to September 2020.

There was no successful plea of innocence in legitimate defence in the five eligible cases. Only one case was admitted the action of defendant was excessive defence, convicted of intentional wounding (excessive defence). Of the remaining four cases, the number of intentional homicide convictions was three and the number of intentional injury convictions was one. This study still found no case of conviction for manslaughter. In terms of sentencing, two were given suspended sentences, leaving three with sentences of six years and six months, eight years and 13 years of imprisonment, respectively.

The defence lawyers' defence statements at this stage were not much different from the previous period, and they were all based on the statutory constituent elements of legitimate defence (defensive intent, nature of defence) and other elements (alcoholism, long-term family violence) that had an impact on the outcome of the defence case. All defence lawyers put forward their own clear defence opinions in this time. It is interesting to note that different from the previous period, defence lawyers have recognized the particularity of battered women cases and tried to understand the situation of abused women (e.g., see the case of Hairong Jiang).

The judgment mainly excluded justifiable self-defence based on the argument that the defendant's behaviour had met the constituent elements of a specific crime such as "having criminal intent" and "hoping or allowing death to occur". Some judges even highlighted the reasons that caused the defence's failure to mount justifiable defence, and the causes are "there is no illegal infringement" and "behaviour exceeds the necessary limit, causing heavy damage". This is an analysis from the legal provisions of justifiable defence. In addition to the requirements provided by law, there are other factors that negate legitimate self-defence (e.g., the defendant has no obvious injuries). The main points of these judgments are largely the same as those of the previous judgement. This article found that some began to try to understand the psychological state of battered women under long-term domestic violence. This is an attempt by judges to think from the perspective of battered women.

6. Analysis

Our analysis of two time periods i.e., September 2020 - 2022 and 2018 - September 2020, reveals that defenders and judicial administrators had gained a deeper understanding of legitimate defence and the killing of abusers by battered women. Specifically, it is manifested in the following aspects:

In terms of sentencing, this study compares the sentencing pattern upon findings of the court on excessive defence over two time periods. In the previous period, there are three overdefensive offenders were given suspended sentences, while the rest were sentenced to different periods of imprisonment (three, seven and eight years). Between September 2020-2022, offenders recognized as

having defensive conduct were given suspended sentences⁵. It is concluded that compared to the previous period, the judges' decision made during this period tend to be consistent, that is, in a case where the defendant's conduct had been ruled as defensive, the sentence was suspended. This shows that after the issuance of the Guiding Opinion, judges can basically make similar judgments on similar cases of perpetrators when they recognize that the acts of battered women are defensive in nature (not necessarily constituting legitimate defence).

In terms of defence opinions, different from the past, some defenders recognized the particularity of case that involves a battered woman killing her abuser and argued that death in such circumstance was caused by intensified conflicts in marriage and family. For that, death caused by domestic violence female victims ought to have been distinguished from other homicides that seriously jeopardized social order. Victims' situation for instance, having to endure domestic violence for a long time, has begun to attract serious attention of defence counsels. Hence, counsels' capability to explain the tension and panic of the battered woman during the abusive period, that had triggered the battered woman to rebel against the abuser in an extreme way, resulting in the death of the abuser. (e.g. see the case of Hairong Jiang). The content of the Guiding Opinion has already been used to defend defendants. "

Compared to the previous period, judicial administrators in this period had been more understanding of domestic violence. The bench had indeed began to pay attention to the influence of domestic violence on battered women in killing abusers and recognize the evidence of domestic violence perpetrated by victims (e.g., see the case of Damei Li).

Next, this study examines the application in practice by combining specific provisions and cases.

As stipulated in Article 2 of the Guiding Opinion:

"Full consideration should be given to the urgency and nervousness of the defender when facing unlawful infringement, and to prevent the defender from judging the defender afterwards by the criteria of calmness, rationality, objectivity and accuracy under normal circumstances. "

Prior to the promulgation of this provision (before September 2020), the academic community generally believed that there was a God perspective in the judgment of justifiable defence in practice, that is, the process of inferring the occurrence of violence based on the violent outcome was judged, and then considering whether the defence was excessive (Finkel, 1995; Hongjie, 2021; Hao, 2018). This approach received numerous criticisms in practice. The significance of this legal provision is to correct the situation in practice where legitimate defence had been judged from God's perspective.

In cases between September 2020 and 2022, defence lawyers had used this clause to defend their clients, "the defendant cannot be required to choose the way of resistance with the reason and sobriety of a normal person (see the case of Ning Ma)" which indicated that this clause had been accepted by defence lawyers. Unfortunately, the judge's opinion was contrary to that of the defence counsel, because at that point in time, when no serious violence had occurred, the defendant killed a person with a lethal weapon, and her defensive conduct clearly exceeded the necessary limit and caused significant damage, which was excessive defence and constituted the crime of intentional wounding and was criminally liable.

Article 6 of the Guiding Opinion on Legitimate Defence stipulates that:

"As to whether the unlawful infringement has begun or ended, a reasonable judgment should be made in accordance with the law based on the situation in which the defender was in defence, in accordance with the general perception of the public, and the defender should not be demanded. Where defenders have a mistaken understanding of whether the unlawful infringement has begun or ended due to panic,

⁵ This refers to the court's recognition of the defensive nature of the battered woman's conduct, rather than the recognition that the accused was justified or excessively defensive.

nervousness, and other psychology, appropriate handling shall be made in accordance with law in accordance with the principle of unity of subjectivity and objectivity."

This clause serves as a guidance in deciding whether there has been unlawful infringement from the perspective of the defendant, which requires understanding of the defendant's circumstances including her psychological state that lead to commission of the alleged offence (Roff, 2021). There are cases where defence lawyers have tried to use this clause to defend the defendant, "In the case of defendant Hairong Jiang, she has been in a state of panic and tension for a long time because of the victim's behaviour. Zhang's text message prompted the defendant to develop a sense of defence. After entering the house, the victim has already committed unlawful assault. The defendant's action to stop the unlawful infringement is a legitimate defence." But in the same way as the previous article analysed, submission put forward by the able counsel was not adopted by the judge. Instead the defendant was sentenced to eight years in prison for committing intentional homicide.

Article 12 of the Guiding Opinion on Legitimate Defence stipulates:

"In determining the extent of the harm of an unlawful encroachment, consideration should be given not only to the damage already caused, but also to the imminent risk and real possibility of causing further harm. Defenders should not be required to respond in a manner and intensity that is basically comparable to the unlawful encroachment."

This provision is a correction that whether the damage has ended cannot be concluded simply by the fact that the victim has fallen to the ground. The fact that the victim falls on the ground does not mean that the victim is unable to commit re-offending, but rather that there is an imminent risk and the possibility of further aggression. "Victim Li insulted and beat defendant Damei Li to pee on his pants, and then the victim Li slipped and crawled on the ground because he stepped on the urine of defendant when he continued to chase and beat defendant, then the defendant sit on the back of victim Li and strangle the victim with his hand ..." (see the case of Damei Li). Unfortunately, this circumstance was not mentioned in the course of the trial, hence application of this provision by defence lawyers and judges was nowhere to be found in the judgment.

In general, defence counsels have a deeper understanding and application of Guiding Opinion than government judicial personnel. Judicial personnel still have a relatively rigid application of legal provisions. While investigators have recognized the effects of chronic domestic violence on defendants, no co-relation has been established between the long history of domestic violence and the motivation of battered women to kill their abusers. Nonetheless, prolonged acts of domestic violence are used as evidence to suggest the victim is equally blameable and such evidence may serve as mitigating factor to the defendant's sentence. The Guiding Opinion plays a limited role in the judicial practice regarding battered women against the killing of their abusers, especially among members of the judiciary. It should be noted that even though the presiding judicial officers commuted the sentence of the offender, the grounds adopted were those applicable to all offenders. This reflects judicial personnel still lack of understanding on the Guiding Opinion, which cannot be based on specific cases and is not conducive to safeguard fairness and justice⁶. Battered women have special characteristics for she is not only a murderer but has also been a victim of long-term domestic violence. This is a unique category of defendant and should not be sentenced to the same level of culpability as other killers. It would be unfair for abused women to be found equally guilty (Hatcher, 2003; Hodell et al., 2012). Judges should be required to deliver verdict and base their judgments on a thorough understanding of what happened to battered women when the reforms are carried out.

⁶ Article 2 of the Guiding Opinion stipulates: Judicial personnel should make accurate determinations according to law based on specific cases.

Article 3 of the Guiding Opinion provides: Adhere to the unity of law and reason, and safeguard fairness and justice.

7. Conclusion

The issue of battered women is a global issue, and the death of abusers caused by battered women has been a topic of worldwide discussion. As the results of the review show, the Chinese study of abused women killing their abusers is not only consistent with the international literature, but also has unique characteristics. The failure of the defence of abused women who killed abuser demonstrates the limited impact of Guiding Opinion in practice, especially among judicial administrators. An analysis of the cases on the China Judgment Online shows that the Guiding Opinion is still not well understood. In addition, this study illustrates that the general requirement of legitimate defence and evidence of domestic violence have been under-utilized and, when used, were not clearly linked to the elements of defence or offences. As a result, the Guiding Opinion remains under used in cases of abused women killing abusers and ought to be changed. This can be partly attributed to a long-standing common misconception in the legal profession as to why a woman in the context of ongoing domestic violence does not just leave the relationship but feel it necessary to kill her partner to protect herself (Tyson et al., 2016; Douglas et al., 2020; Singh, 2021). The main reason is that the judiciary does not have a clear understanding of the provisions of legitimate defence and is unable to think from the battered women's perspective. Abused women are not typical killers, but victims of long-term abuse and violence (Herzog, 2016). Homicides committed by these women are the result of their inability to protect themselves from their male partners' aggression. Women's experiences of violence must be considered in recording the conviction and sentencing of battered women. In order to address this problem, this research recommends that judicial professionals be trained to increase their understanding of the Guiding Opinion and the living environment of those battered women (Nash & Dioso-Villa; 2022).

8. Acknowledgement

The authors wish to thank the Ministry of Higher Education (Malaysia) for providing the research grant funding under Fundamental Research Grant Scheme (FRGS), FRGS/1/2020/SS10/UKM/02/19 and Universiti Kebangsaan Malaysia under TAP UKM-Ko22384

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