

# History of domestic violence and legislation in the uk



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## **Literature Review**

### **Definition of domestic violence**

Domestic Violence is a phenomenon affecting many societies directly and indirectly around the world; and somehow, after many years of research not a single definition describes this phenomenon adequately yet. Defining domestic violence can be very difficult, as it is a broad term used to describe a range of behaviours and has a multiplicity of meanings to different people in different contexts (Burton, 2008).

Domestic violence usually begins as an isolated abusive incident, however, when the abuse is repeated and becomes a constantly abuse, it is defined as “ battering” (McCue, 2008).

Physical is not the only form of domestic violence. Psychological and emotional violence are common forms of domestic violence as well (Lowenstein, 2005) and therefore the government has widened the definition of domestic violence to cover psychological intimidation and controlling behaviour and at the same time, recognising that domestic violence occurs in younger people’s intimate relationships (Walker and Gavin, 2011), applying to victims under the age of 18 as well:

“ any incident or pattern of incidents of controlling, coercive, threatening behaviour, violence or abuse between those aged 16 or over who are, or have been, intimate partners or family members regardless of gender or sexuality”. This includes psychological, physical, sexual, financial and emotional abuse (Home Office, 2013).

The new Home Office definition express controlling behaviour and coercive behaviour. Controlling behaviour is a reach of acts intended to make an individual subordinate or dependent by separating them from any kind of support, not allowing them to obtain personal gain by controlling and regulating their everyday move and behaviour. Coercive behaviour is an act of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten their victim (Home Office, 2013).

As an example, The Supreme Court held in *Yemshaw v. Hounslow London Borough Council* [2011] that domestic violence was not confined to physical violence but extended to threatening or intimidating behaviour and any other form of abuse being applied directly or indirectly (Miles, 2011).

Domestic violence and abuse is not regarded of age, class, wealth, education, gender, race or any other determinant. Domestic violence is as likely to be happening to a lawyer, a doctor, a teacher, or even a police officer (Gaz, 2012).

## **History of domestic violence**

Domestic violence has existed for many years and has very long historical roots and it has been establish in the inequality between men and women in society (Hague and Malous, 1998). Historically, abuse to wife has been viewed as normal which was part of marriage, something that women should expect and tolerate when being married (Erez, 2002). In the mid-1800s most legal systems accepted wife beating as a valid exercise of a husband's authority over his wife, using the " rule of thumb" established by Sir Francis Buller, known as ' Judge Thumb' meaning that a husband could beat his wife

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with a stick not thicker than his thumb (Women's aid, 2008) and it was allowed by the old British Common Law (Dipty, 2009). Only towards the end of the twentieth century, in the 1970's, that domestic violence had been defined as a crime, justifying intervention by the criminal justice system (Erez, 2002).

## **Legislations**

### **Pre-1970s**

In the 1500s, " the Golden Age of the Rod" had been used against women in the United Kingdom who were taught that it was their sacred duty to obey the man of the house and during this time, violence against wives was ample.

Mid-1800s, the Code of Hammurabi decreed that a wife was subservient to her husband and that he could inflict punishment on any member of his household for any transgression (WomenSafe, 2002). Around the same time in Britain, a husband had absolute power to chastisement his wife in order to implement domestic discipline (ICADV, 1999).

During that time, there was no laws to criminalize violence against wives regardless of such assaults being included within the 1861 Offences Against the Person Act, the judges did very little and sometimes did nothing to address chastisement of wives (Summers & Hoffman, 2002, p. 31).

In the late 1800s, having the Queen Elizabeth in the throne, new reforms for women were established, some of which included that wives could no longer

be kept locked and beatings that could cause life threatening were treated as a ground for divorce (Cumbee Center).

The introduction of the Matrimonial Causes Act 1878 helped victims of violence in marriage to obtain separation orders if their husband was convicted of aggravated assault (Summers & Hoffman, 2002) and in 1882, the Woman's Property Act, allowed wives to obtain full control over their own money and property (Parliament).

### **Second-wave feminism**

In 1960s and 1970s, there was a massive comeback of feminist activity, in conjunction with the women's liberation movement. This period has been called the Second Wave of feminism, having the first wave from 1848 to 1920, when women won the right to vote (Cree, 2008).

The Second Wave of feminism developed in the United States, West Europe, Australasia and Japan. However, it started in small local female groups in the United Kingdom, aiming to campaign similar private problems they all shared ( ) such as equal rights in employment, education, public and private lives and of course campaigning against rape and domestic violence (Cree, 2008) and it was then when domestic violence started to emerge as a significant issue, being recognised as a major social problem needing for political response and remedies (Summers & Hoffman, 2002).

The great movement established networks for support, analysing and comparing women's roles and relationships in society and defined a set of demands for the social and economic equality for women (Mendes, 2009).

The women's movement campaign was so successful that women were able to gain a stronger voice and become a strong image for the public eye, therefore a series of laws were introduced to aid women equality, such as the Equal Pay Act 1970 granting equal wages for both women and men (Mendes, 2009).

### **Post-1970s**

The women's movement was so successful that it helped with several legislations development (Hughes, 2010). There has been considerable changes in the national policy of domestic violence in the United Kingdom in the past 30 years (Matczak et al, 2001) made by the local government authorities which began to undertake and develop actions on domestic violence, and it was all mainly in response to the high demand from groups and Non-Governmental Organisations (NGOs) for the housing, social services and court and police protection for domestic violence victims (Ashworth).

Some of the legislations development included the Sex Discrimination Act 1975 which was passed outlawing sexual discrimination in the workplace and the Domestic Violence Act was passed in 1976 allowing married women to access court order to prevent further violence and to have the right to stay at home without the abuser (Hughes, 2010).

Women's Aid was also developed as a result of the women's liberation movement and as all women gathered together, the big concern of violence at home as well as other types of abuse, including sexual abuse became highlighted. Before Women's Aid, the organisation was the first Women's Aid federation which was set up in 1974, to provide practical and emotional

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support as part of the different services available to women and children experiencing violence (Women's Aid).

The 1970s brought three vital items of legislations, the Domestic Violence & Matrimonial Proceedings Act 1976, which provide the police with powers of arrest for the breach of injunction in cases of domestic violence and allowed women to obtain the right to stay at the matrimonial home, the Domestic Proceedings & Magistrates' Courts Act 1978, which amend the use of injunctions to prevent further violence in the home and the law relating to matrimonial proceedings in magistrates' courts and the Housing (Homeless Persons) Act 1977, which refers to persons who are homeless or threatened with homelessness which helped domestic violence victims with re-housing (UK Legislations).

The acts were meant to produce legal remedies, however, the ways in which they were enforced meant that battered women continue to be inadequately protected leaving criminal law broadly untouched in terms of the protection of victims and the punishment of perpetrators of domestic violence (Summers & Hoffman, 2002).

However, in 1993 the Crown Prosecution Service, published a comprehensive guide for all staff to be able to deal with domestic violence cases adequately even if a victim decides to withdraw the request for prosecution which tends to happen occasionally as a result of intimidation or fear by the abuser (Ashworth).

Furthermore, legislative reforms took place in the 1990s, Part IV of the

Family Law Act 1996 being the most significant one which improved the <https://assignbuster.com/history-of-domestic-violence-and-legislation-in-the-uk/>

protective orders available to domestic violence victims under the civil law (Burton, 2008).

The Family Law Act 1996 Part IV which is now the main piece of legislation providing remedies under the civil law for victims of domestic violence (Burton, 2008) provides the victim with a statutory 'home right' meaning the victim cannot be evicted from the home unless there is a court order (Welstead & Edwards, 2011).

Throughout the period between 1997 and 2010, the principle arrangement of policy and legislation on domestic violence was being enforced based on prevention, protection and justice and allowing support to victims of domestic abuse to be established at local and national level (Matczak et al, 2011).

### **Up to dated**

In 1986, the Home Office published the first circular regarding domestic violence called "Violence against women" which made it clear that it was obligatory for the police to ensure the safety of women and children at domestic deutes (Applegate, 2006) but it wasn't until 1992 that both the Home Office Circular 60/1990 and the Association of Chief Probation Officers declared domestic violence to be a crime, given law enforcement agencies the power to punish the abuser (Kury & Smartt, 2006). However, it did not make much of a change to the policy (Applegate, 2006).

It was not until 2005 when the Domestic Violence Crime and Victims Act 2004 was introduced, that put some of these issues addressed by the

criminal law and when some changes to the policy were actually made. The Act aims to increase the safety of domestic violence victims by providing the police with enormous power to approach and deal with domestic violence in better ways, establishing a new offence called “familial homicide” which provides the power of arrest for minor offences of common assault and linking some criminal and civil remedies (Women’s aid) and for the criminal justice, there is a statutory code of practice to ensure they provide support and protection to victims of domestic violence (Applegate, 2006).

While the law itself does not distinguish between a domestic violence victim and a person who gets attacked by a stranger in the streets, in practice the victims of domestic violence rarely obtain the law’s protection (Elliot & Quinn, 2012). Unlike in some jurisdictions from other countries such as the United States, there is no specific offence of domestic violence in the United Kingdom, instead, there are a variety of criminal offences including sexual and physical assault, harassment offences and the crimes related to homicide, which can be applied in a case of domestic violence (Paradine & Wilkinson, 2004)

Today, the government is fully committed to tackle domestic violence in the United Kingdom in every possible way by allowing violence and abuse to be treated seriously by courts and the criminal justice system (Summers & Hoffman, 2002). The government’s strategy to tackle domestic violence is based on three elements; prevention, protection and justice, and support (Blunkett, 2003). The government provides some of these elements by implementing local domestic violence conventions where the police, social services, housing services, probation, health services, legal professionals, <https://assignbuster.com/history-of-domestic-violence-and-legislation-in-the-uk/>

and many other voluntary agencies gather and work together to tackle domestic violence at local level (Matczak et al, 2011).

Although, there have been implementations of local domestic conventions and domestic violence units as well as many multi-agencies that work together to tackle domestic violence and changes in legislation and police policy, there are still some major concerns of how domestic violence is being dealt today.

In 2012, around 1.2 million women suffered domestic abuse, over 400,000 women were sexually assaulted, less than 1 in 4 suffered abuse from their partners (Home Office, 2013) and on average, two women are being killed a week by a partner or former partner (CAADA, 2013).

Furthermore, the police have been majorly criticised for failing to respond to domestic violence properly by not recording incidents as crimes (Paradine & Wilkinson, 2004) with a 30% of domestic violence incidents reported to the police but not taken into actions and only 4% of reported incidents resulting in a conviction (Women's aid) and they have been also criticised for not making arrests and failing to enforce civil injunctions (Paradine & Wilkinson, 2004).

For these reasons, in September 2013, the Home Secretary has commissioned Her Majesty's Inspectorate of Constabulary (HMIC) to carry out an inspection into how police forces are responding to domestic violence and the review will be examining the performance of all forces around England and Wales and report back to the Home Office in April 2014.

In the meantime, chapter 2. 4 and 2. 5 will be looking at the reporting and non-reporting of incidents and how the police is responding to domestic incidents after the establishment of domestic violence units were introduced across the country, and assess the changes in police policy and practice over the past years including the ‘ pro-arrest’ policy which aims to reduce the number of domestic violence cases discontinued by the police or the Crown Prosecution Service (Hoyle & Sanders, 2000).

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