

**A COMPARATIVE STUDY OF EXECUTIVE CLEMENCY FOR BATTERED WOMEN IN  
MURDER CASES: PERSPECTIVES FROM THE UNITED STATES AND UNITED  
KINGDOM**

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**Abstract.** This paper examines how executive clemency can play an important function in confronting the framework-level inefficiencies and injustices encountered by battered women standing trial for or convicted of murder. Women in these situations frequently encounter culturally and legally ingrained biases that fail to fully recognise the prolonged impact of abuse and trauma, rendering clemency an essential path for seeking justice. This paper considers clemency practices in the United States and the United Kingdom, highlighting the impact of notable cases and legal structures. It particularly considers the role of Battered Woman Syndrome in the United States and the trauma-informed measures established by the United Kingdom's Domestic Abuse Act of 2021. This paper utilises a doctrinal methodology to examine statutes, case law, and academic literature, aiming to appraise how effectively clemency serves to promote justice for battered women who have endured cumulative abuse. The findings suggest that although clemency is instrumental in addressing systemic shortcomings, its uneven implementation, along with prevailing political and societal biases, limits its effectiveness. This paper recommends the implementation of reforms that include the establishment of independent clemency review boards, providing trauma-informed training for those involved in decision-making, and creating standardised criteria for the application of clemency. These measures aim to improve transparency, equity, and accessibility, thereby ensuring that clemency can serve as an effective means of justice and mercy.

**Keywords:** executive clemency, battered woman syndrome, murder, domestic violence, self-defence.

## Introduction

Pardons, commutations and reprieves are mechanisms of executive clemency, and are useful tools in correcting and addressing anomalies and harshness in the criminal justice system (Huang, 2010). This affords governments the chance to extend mercy to persons who may have been convicted or sentenced unfairly due to factors that could be deemed as extenuating or due to procedural flaws. In the context of defendants who are battered women, clemency wields unique importance (Schornstein, 2016). These women are often unable to access justice and seek help within conventional legal systems for the

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prolonged abuse and trauma that they have endured. The granting of clemency in such cases acknowledges the specific overlap between domestic violence and criminal behaviour, offering a way of finding justice and balance that takes into consideration such factors.

Lenore Walker has testified for over 350 battered women facing murder charges, contributing to the development of legal precedents in the process (Boxall, 1995). She deserves accolades for bringing about and advocating for the assessment and integration of the experiences of battered women defendants during trial (Walker, 1979). Her studies and campaigns, as well as the public display of cases with expert opinions and testimonies, have generated extensive legal commentary and drawn public attention to the conditions under which battered women murder in self-defence. Introducing Battered Woman Syndrome (BWS) into testimony and discussing how to adapt it has influenced legislative reforms, public debates, and clemency initiatives in various states, enabling battered women to be freed from jail. This could possibly be best used to secure amendments to self-defence law that do not emphasise learned helplessness (Madden, 1993; Walker, 1979).

Around the world battered women continue to struggle with clemency processes which are marred with structural barriers and inconsistencies. Most legal systems do not take into account the cumulative effect of prolonged abuse, trauma and social pressure on the actions of the battered woman, leading to unduly severe sentences (Zepinic, 2021). In some jurisdictions where clemency is available, its application is usually sporadic, and is often influenced by political considerations, judicial prejudices, and societal reluctance to embrace a culture of forgiveness in cases of violence (O'Donnell, 2017; Sarat & Hussain, 2004). In addition, the lack of clear guidelines and the poor recognition of BWS make clemency applications even more difficult for many women, and they remain without recourse to justice. These framework-driven barriers call for a comparative approach to pinpoint effective strategies and recommend changes that can help the standardisation and integration of BWS for the application of clemency within varying legal systems.

To this end, this research centres on two main jurisdictions which have been selected due to the differences in their legal systems and their progress in treating BWS as a factor and consideration for clemency: the United States (US) and the United Kingdom (UK). Clemency has a long-standing and rich tradition in the US, just as advocacy movements and key cases such as those of Beverly Ibn-Tamas and Thomia Hunter have been instrumental in influencing and stirring legal and social debates across the board (Huss et al., 2006). These efforts have brought into the spotlight the importance of clemency in combating biases in the judiciary and structural inequities. On the other hand, in the UK there have been recent positive legal developments in relation to the effect of domestic violence on women's behaviour, especially in influencing defences and clemency petitions. The Domestic Abuse Act of 2021 is an example of how the UK has been enhancing the application of a trauma-informed approach in its criminal justice system.

This analysis also encompasses three secondary jurisdictions that offer valuable comparative insights to enrich practicable recommendations as regards the standardisation and adoption of BWS as a mitigating factor for battered women: New Zealand, South Africa, and Australia. New Zealand can be considered progressive in terms of domestic violence legislation, with its clemency policies taking into consideration the unique circumstances of battered women who kill in situations of domestic abuse. South Africa offers a rich socio-legal context in which social and organisational factors affect the practice and application of clemency, revealing the relationship between legal reforms and cultural norms. Australia, with its state-specific mechanisms and legal reforms addressing domestic violence, sets the pace for how clemency can be integrated within broader institutional reforms. Altogether, these jurisdictions present an opportunity to examine shifts in the perspective of clemency in cases involving battered women defendants.

This paper leans on the doctrinal method of research to analyse legal instruments, case law, statutes, and literature on the practice of clemency in the chosen jurisdictions. The doctrinal method is most suitable for this study in that it allows for the detailed explication of legal concepts as well as their meanings and implications in certain situations. To systematically compare the jurisdictions assessed in this paper, a

comparative approach is taken to analyse clemency practices and how they manage the issue of domestic violence as a factor in criminal conduct. In light of these methodological tools, this paper seeks to establish best practices, assess existing deficiencies, and offer practical recommendations for possible legal and policy reforms. This approach is important as it ensures that the analysis is systematic and relevant to the discourse on clemency and justice for battered women defendants.

This study has a number of specific objectives. First, it aims to compare and evaluate clemency practices in the US and the UK in terms of legal procedures, judicial precedents, and deeply entrenched issues. Second, it seeks to examine the relevance of the secondary jurisdictions of New Zealand, South Africa, and Australia in contributing to recognising and understanding clemency for battered women, as well as discussing recent developments and socio-legal factors. Lastly, it offers policy recommendations and advocacy initiatives seeking to improve clemency practices and outcomes across the world. By so doing, this paper will contribute to the existing body of literature and inform policy discussions on how to expand the application of clemency to consider and accommodate gender- and trauma-sensitive justice systems.

## **1. Conceptual Framework**

Executive clemency is the ability of the head of state or government executive to reduce or nullify criminal sentences for a crime that has been committed. It appears in different forms, such as: pardons, which completely absolve convicted persons of their offences and expunge their legal consequences; commutations, which lessen the extent or duration of punishment without erasing the guilty verdict or conviction; and reprieves, which are temporary measures that are adopted to suspend the enforcement of a sentence, usually to await further consideration and/or review. In the context of justice systems, clemency has two major primary functions: on the one hand, serving as a corrective instrument to address judicial errors and rooted yet flawed inequities; on the other hand, as a means of achieving justice and compassion, especially in cases where it is most deserved.

When it comes to cases involving battered women, executive clemency can be seen as an important tool to remedy the deficiencies of judicial decisions that rarely take into account the psychological and social factors that lead these women to act in a certain way. Women who are subjected to severe abuse for an extended period are usually ostracised by conventional justice systems, which utilise predetermined sentencing parameters that do not factor in the effects of coercion, trauma, and manipulation on the woman's ability to make rational decisions. Clemency presents a means to address such oversight, thus affording justice systems an opportunity to consider factors that may have been overlooked in the course of conventional justice proceedings. By establishing clemency as a framework for mercy, this paper contends that context is fundamental in the assessment of criminal behaviour, especially when it comes to cases of abuse where legal concepts like the principle of self-defence may not fully capture all elements of abuse and survival.

BWS, a form of Post-Traumatic Stress Disorder (PTSD), provides a way of explaining the actions of people who have been subjected to prolonged and severe abuse from their partner. BWS was first conceptualised by Lenore Walker in the latter part of the 1970s, and it posits that abuse results in learned helplessness whereby victims see themselves as unable to escape their circumstances (Walker, 1979). This condition is characterised by behaviours like fear, hyper-vigilance, and the perception of risks or danger where they do not exist, leading to actions that may seem extreme or irrational under normal circumstances.

In recognition of this phenomenon, in late 2022, the US President Joe Biden fully pardoned five drug and alcohol offenders and a woman convicted of murder in the 1970s. This could mean that their criminal records are now purged of these crimes. Among these notable cases was that of Beverly Ann Ibn-Tamas, whose narrative significantly raised awareness of BWS by highlighting why survivors might resort to violence in situations that are not traditionally seen as self-defence. At the age of 33 and pregnant, Ibn-Tamas shot and killed her husband, neurosurgeon Abdur Ramad Yusef, in their Washington, DC home on February 23, 1976. The shooting was allegedly in response to her husband's threat of eviction

(Aljazeera, 2022). Ibn-Tamas claimed she feared for her life due to his physical and verbal abuse before and during her pregnancy.

According to the *Washington Post* (Schneider, 1991), Ibn-Tamas testified that after a fight, her husband had forced her upstairs and assaulted her with a hairbrush and a pistol from their bedroom dresser. He then ordered her to leave and kicked her abdomen when she refused. She saw the weapon on the dresser and, believing her husband was about to grab it, shot him. Ibn-Tamas then attempted to escape with her 2-year-old daughter, but fired again when her husband appeared on a landing near the stairs. She noted that he seemed ready, as if anticipating her flight, and she feared he had taken another gun from their home. The White House revealed that during her trial, the court excluded expert testimony on BWS, and Ibn-Tamas was sentenced to 5 years in prison. Domestic violence expert Lenore Walker testified for Ibn-Tamas in her appeal, which was of great importance for the legal representation and judicial acknowledgement of BWS and led to a great deal of academic investigation. The White House also stated that Ibn-Tamas, now 80, went on to become a nursing director at an Ohio healthcare company, while her children achieved higher education degrees (Aljazeera, 2022).

When considering clemency applications, BWS offers a useful perspective and a basis on which to assess the behaviour of women who have committed offences against their abusers. However, the common practice in traditional legal systems requires the defendant to prove that they were in imminent danger and that reasonable and proportionate force was used to defend themselves to justify the claim of self-defence. This standard does not capture the pervasive and cumulative nature of domestic violence. This allows for clemency as informed by BWS, which enables a defendant's actions to be evaluated through a wider lens by considering the surrounding circumstances rather than just the immediate context itself, thereby considering the long-standing abuse that led them to believe their lives were in danger or that shaped their perception of danger and survival.

BWS has significantly contributed to the construction of public opinion and legal approaches to battered women. In the US and the UK, for example, the opinions of experts on BWS have contributed to and influenced clemency decisions, thereby revealing the relationship between psychology and law. The case of Beverly Ibn-Tamas in the US draws attention to the need for judicial systems to factor in and consider psychological aspects of abuse, while the UK's emerging legal mechanisms, including the Domestic Abuse Act of 2021, mirror the increasing awareness and recognition of trauma as a factor capable of influencing criminal behaviour.

## **2. Theoretical Frameworks**

Feminist legal theory serves as a useful theoretical approach for analysing the ways in which law is gendered, especially in relation to cases of domestic violence and clemency. This theory challenges the patriarchal structures and cultural biases that are evident in many legal systems, especially those that perpetuate the exclusion of women and reinforce gender inequalities. In the context of battered women, the esoteric nature of the legal system is pointed out, where inequalities such as the underreporting of domestic violence and the prioritisation of conventional defence principles place battered women on trial at a disadvantage. Through the promotion of and advocacy for a more inclusive and extensive approach to justice, feminist legal theory endorses the consideration of trauma-related perspectives in granting clemency decisions. It commands attention to the need for an understanding of the social, economic, psychological and cultural contexts that influence women's experiences with the legal system. This theory is most useful and relevant in jurisdictions like the UK, given the recent legal reforms that sought to address to the gendered nature of domestic violence, and in the advocacy campaigns that have led to clemency for battered women in the US.

The theory of restorative justice is an efficient alternative to the traditional punitive approaches embodied in healing, accountability and the restoration of relationships. This theory focuses on the needs of victims and communities, as well as the prevention of further criminal activity by targeting the underlying causes of such behaviour rather than merely punishing offenders. When it comes to battered women, restorative justice offers a theoretical lens that makes it possible to view the actions of these

women within the broader context of their responses to victimisation and the need for survival. As a form of restorative justice, clemency acknowledges the role that flaws in the legal system play in the criminalisation of battered women. It offers a chance for governments to acknowledge these miscarriages of justice and attempt to rectify them so as to encourage rehabilitation. For example, in New Zealand, clemency practices are grounded in the principles of restorative justice and have justified the need to address the causes of domestic violence, providing women who have been battered with a means for reintegration and healing.

The principles of comparative law are useful in developing a framework for comparing clemency processes throughout various countries. By comparing and contrasting how different legal systems approach the pardoning of battered women, comparative analysis reveals effective strategies and areas for improvement. This is especially pertinent for this paper given that it aims to synthesise knowledge from the US, the UK, and the secondary jurisdictions of New Zealand, South Africa and Australia. For instance, the US has a well-documented record of clemency initiatives for battered women who kill their partners, owing to advocacy movements and judicial precedents. On the other hand, the UK offers a recent example of legal reforms that factor in a trauma-informed approach to criminal defence, clemency considerations, and decisions alike. Other jurisdictions, such as South Africa and Australia, provide rich insights into how culture, society and law coexist and influence clemency decision-making processes and general practices. In essence, comparative law principles offer a perspective through which the aforementioned dynamics can be adopted by identifying varying strategies that can be applied across different legal contexts.

In an effort to enhance the conceptual analysis in this paper, information and ideas gleaned from clemency practices in New Zealand, South Africa, and Australia are included. The experience of New Zealand also proves that clemency can exist in harmony with other legal measures in the fight against domestic violence. For instance, the country's Family Violence Act of 2018 offers a finely tuned legal approach to addressing domestic violence, which has been factored into clemency decisions for battered women.

The South African experience, framed within its distinct socio-legal landscape, provides important lessons regarding the difficulties of advancing clemency in societies fraught with persistent gender injustices (Mdlleleni et al., 2021; Segalo, 2015; Yende et al., 2024). For instance, in the case of *S v. Ferreira and Others* (2004), the appellant, following serious physical and extreme mental abuse, hired others to kill her abuser. She was convicted by a trial court who stated that she could have just walked away. She then appealed for a reduced sentence. The court acknowledged the impact of the abuse on her psychological condition, which influenced her behaviour. The moral culpability of the accused was evaluated in relation to her circumstances, emphasising the profound abuse she endured and its effect on her mental state. This demonstrates that reduced sentencing is an effective mechanism for rectifying structural injustices even in the context of challenging legal and cultural contexts. Although the court reduced her sentence, it declined to grant an acquittal due to the premeditated nature of the act.

Australian States have implemented state-specific reforms that can be used to model how clemency can be made part of a larger process of reform (NSW Government, 2024). This has occurred alongside other efforts such as the Victorian Royal Commission into Family Violence, which sought to address the issue of domestic violence generally, thus making it difficult for battered women to be punished without mercy (Caruso & Crawford, 2014).

### **3. Cross-Jurisdictional Clemency Practices**

Assessing the historical context of providing executive clemency for battered women defendants is fundamental to understanding its effectiveness. Historically, the legal system has struggled to handle cases of battered women. Over time, legal frameworks, public views, and judicial interpretations have shaped how certain situations involving battered women are understood and handled. For example: victims of domestic violence who killed their abusers in self-defence began a campaign for legal reform in the US in the 1990s; women's rights advocacy groups across the US have sponsored clemency

initiatives to reduce the sentences of battered women, enabling women imprisoned for killing their abusers to submit a petition to the state governor for clemency under these schemes; and the early 1990s saw the manifestation of clemency schemes in Maryland, Ohio, California, Kentucky, Illinois, Massachusetts, and Louisiana (Feldman, 2024). For each clemency initiative, clemency advocates focus on three main themes: bringing the issue of these women to the state governor's attention; canvassing for the implementation of domestic violence and abuse legislation; and raising public awareness, empathy, and support for these women, who did not receive a fair trial as it did not consider the effect of prolonged abuse on their actions (Schornstein, 2016).

### 3.1 Clemency in the US

Executive clemency has always been an integral part of the American criminal justice system, and is authorised by the US Constitution. Specifically, Article II, Section 2 vests the president of the US with the power to grant reprieves and pardons for federal offences except in cases of impeachment. State governors have similar powers and functions, with decisions and procedures which are usually guided by advisory boards or commissions. Clemency in the US serves multiple purposes, including correcting judicial errors, mitigating severe penalties, and offering a pathway to justice when the legal system fails to consider exceptional circumstances or equitable reasons for leniency (Larkin, 2020). In some US states, the advisory board, usually the parole board, considers clemency requests, collects evidence, holds proceedings, and makes recommendations to the governor on whether to grant a pardon or commutation. Governors often heed their advisory groups' recommendations, notwithstanding their autonomy. Another administrative entity may need to affirm a governor's clemency decision in some US states. Massachusetts, for example, created the Governor's Council to check and balance gubernatorial power (Goldfarb, 2004), while Louisiana has parole boards and pardon committees, alongside governor-appointed members. In the latter state, the pardon committee can reduce an inmate's sentence, while the parole board can grant parole, although the parole board evaluates the eligibility of a prisoner for parole based on the jail term they have served. Because most women convicted for murdering their abuser serve lengthy terms, parole is unattainable; thus, their only option is to petition the pardon committee for sentence reduction or clemency after serving enough time (Schornstein, 2016). In Missouri, the governor can grant reprieves, commutations, and pardons for all crimes except treason and impeachment under Article IV, Section 7. The governor receives a non-binding recommendation from the board of probation and parole after reviewing all clemency petitions. Nonetheless, clemency remains at the governor's discretion (Stallion, 2016).

Clemency has been effective in dealing with cases of battered women to address the problems of a legal system that fails to account for the psychological effects of prolonged abuse. Most battered women who kill their husbands or partners are charged with serious offences including murder, often because traditional laws on self-defence are rigid and limited to cases where the woman was in actual and imminent threat of harm from her husband or partner. This standard does not address the implications of the cumulative effect of abuse, and as such, leaves clemency as one of the few avenues for redress.

The clemency procedure has also developed over time in the US through legal decisions as well as the activities of interested groups. A major shift occurred in the 1990s when clemency campaigns became popular, especially in Ohio and Massachusetts. Ohio was one of the first jurisdictions to consider executive clemency for battered women, establishing the legal system's awareness of the specific issues faced by battered women defendants and defining the executive branch's potential intervention to correct miscarriages of justice. In 1990, just weeks before leaving office, Governor Celeste granted clemency to twenty-five women serving long sentences for actions taken against their abusers after the Ohio Supreme Court acknowledged the battered woman defence. The governor observed that the criminal justice system had mistreated these women because their full histories of domestic violence were not presented (Wilkerson, 1990).

Clemency efforts in Ohio and Massachusetts have also seen success in other areas of this issue. Again in 1990, Ohio legalised the use of expert testimony on BWS, which spurred a clemency movement supported by Governor Richard Celeste and his wife, Dagmar, who had offered their residence as Ohio's

first women's refuge since 1976 (Wilkerson, 1990). Dagmar Celeste, a Netherlands native who majored in Women's Studies at Capital University in Ohio, initiated an abused women's support group in Marysville's women's jail when Richard Celeste became governor (Orleck, 2014). While facilitating the support group, she realised that many women had been convicted of crimes against their batterers, revealing a loophole in the justice system regarding domestic violence. In response to her discovery, Celeste discussed the issue with her husband, leading to the initiation of clemency programmes in Ohio. Twenty-one of these women were set to be released in early January 1991, while the remaining four were to serve up to 2 additional years in prison. As a condition of their release, all the women were required to volunteer 200 hours in the community, specifically in roles related to addressing domestic abuse (Wilkerson, 1990).

Prior to Richard Celeste assuming the role of governor in 1981, the Ohio Supreme Court offered a ruling in the case of *State v. Thomas* (1981). This ruling upheld the murder conviction of an abused woman, even though the trial judge had disregarded testimony from specialists regarding BWS. In March 1990, the Court reversed its previous ruling and re-evaluated its conclusion. In the well-known case of *State v. Koss* (1990), the Court overturned the conviction of a woman who had killed her abuser, ruling that her act of voluntary manslaughter was justified. This decision was based on the fact that crucial testimony from an expert on BWS had been excluded from the trial. Later in 1990, the state legislature enacted a statute that allowed the use of expert testimony on BWS during the trial of a defendant who asserted self-defence in response to allegations of murdering or assaulting her abuser (Dutton & Aoláin, 2019). Again in 1990, the governor's staff provided education to both their own organisation and the Ohio Parole Board on topics such as domestic abuse, self-defence, and the legal challenges faced by women who have been convicted of violence against their abusers (Schornstein, 2016).

Another key case study from this period is that of the Framingham Eight – eight inmates from Massachusetts' women's jail who murdered their batterers in the late 1980s and early 1990s. After meeting at a jail support group for battered women and discovering their shared experiences, they decided to embrace the term and unite to voice their concerns. To garner media attention, advocates for the support group launched a media campaign aimed at raising awareness about domestic violence and the self-defence claims of these women. By 1991, Boston media had begun extensively covering the issue of domestic violence and the cases of the Framingham Eight (Goldfarb, 2004).

At the time, Massachusetts Governor William Weld appeared to have taken a tough stance on crime. However, in 1991, the Massachusetts legislature addressed the legal needs of domestic abuse victims. The governor modified sentence clemency rules to include testimony regarding abuse that had immensely contributed to the offence. This was the first formal clemency expansion for battered women in the US, and these legislative modifications energised Massachusetts' clemency campaign. The Framingham Eight petitioned the governor for pardons in February 1992 through lawyers paid for by women's advocacy groups. They disclosed histories of abuse in their applications, arguing that they were denied a fair trial due to the now altered legislation. Seven of the eight women were tried by the Advisory Board of Pardons and Parole Board, but only two were pardoned by the governor (Schornstein, 2016).

In 1994, Illinois Governor Jim Edgar pardoned four Cook County women who had killed their abusive partners, justifying their release with BWS. He rejected clemency petitions from eight other women because they did not meet the BWS requirement (Chicago Tribune, 1994). According to governor counsel Diane Ford, the governor thoroughly evaluated all 12 petitions and found strong evidence of BWS in the cases of Christine Popp, Velma Taylor, Betty Jordan, and Mary Young – the four women granted clemency (Chicago Tribune, 1994).

In 1992, Missouri Governor John Ashcroft reduced the sentences of two battered women who killed their husbands in self-defence (Romero et al., 2004). Similarly, Juanita Thomas, an African-American woman who was convicted of murdering her abusive partner, was the first woman freed by the Michigan Battered Women's Clemency Project in 1998 through a motion for relief from judgment (Geraghty, 1998). While there is no consensus on whether battered women who kill should be forgiven, they are

treated differently by the legal system than other murder offenders. The criminal justice system should tailor its response in order to account for the severity and duration of abuse suffered by these women, acknowledging the impact of such trauma. This includes admitting the testimonies of battered women as valid evidence in their defence (Becker, 1995).

Some mistreated women who murder their abusers go through the criminal justice system without receiving adequate consideration of their abuse. Women who do not fit the established paradigm of a battered woman may not receive fair treatment. Additionally, deeply entrenched racism and prejudice often result in battered women from marginalised communities being denied equal treatment in trials. Even if the clemency authority has been used arbitrarily and without regard for justice or the public interest, each jurisdiction's administrators have exclusive discretion. Thus, clemency remains essential for ensuring the fair treatment of battered women within the legal system (Becker, 1995).

Recognising the disproportionate impact of sentencing on battered women speaks to the existence of inequalities and shortcomings within the criminal justice system. It reinforces the need for reforms that address the root causes of criminal behaviour. Clemency, by embodying fairness and compassion, stresses that each case is unique and requires individual analysis, including the survival techniques of these women. It can balance power and handle the complex issues faced by battered women across all legal systems (Afkhani et al., 2019). Another concerning observation is that law enforcement authorities are often more prompt in intervening to safeguard a perpetrator of domestic violence from being killed than they are in responding to a plea for aid from a victim of abuse (Dowling et al., 2018).

### 3.2 Clemency in the UK

Clemency in the UK is based on the Royal Prerogative of Mercy, which is a discretionary legal power that was originally held by the monarch and is currently exercised by the Secretary of State for Justice. This power enables the granting of pardons, the reduction of sentences, and other forms of assistance to address wrongful convictions or humanitarian concerns in specific situations. Although used less frequently than in the US, clemency in the UK has been instrumental in reducing the worst effects of the criminal justice system, especially for women who kill their abusers. The recognition of domestic abuse as a form of criminal offence and its acceptance in the legal system as a factor that may reduce the severity of a crime has also impacted clemency petitions. Recent advancements, such as the Domestic Abuse Act of 2021, have reiterated the need for a trauma-informed justice system that echoes much-needed calls for ending cycles of prolonged abuse. Nevertheless, the use of clemency is still limited, and factors like a lack of clear procedures, relatively low publicity and awareness, and mistrust among the public have a tendency to hamper its implementation.

The institution of clemency in the UK has developed from an absolute royal prerogative into a more systematic approach within the contemporary constitution. Clemency is seldom sought, and is usually granted in situations where there has been a miscarriage of justice or where the convict is terminally ill or old. Nevertheless, the growing awareness of domestic abuse as a common social problem has slowly broadened its definition and made it more applicable, extending its grace towards battered women. The Royal Prerogative of Mercy is an extra-judicial process that is intertwined with judicial processes like appeals and reviews in handling possible miscarriages of justice (Gay, 2014). Whereas decisions on clemency are made with the help of advisory panels in the US, in the UK clemency is mainly a matter of ministerial prerogative based on the informed recommendations of legal consultants and advocacy groups.

The UK has done much to ensure that considerations of domestic violence are incorporated into its legal system and therefore its clemency practices. According to the Homicide Act 1957, there are some partial defences, including diminished responsibility and loss of control of the defendant, which are very helpful in the cases of battered women. Such provisions provide for the possibility of lowering the charge from murder to manslaughter as a way of recognising the psychological and emotional factors that come with abuse. This has most recently been enhanced by the Domestic Abuse Act of 2021, which not only recognises coercive control as a form of domestic abuse but also requires the Court to have regard to the



impact of abuse during criminal trials. This Act has also affected clemency applications by offering a legal foundation for acknowledging the circumstances that lead to battered women killing their partners.

In *R v. Challen* (2019), the defendant was charged with the murder of her husband in 2011; she had been a victim of coercive control for many years (Hill & Weaver, 2019). This was a landmark case within the UK legal framework because it was one of the first to fully recognise coercive control as an element of an offence that can be considered as a mitigating factor. Challen was originally sentenced to life in prison; however, in 2019, her conviction was overturned due to fresh evidence that proved the extent of the psychological torture and abuse she had suffered. Although her case was dealt with through the appeal process rather than clemency, this shows the increasing awareness of coercive control in the UK's legal framework (BBC, 2021).

The case of Emma Humphreys became a turning point in the consideration of abuse as a mitigating factor in battered women cases (Centre for Women's Justice, 2019). Humphreys, who was sentenced to life in prison after having been convicted of killing the man who exercised control over her, had her sentence commuted due to the work of Justice for Women, a legal advocacy group that exposed the shortcomings of her trial, including the lack of consideration for the prolonged abuse that Humphreys had suffered. Her release paved way for the consideration of trauma informed approaches to clemency and influenced future reforms (McGillivray, 2021).

As a woman convicted of murdering her husband, Kiranjit Ahluwalia became a flag bearer for the idea of the need to change the approach towards dealing with cases of domestic violence. In *R v. Ahluwalia* (1992), her conviction was quashed, and as such she was released on appeal when it was established that she had been a victim of domestic violence and psychological coercion, and that culturally and legally ingrained prejudices influenced the trial (BBC, 2019). Although her case does not relate to clemency, it made a huge contribution to the reforms that define and have shaped contemporary practices.

Clemency has not exactly been an extremely important factor in ensuring the freedom of battered women in the UK. Instead, social justice organisations like Justice for Women and Southall Black Sisters have played an immense role in making society aware of the plight of women in the criminal justice system. These groups engage in lobbying for the change of laws, offering legal assistance and raising awareness of the existing structural issues that contribute to inequality.

In cases like *R v. Humphreys* (1995), it is clear that the role of advocacy is as important as that of public and media pressure, having resulted in the consideration of factors that were earlier neglected during trial. Likewise, the increased understanding of coercive control as an essential element of domestic abuse can be attributed to continued advocacy by feminist legal scholars and activists. Measures like the Domestic Abuse Act of 2021 and cases like Sally Challen's provide a basis for further development, underlining the need for considering trauma and prolonged abuse in the trials of battered women.

Under English law, battered women have historically had a tough time accessing justice. The repealed provocation defence that was scrapped in 2010 was viewed by many scholars as being gender-biased and ineffective in defending women who killed their partners in the heat of passion (Clough, 2016). The new partial defence of loss of control, which was implemented by the Coroners and Justice Act of 2009, is an attempt to come up with a better approach whereby one has to have a reasonable belief of being in imminent danger of being subjected to serious violence, and the defence of provocation includes cumulative loss of control (Clough, 2016). Although this defence is an improvement, it is not without its flaws, including the need to identify a specific provocation and the possibility of not being applicable in all cases of battered women who kill their partners.

#### **4. The Intersection of Gender-Based Violence and Clemency**

The overlap between gender-based violence and clemency reveals an important consideration within justice systems, which have often found it difficult to tackle the distinct challenges encountered by

women who have experienced abuse. The experiences of these women, frequently subjected to extended periods of domestic violence, lead them to engage in criminal activities as a final strategy for safeguarding their well-being. Nonetheless, conventional legal frameworks often overlook the multidimensional interplay of cumulative trauma and coercion that shapes individuals' actions. Clemency serves as an important extrajudicial mechanism that addresses endemic shortcomings, offering individuals an opportunity for justice when traditional defences, like self-defence, fall short.

Across the globe, legal systems are increasingly acknowledging the importance of gender-based violence in clemency applications, though the degree of success varies greatly. In regions such as the US, clemency has served as a mechanism to confront the injustices experienced by battered women. As a recognised subset of PTSD, BWS elucidates the impact of prolonged abuse on a victim's perception of danger and their decision-making processes. The acknowledgement of these issues has resulted in notable clemency cases such as that of Thomia Hunter in Ohio, where the presence of domestic abuse and the improper handling of BWS testimony played a major part in the decision to grant clemency. In the UK, the Domestic Abuse Act of 2021 brought attention to the relevance of coercive control and emotional abuse, which has the potential to reshape the legal system's perspective on clemency. The situation involving Sally Challen, whose life sentence was revoked following the introduction of evidence regarding coercive control, speaks to the growing understanding of how domestic violence influences behaviour and accountability.

BWS plays an important role in connecting the issues of domestic violence and clemency, providing a psychological framework that aids in comprehending the behaviours of women who have experienced abuse. BWS points to the profound impact of sustained abuse, manifesting in symptoms such as learned helplessness, hypervigilance, and an intensified perception of threat. The consequences of these effects may result in actions that seem excessive when evaluated through conventional legal frameworks. For instance, numerous women experiencing abuse may engage in violent actions during times when they feel a sense of safety, rather than in response to immediate danger (National Collaborating Centre for Women's and Children's Health (UK), 2010; Rakovec-Felser, 2014). This behaviour complicates the ability to satisfy the strict requirements set forth by self-defence legislation. Clemency shaped by an understanding of BWS facilitates a deeper assessment of these cases, acknowledging the psychological and emotional impact of abuse. Nonetheless, dependence on BWS has also faced criticism. There are perspectives that suggest that viewing battered women exclusively through the lens of psychological conditions may diminish their sense of agency and perpetuate stereotypes associated with passivity (Delgado-Alvarez & Sanchez-Prada, 2022; Rakovec-Felser, 2014). Moreover, the varying implementation of BWS in different jurisdictions speaks volumes towards the necessity for uniform practices in making clemency decisions.

While there are major possibilities for progress, the incorporation of gender-sensitive perspectives into clemency decisions continues to encounter numerous obstacles. The presence of gender biases in the criminal justice system frequently diminishes the validity of the accounts provided by battered women. Stereotypes surrounding victimhood, along with societal expectations regarding remorse and passivity, have a disproportionate impact on women who diverge from these established norms (Delgado-Alvarez & Sanchez-Prada, 2022). Moreover, dependence on conventional self-defence laws, which necessitate proof of an immediate threat, does not adequately address the cumulative and persistent characteristics of domestic violence. Unable to fulfil these criteria, numerous women who have experienced abuse often perceive clemency as their sole option for relief (Bakircioglu, 2009; Bettinson & Wake, 2024). However, the clemency process frequently lacks transparency and consistency, with decisions shaped by political factors and societal pushback (Larkin, 2022; Rappaport, 2020). Executives often approach the issue of clemency in cases of violence with caution, concerned about possible repercussions and the impact on their political reputation.

The availability of advocacy and legal support also represents a notable obstacle. A large number of women who have experienced abuse often find themselves without the necessary resources or understanding to effectively engage with the clemency process. Organisations dedicated to advocacy, such as Justice for Women in the UK and the National Clearinghouse for the Defence of Battered Women

in the US, are essential in addressing this disparity. These organisations offer legal support, compile records of abuse histories, and promote advocacy for policy changes. Nevertheless, their influence remains constrained, resulting in numerous women lacking sufficient representation. This points to the necessity of exhaustive reforms to guarantee that clemency is both accessible and fair for all individuals.

Confronting these obstacles necessitates an elaborate strategy, and it is crucial to broaden the scope of legal frameworks that are informed by an understanding of trauma. The Domestic Abuse Act of 2021 in the UK and California's Penal Code § 4801, which requires the consideration of intimate partner battery in parole decisions, represent relevant legislative advancements. It is essential that these frameworks are supported by the creation of independent clemency review boards, which would serve to improve both transparency and consistency in this process. It is also essential that these boards comprise specialists in domestic violence and trauma, thereby guaranteeing that decisions are made with a thorough awareness of the applicant's situation. Public awareness campaigns also play a vital role, and it is essential for advocacy groups and policymakers to collaborate in transforming societal views on clemency for battered women. This involves pointing out the fundamental failures that lead to their criminalisation and highlighting the wider societal advantages of embracing compassion and justice.

An examination of clemency practices across different jurisdictions uncovers a range of challenges and innovative approaches. In the US, the incorporation of BWS into clemency applications, alongside the proactive involvement of advocacy organisations, has facilitated significant advancements. Nonetheless, this process is heavily influenced by political factors, where choices are frequently affected by societal views and the discretion of those in leadership positions. In the UK, recent legal reforms and classical cases such as that of Sally Challen point to the promise of trauma-informed approaches; however, the use of clemency continues to be constrained. Countries like New Zealand, South Africa, and Australia offer further perspectives. Progressive domestic violence legislation in New Zealand, along with its integration of trauma-informed perspectives in clemency decisions, serves as a valuable model for other nations to consider. The distinctive socio-legal landscape of South Africa speaks to the importance of cultural influences, whereas state-specific reforms in Australia point out the necessity of harmonising clemency with more extensive legal transformations.

The overlap between gender-based violence and clemency decisions draws attention to the essential requirement for justice systems to adapt to the specific difficulties encountered by women who have experienced abuse. Clemency acts as an essential mechanism for tackling institutionalised biases and inequalities, presenting a route to justice that conventional legal systems frequently do not achieve. Through the implementation of trauma-informed strategies, the establishment of standardised clemency procedures, and the assimilation of global best practices, justice systems can more effectively navigate the intricate challenges associated with gender-based violence. By adopting this approach, clemency can serve as an important tool for promoting compassion, fairness, and equity in situations concerning battered women.

## **5. Challenges in Clemency Practices**

Clemency serves as an imperative tool in justice systems, and is aimed at confronting framework-level injustices and providing compassion in situations where conventional legal processes may be inadequate. Nonetheless, the use of such a strategy in situations concerning battered women continues to encounter major hurdles. These challenges stem from a combination of infrastructural, legal, political, and social obstacles that together hinder its fair and efficient application. Clemency presents an opportunity for fostering fairness and compassion; however, it must be willing to confront its inherent limitations to fully unlock its potential.

A notable challenge in clemency practices is the dependence on executive discretion, which frequently results in inconsistency and unpredictability in the decision-making process. In places such as the US, the authority to grant clemency lies with governors or presidents, who may be swayed by political factors or the sentiments of the public (Krieger, 2024). The concentration of power can lead to the influence of personal biases on outcomes, thereby compromising the transparency of the process. In the UK, the

Royal Prerogative of Mercy, which is implemented based on ministerial advice, functions without established criteria (Torrance, 2024). This lack of standardisation results in a system that can be quite opaque, potentially leading to deserving applicants being overlooked. The absence of established structures across different jurisdictions speaks to the pervasive inequities present within clemency frameworks.

The presence of gender biases in legal systems adds complexity to clemency decisions concerning battered women. Societal stereotypes frequently suggest that women must portray themselves as passive and regretful victims in order to be considered deserving of compassion (Copenhaver, 2002). Women who challenge these stereotypes, whether by standing up to their abusers or demonstrating assertiveness, are frequently met with scepticism, which diminishes their chances of obtaining clemency (Copenhaver, 2002). The impact of these biases is intensified by ingrained racism and intersectional prejudices, leading to serious disadvantages for women from marginalised communities. For instance, women from minority communities may encounter heightened scepticism regarding their accounts of abuse, or may endure more severe judgements as a result of deeply rooted stereotypes (Smith, 2024).

Another major concern is the existence of inflexible legal standards that do not reflect the actual experiences of women who have suffered abuse. Conventional self-defence laws which necessitate evidence of an immediate threat frequently overlook the cumulative impact of sustained abuse, resulting in numerous battered women being unable to satisfy these requirements (McPherson, 2022). As a result, clemency emerges as their sole feasible option. The clemency process also frequently faces limitations due to insufficient legal frameworks that fail to adequately acknowledge BWS or other trauma-informed viewpoints. The irregular acceptance of BWS testimony in legal settings restricts battered women from effectively presenting thorough evidence for their clemency applications, thereby reinforcing integrated disparities.

The involvement of political factors in clemency decisions poses a serious obstacle. The perceptions of the public, influenced by representations in the media and prevailing societal views, frequently compel those in positions of authority to adopt a stance that is perceived as tough on crime, especially violent offences (Larkin, 2016). Executives might be concerned that offering clemency to battered women who commit homicide could be seen as endorsing violence, potentially resulting in political repercussions. This hesitance generates a discouraging atmosphere, inhibiting the application of clemency even in situations where justice evidently calls for it. The impact of public opinion shows the necessity of enhanced advocacy and education to foster societal backing for clemency as a valid reaction to institutional shortcomings.

The availability of legal resources and advocacy continues to pose a considerable obstacle for women who have experienced abuse and are pursuing clemency (Uygur & Skinnider, 2022). The majority of women face challenges in effectively navigating the intricate and frequently unclear clemency process. While many advocacy organisations offer legal representation and document histories of abuse, they mostly advocate for policy reforms. These organisations also frequently face challenges related to insufficient funding and excessive demands on their resources, which restricts their capacity to assist all deserving applicants. Women who are marginalised encounter a range of interconnected obstacles, such as cultural stigmas, language barriers, and fundamental discrimination, all of which hinder their ability to obtain clemency.

In light of these challenges, the following practicable opportunities and recommendations to reform and improve clemency practices, especially concerning cases involving battered women, are offered:

1. All stakeholders involved in the dispensation of justice should receive training on the psychological and behavioural impacts of prolonged abuse to ensure clemency decisions and trials alike are informed by a trauma-sensitive perspective.
2. Independent boards featuring legal experts, domestic violence advocates, and other stakeholders deemed relevant by the respective justice system should assess clemency applications

transparently and fairly, consequentially reducing the impact of undue influence throughout the entire process.

3. Clear and consistent guidelines must be put in place to adopt and acknowledge BWS and trauma-related factors as valid mitigating factors in clemency applications.

4. Advocacy groups and policymakers should educate and sensitise the public regarding systemic shortcomings and point to successful clemency cases to foster societal support for fairness and compassion.

5. International collaboration should promote the propagation of best practices and adopt flexible means to refining context-sensitive strategies to clemency across jurisdictions.

6. Digital platforms should be used to streamline clemency applications and improve, track, and enhance accessibility and transparency for marginalised individuals.

## Conclusion

Clemency serves as an essential tool for confronting the institutionalised biases and injustices encountered by battered women in criminal justice systems across the globe. Clemency provides a pathway to mercy and rehabilitation, recognising the effects of enduring abuse and the constraints of conventional legal systems in tackling gender-based violence. Nonetheless, the implementation of this concept frequently encounters systemic obstacles, such as gender biases, inflexible legal standards, political opposition, and an absence of uniform procedures. The challenges highlighted here emphasise the necessity for reforms that incorporate trauma-informed principles, improve transparency, and ensure equitable access to clemency processes.

The examination of clemency practices in regions like the US and the UK reveals a landscape marked by both advancements and ongoing disparities. The US showcases the possibilities of clemency initiatives driven by advocacy and bolstered by the judicial acknowledgement of BWS and the implementation of reforms at the state legislative level. The evolving legal framework in the UK, especially the Domestic Abuse Act of 2021, emphasises the significance of incorporating trauma-informed perspectives within justice systems. Countries like New Zealand, South Africa, and Australia present valuable perspectives, showcasing approaches that utilise cultural and legal advancements to improve clemency for women who have experienced abuse. In order to fully harness the potential of clemency as an instrument of justice, it is essential for jurisdictions to embrace a more systematic and fair methodology.

The establishment of independent clemency review boards, the standardisation of application criteria, and the promotion of public awareness represent crucial measures for fostering a more equitable process. Furthermore, collaboration across different jurisdictions and the implementation of best practices can contribute to the harmonisation of clemency frameworks. This approach ensures that battered women receive treatment characterised by dignity and compassion, irrespective of their geographic or cultural backgrounds.

Clemency serves as both a means to rectify specific instances of injustice and a reflection of a deeper dedication to the ideals of fairness, equity, and compassion within our legal frameworks. By acknowledging the distinct situations faced by battered women and tackling the deeply entrenched challenges that lead to their criminalisation, clemency can act as a source of hope and a driving force for reform. In this process, clemency reinforces the function of justice systems as mechanisms for both accountability and compassion, guaranteeing that women who have suffered abuse receive the acknowledgement and remedy they rightfully deserve.

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