

Overview of domestic violence in the uk



Domestic violence is very real and common in the UK, and indeed internationally

In the UK domestic violence accounts for a quarter of all crime, despite these figures it is recorded that only 5 per cent of recorded cases of domestic violence end in conviction, less than 20 per cent of rapes and sexual assaults are reported to the police, and less than 6 per cent of rapes result in conviction. Wells points out as a comparison, the number of women that are in prison, and the seemingly trivial reasons for their incarceration.

There are now over 4,500 women in prison, an increase of 194 per cent in the last ten years. Most women are convicted of non-violent offences, such as shoplifting. One woman out of 12 judges in the House of Lords, 5 women out of 43 police Chief Constables, 18 women out of 42 Chief Officers of Probation, 7 women out of 42 Chief Crown Prosecutors, 31 women out of 138 Prison Governors. There was evidence of sexual harassment and discrimination experienced by women working in the system.

Domestic violence is not discriminatory and occurs between people of all social classes, amongst all racial and religious groupings and in all age groups. Crime and other statistics can only provide us with a taster of the real picture. The nature and extent of the suffering which is endured by families behind closed doors is very much something that is kept private. Victims of domestic assaults often do not complain of violence, either through fear of being further assaulted, or because they are too embarrassed and ashamed to reveal their plight to professionals who might be able to assist them. Although the traditional perspective is that victims of domestic violence are predominately women, this is not always the case,

men, children and the elderly are vulnerable to domestic violence too. This said there is an abundance of evidence to show that it is women and children who are the main victims. Children who themselves suffer violence at the hands of a parent are in the main protected by the state through child protection procedures. The remedies provided by the civil law are therefore generally used to obtain protection for an adult victim.

As Subedi points out There are several causes of violence against women. These range from historical unequal power relations between men and women to cultural perceptions, women's sexuality, inaction on the part of the agents of the State to the traditional perception in law and practice that matters within the family and between a husband and wife are basically private matters in which outside or State involvement should be kept to a minimum. Unlike other forms of crime, the problem with domestic violence has been that even the law itself is not well- developed and the law that is there on this issue has not been enforced as vigorously as possible. It is from this premise that efforts have been made in the recent past both at national and international level to strengthen the law on traditional patterns of violence and to expand the scope of the law to cover new forms of violence. While the problem often encountered in this process at national level is the doctrine of privacy and the concept of the sanctity of the family, the dichotomy of the public/private sphere is the problem at international level.

In the UK, domestic assaults are criminal offences and a man who attacks his wife can be prosecuted for his actions. He may be charged with one or more of various offences against the person included the offence of rape. The Protection From Harassment Act 1997 introduced strong measures to assist

those who are victims of a course of conduct, which amounts to harassment and made such conduct a crime. However, victims of domestic violence and harassment may be reluctant to become involved in the prosecution process for a number of reasons. These include the realisation by the victim that the matter is no longer under her control once she has reported an attack to the police. It will be up to the police to decide whether and how they wish to investigate her complaint, and it will be the decision of the Crown Prosecution Service whether or not to go ahead and press charges.

This loss of control acts as a disincentive to women to report incidents of violence, as they may well fear the consequences of their action if the police and Crown Prosecution Service fail, as they see it, to respond in an appropriate fashion. In the past the police have been unwilling to intervene in cases of domestic violence, and to prosecute offenders. This perception of the police as unwilling to come to the assistance of victims of domestic assaults is still evident today, even though domestic violence is taken much more seriously by the police than in the past, and even though police practices in many areas have changed radically in favour of the victim.

Figures from British Crime Surveys suggest that domestic violence forms the largest single category of violent crime. In a survey carried out by Davis and Gretny revealed that of a total of 448 assaults, all of which were referred to the CPS, there were 243 (54 per cent) non-domestics and 205 (46 per cent) “domestics”. If the British Crime Survey finding that domestic violence comprises 20 per cent of all assaults can be believed, and if the Bristol police files that they surveyed can be taken to be representative of the current position, it would appear that domestic assault is significantly more likely to

be prosecuted than is assault in other contexts. This is remarkable given the widely accepted picture of domestic violence as a crime both under-reported and under-recorded.

In such situations a victim of domestic violence, may apply for an injunction under the Davis G & Cretney A, (1996) Prosecuting Domestic Assault, Criminal Law Review Mar 162 - 174 or a non- molestation order under s42 of the Family Law Act 1996. The statutes have somewhat differing aims although both statutes do aim to prevent harassment and can be compared and this will be discussed. Only ' associated persons' can apply under the FLA 1996; anybody can apply under the PHA 1997. There are wider remedies available under the FLA 1996, including the power to make ' occupation orders'. Damages can be awarded only under the PHA 1997. This is an important point. Domestic violence/harassment knows no social boundaries and therefore an award of damages can be a salutary lesson. It can also be an important remedy for those who are scared to report, for fear of financial hardship. Such damages can, of course, if not promptly paid, be enforced in all the usual ways including execution, attachment of earnings or a charging order on land - if necessary followed by an order for sale. Presently, a power of arrest can be attached to FLA 1996 orders but not to PHA 1997 orders.

However, although the power of arrest is retained for occupation orders it is to be abolished for non-molestation orders. A warrant of arrest can be issued under either statute. Breach of an injunction under s 3 of the PHA 1997 is an offence breach of a non-molestation order is made an offence by s 42A of the FLA 1996.(7) District judges have full jurisdiction under both statutes to make orders, issue warrants and deal with contempt of court proceedings for <https://assignbuster.com/overview-of-domestic-violence-in-the-uk/>

breach of orders. Applications under the FLA 1996 are family proceedings governed by the Family Proceedings Rules 1991 and must be issued in a family proceedings court, a divorce county court, family hearing centre, care centre or in the Principal Registry or Lambeth Shoreditch or Woolwich County Courts. Applications under the PHA 1997 are civil proceedings governed by CPR 1998 Part 65 and can be issued in the High Court (Queen's Bench Division) or in the county court for the district in which either the claimant or the defendant resides or carries on business.

Exceptionally, concurrent proceedings under both statutes are appropriate. They should be consolidated and tried together. A person arrested and brought before the court pursuant to the FLA 1996 can be remanded in custody or on bail. There is no power to remand a person arrested and brought before the court pursuant to the PHA 1997. Punishment for contempt of court under either statute is subject to the maximum of 2 years' imprisonment provided by the Contempt of Court Act 1981. The sentence must be proportionate to the seriousness of the contempt. Conviction for breach of an injunction under s 3 of the PHA 1997 or for breach of a non-molestation order under s 42A of the FLA 1996 both carry a maximum sentence of 6 months and/or a fine not exceeding the statutory maximum on summary conviction, and a maximum sentence of 5 years and/or fine on conviction on indictment. Both statutes provide that a person cannot be both punished for contempt of court and prosecuted in respect of the same incident. The PHA 1997 also creates offences (ss 2 and 4) not dependant on a civil injunction; the FLA 1996 does not.

By s 1 of the PHA 1997, a person must not pursue a course of conduct which amounts to harassment of another and which he knows or ought to know amounts to harassment of another. By s 7(3) a 'course of conduct' must involve conduct on at least two occasions and by s 7(4) 'conduct' includes speech. Section 7(3A) was inserted by the Criminal Justice and Police Act 2001 and provides: 'A person's conduct on any occasion shall be taken, if aided, abetted, counselled or procured by another: (a) to be conduct on that occasion of the other (as well as conduct of the person whose conduct it is); and (b) to be conduct in relation to which the other's knowledge and purpose, and what he ought to have known, are the same as they were in relation to what was contemplated or reasonably foreseeable at the time of the aiding, abetting, counselling or procuring.'

The phrase 'course of conduct' has caused difficulty. In *R v Hills* held that assaults in April and October 1999 were not a 'course of conduct', particularly since the parties had been reconciled in the interim. In *Lau v Director of Public Prosecutions* quashed a conviction on the grounds that two incidents 4 months apart were not a 'course of conduct'. The fewer the number of incidents and the wider the time lapse between them, the less likely that they give rise to a 'course of conduct'. On appropriate facts, a charge of assault should be preferred. Indeed, many cases justify both a charge of assault and of harassment.

The definition of harassment (and assault) is the same in civil and criminal proceedings, and thus arguments on whether or not there was a course of conduct can arise in both civil and criminal courts. In civil cases, where they

may be doubt on whether there is a course of conduct then, as in crime, where appropriate, assault can also be alleged.

In June 2003 the Home Office published a consultation paper setting out proposals to tackle domestic violence. The paper indicated the Government's strategy was based on three elements: to prevent domestic violence occurring or recurring; to increase support for victims; and to ensure improved legal protection and justice for domestic violence victims. This led to the enactment of the Domestic Violence, Crime and Victims Act 2004 which came into force in March 2005.

DVCVA 2004 closely links the civil and criminal processes through new police powers, and through a new criminal offence of breach of a non-molestation order. It also creates a new offence of causing or permitting the death of a child or vulnerable person. It also requires the adoption of a code of practice and a victims' fund, to be financed by surcharges on fines and some fixed penalties. It creates the power for the Criminal Injuries Compensation Authority to recover money from offenders, and makes a variety of other changes to criminal procedure, powers and sentencing.

Non-molestation or occupation orders are key tools in providing protection for those who fall within the category of " associated persons". Prior to the enactment of the DVCVA 2004 eligibility extended to those living together as man and wife (" cohabitants"), or former cohabitants, and those who live or have lived in the same household (except if they are employees, tenants or boarders, or a lodger). DVCVA 2004 extends the category of " associated

person” to include cohabitants in a same-sex relationship living in an equivalent relationship to that of husband and wife.

The power to attach a power of arrest to a non-molestation order is removed by this act. Instead, common assault becomes an arrestable offence under the Police and Criminal Evidence Act 1984 and breach of a non-molestation order becomes a criminal (arrestable) offence.

If, for whatever reason, no prosecution is mounted, perhaps because of the wishes of the victim, that does not prevent an application to the civil court to commit for breach of the order. Nothing prevents the commencement of civil proceedings while criminal proceedings are pending, following arrest, though arguably a family court should await the determination of the criminal process.

A new criminal offence is created under s42A will be punishable on conviction on indictment by a term of imprisonment not exceeding five years, or a fine, or both, and on summary conviction by a term of imprisonment not exceeding 12 months, or a fine not exceeding the statutory minimum, or both. The prosecution will need to prove the existence and terms of the order; the fact that the defendant was aware of the order; conduct that amounts to breach of that order, provided the breach is relevant only to sentence and not to guilt or innocence; and the lack of reasonable excuse.

Minor changes are made to occupation orders under the DVCVA 2004 these require a court, in proceedings for an occupation order, to consider whether or not to make a non-molestation order. Other changes include changes to <https://assignbuster.com/overview-of-domestic-violence-in-the-uk/>

reflect cohabitation as opposed to marriage. Nothing in the new Act removes the right of the court to attach a power of arrest to an occupation order. This may cause some difficulties where a court makes both a non-molestation order and an occupation order, particularly if a court has attached a radius clause, for example not to come within a specified distance of the applicant's home.

Restraining orders under PHA 1997 form an integral part of the machinery for the protection of victims of domestic violence. DVCVA 2004, s 12, will extend the court's power to make a restraining order under s 5 of PHA 1997. Under s 5, when a court is sentencing or otherwise dealing with a person who is convicted of an offence under s 2 or s 4 of that Act, then as well as sentencing him or dealing with him in any other way, it may make a restraining order. The restraining order is particularly useful, as it provides for the continued safety of the victim but can only be made in cases where a conviction had been obtained for a s 2 or s 4 offence.

As Wells points out:

A vignette of current concerns suggests that much has changed in the last few decades. There is a ministerial group on domestic violence headed by Home Office minister, Baroness Scotland. The Solicitor General, a woman, has made tackling domestic violence a policy priority. She has talked to the President of Family Division, a woman. The Law Commission has recommended the abolition of the partial defence of provocation for reasons largely to do with its differential impact on male and female partner killers. The psychological trauma associated with rape and other forms of sexual

harassment has been acknowledged, much attention has been given to improving police practices, and the offences themselves have been reconfigured around the concept of trust. It is difficult to believe that these changes would have come about without the influence of feminism in general and feminist legal commentators in particular. These changes also fit into a much wider pattern in which victims have moved very much centre stage along with the associated restorative justice movement.

Internationally moves are being made to improve the situation for women. There have been international efforts to strengthen women's rights. This perception has contributed to the reluctance on the part of many countries to adopt either a protocol to CEDAW providing for individual petition or a protocol on violence against women with similar remedies for women. Moreover, the perception of States towards certain types of violence seems to be different in developed Western countries from that of certain developing countries. While widespread dissemination of pornographic material and use of women as sex objects by the media has been viewed as violence against women by women in certain developing countries, the same does not necessarily hold true in certain Western countries such as the Netherlands and the United States, which opposed the inclusion of this type of violence in the definition of violence in the draft UN declaration on violence against women. This type of activity cannot be violence for those women who voluntarily allow themselves to be used as sex objects by the media. But it may be seen as a psychological violence against women in general by those who disapprove of such treatment of women by the media. The protest campaigns organised recently by grass-root women's groups in

India against the world beauty competition in Bangalore is an example of such differences of opinion.

So is British law sufficient? Does it protect women adequately? There is generally a much greater awareness of domestic violence, and the criminality and culpability has increased somewhat over the last decade. Awareness has been heightened, although it can be argued that the piecemeal legislation is unacceptable and there needs to be some joined up thinking insofar as this area of law is concerned. Whilst the new legislation is a move in that direction, it is a wasted opportunity as it is certainly desirable that the law on domestic violence should be consolidated.