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**The Struggle for Justice:
The State's Response to Violence against Women**

Expert Paper prepared by:

Funmi Johnson*
Domestic Violence Implementation Lawyer
Crown Prosecution Service
United Kingdom

** The views expressed in this paper are those of the author and do not necessarily represent those of the United Nations*

Introduction

Violence against women is a widespread problem, with appalling physical, sexual, emotional, psychological and economic consequences for girls and women (Gill & Rehman, 2004). It affects women of every age, in every society and in every socio-economic group. Violence takes many forms, including female genital mutilation (FGM), early marriage, forced marriage, rape and other forms of sexual violence, domestic violence and child abuse.

The framing of violence against women as a problem arose primarily, as a result of campaigning by feminist activists and the voluntary sector. The voluntary sector continues to play a significant role in tackling violence against women and indeed have influenced the violence against women discourse more generally, in the way that they have engaged with the State. Whilst the State is a relative newcomer to the agenda, it has a vital role to play.

The main function of the State has been to enact legislation and formulate policies to tackle violence against women. Although this seems to be a simple concept, there is a history of tension between the State and the voluntary sector over the inadequacy of the State's response to the issue (Gill & Rehman, 2004).

This paper looks at some of the legislation available in the UK, which impacts on violence against women and considers the effectiveness of the legal framework.

Defining violence against women

In order to ensure that there is clarity around what the term 'violence against women' means in the context of this paper, the following UN definition is used:

“Violence against women refers to any act of gender based violence that results in, or is likely to result in, or is likely to result in physical, sexual, or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life. Violence against women shall be understood to encompass, but not be limited to the following:

- a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;*
- b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment*

- and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;*
- c) *Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.”*

This definition reflects the breadth of the issues involved in violence against women and also the gendered nature of the abuse. This is important so that policy makers have a full understanding of the issues involved in violence against women, otherwise the laws and policies that are formulated are likely to be ineffective. Gender violence is part of a complex matrix of social practices that collude to devalue women as a group, perpetuate unequal practices and inequality and the domination of and discrimination against women, by men (Van der Hoogte & Kingma 2004; Gill & Rehman, 2004).

Legislative approach of the State to tackling violence against women

The UK legislative approach to violence against women needs to be seen in the context of the wider, human rights based framework. Due to the re-framing of human rights as including the private as well as the public sphere, interaction with the domestic State is not the only means of effecting change (Howe, 2006). Challenges to the State's response to the issue have successfully been brought, using both domestic law and human rights legislation.

The European Convention on Human Rights contains a number of Article rights which are very helpful in relation to protecting victims of violence against women.

Article 2

This Article is concerned with the right to life

Article 3

Individuals have a right not to be subjected to torture or to inhuman or degrading treatment

Article 8

The right to privacy and family life

Article 14

This Article confirms that rights are protected without discrimination

The key Article that a defendant is likely to rely on is Article 6- the right to a fair trial. The European Courts have made it clear that the relevant consideration is the fairness of the overall proceedings and therefore, even though there may be a breach in one aspect of the trial, it does not necessarily amount to a breach of a defendant's Article 6 rights.

The ECHR which was incorporated into domestic law by the Human Rights Act 1998 places an obligation on State authorities to act in a way that protects the individual's rights and therefore it is right that violence against women should always be seen in the wider context of a human rights framework.

Domestic legislation

Legislation has been the main mechanism, by which the State has chosen to tackle violence against women. There are examples of legislation from the eighteenth century, through to the present day, which illustrate that the Government has sought to protect women and children experiencing violence. In 1853, the Act "for the Better Prevention and Punishment of Aggravated Assaults upon Women and Children" argued that women should be awarded the same protection as poodle dogs and donkeys! The Domestic Violence and Matrimonial Proceedings Act 1976, the Domestic Proceedings and Magistrates Court Act 1978 and the Domestic Violence Crime and Victims Act 2004 are examples of more recent legislation.

The current Government included domestic violence in their 1997 election manifesto and have backed a number of initiatives designed to tackle domestic violence and sexual violence. For example the specialist domestic violence courts system and the National Action Plans on domestic violence and sexual violence. The development of specialist domestic violence courts, as part of the Co-ordinated Community Response to tackling domestic violence is a particular priority for the Government. These courts are focused on holding perpetrators to account and increasing the support, safety and satisfaction of victims. There are currently 98 such courts in England and Wales, with plans to expand the number to 128 in 2009-10.

The legal system in England and Wales consists of both civil and criminal jurisdictions. Both systems are independent of each other and it possible for parallel proceedings to operate in both jurisdictions. For example a perpetrator of domestic violence may be prosecuted in the criminal courts, whilst also being made the subject of family proceedings in the civil court.

Criminal legislation

There is no specific offence of domestic violence or violence against women in the UK. In the case of domestic violence, there is a Government definition,

which enables case of domestic violence to be identified and managed appropriately. The definition is as follows:

“Any incident¹ of threatening behaviour, violence or abuse (psychological, physical, sexual, financial or emotional) between adults who are or have been intimate partners or family members, regardless of gender or sexuality”²

Therefore there are many criminal offences which could fall within the definition. Some examples of criminal legislation which may be relevant to violence against women offences are as follows:

- ◆ Offences Against The Person Act 1861 (used to prosecute assaults);
- ◆ Criminal Damage Act 1971 (used to prosecute damage done to property, including by fire);
- ◆ Protection from Harassment Act 1997 (used to prosecute ‘stalking’)
- ◆ Sexual Offences Act 2003 (used to prosecute rape and sexual offences as well as human trafficking offences);
- ◆ Criminal Justice Act 2003
- ◆ Female Genital Mutilation Act 2003;
- ◆ Domestic Violence Crime and Victims Act 2004.

The most recent legislation that focuses on domestic and sexual violence are the Domestic Violence Crime and Victim Act 2004; Female Genital Mutilation Act 2003 and the Sexual Offences Act 2003. Although legislation is a useful tool to tackle violence against women, it is also limited in how it can respond to women’s experiences of violence.

Domestic Violence Crime and Victims Act 2004

The Government description of this Act was *“the most radical overhaul of domestic violence legislation in thirty years”* (Lawson et al, 2004). However, feminist activists and the voluntary sector have some concerns regarding this legislation.

- ◆ the Act is gender neutral in its wording and could potentially criminalise women who are unable to protect their children or vulnerable adult, because they are experiencing domestic violence themselves;
- ◆ breach of a non-molestation order has now become a criminal offence. Non-molestation orders are civil orders of protection, which are designed to offer women protection from violent partners. They can be obtained very quickly from local County Courts, either ex parte or inter partes. Many women opt for the civil route because their first priority is

¹ The CPS can only deal with incidents that are classified as crimes.

² An *adult* is defined as any person aged 18 years or over. *Family members* are defined as mother, father, son, daughter, brother, sister and grandparents, whether directly related, in laws or step-family.

safety and they do not want to criminalise their partner. Under the new provisions, although women have a choice about whether to pursue any breach as either a criminal or civil option, it may build a delay into the system and in some instances, women will not be able to exercise that choice, because the police have been called and the matter proceeds as a criminal prosecution;

Female Genital Mutilation Act 2003

This Act repealed the earlier 1985 Act of the same name. It increased the penalty for committing the offence of female genital mutilation and made it possible to prosecute an offence committed outside the UK, as long as the victim is a British citizen. The limitation of this Act is evidenced by the absence of any prosecutions to date. There are a number of possible reasons for this, including the fact that victims will not wish to criminalise their parents and therefore will not report the matter to the police.

Sexual Offences Act 2003

The purpose of this Act was to strengthen and modernise the law of sexual offences, improve preventative measures and protect individuals from sexual offenders. Some very important provisions contained in the Act are:

- ◆ widening the definition of rape, to include oral penetration;
- ◆ a statutory definition of 'consent';
- ◆ specific offences relating to children under 13, 16 and 18; and
- ◆ the creation of new offences to protect individuals with a mental disability.

The Government is determined to improve outcomes for rape victims in court. The Government published its response to the Office for Criminal Reform consultation paper, *Convicting Rapists and Protecting Victims – Justice for Victims of Rape*. This publication details a range of measures which will be introduced in order to increase successful outcomes in rape cases. This will be achieved by strengthening the existing legislative framework and improving care for victims and witnesses. Some of the key measures are:

- ◆ changing the law to make video recordings of rape victims automatically admissible as evidence in chief in trials;
- ◆ introducing legislation to make all complaints of rape made by the victim to friends, family and others, automatically admissible as evidence at trial, irrespective of the time which may have elapsed; and
- ◆ continue to explore avenues to enable information about the psychological responses of rape victims to be presented to juries, in order to challenge myths and stereotypes about victim behaviour.

Support for victims

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Apart from holding the perpetrator accountable for their actions, it is also crucial to support victims to give evidence in court. In specialist domestic violence courts, victims are supported by independent domestic violence advisors, who help them to navigate through the criminal and civil jurisdictions, offer emotional support, act as a liaison between the victim and the various statutory agencies and who can also attend court with them. An important legislative measure was introduced in 1999- **The Youth Justice & Criminal Evidence Act 1999**. This Act introduced the concept of special measures which can be applied for on behalf of witnesses who are vulnerable by reason of their age, or a physical or mental disability. There is also protection available for witnesses who are deemed to be 'intimidated'. In the case of intimidated witnesses, the court needs to consider a number of factors, including the nature of the offence, the socio-cultural and ethnic origins of the witness and the behaviour of the accused or any of his friends, family or associates towards the witness. Once the court is satisfied that the quality of the witness' evidence will be improved by the granting a special measure, then they will grant the application. Some examples of special measures include being screened off from the defendant, giving evidence by live television link, allowing witnesses to give their evidence through a pre-recorded interview and also excluding people from the court room, to provide a more private setting. The court can also make an order that precludes the victim/witness being identified by the media.

Civil legislation

Where the focus of the criminal law is to deal with offending behaviour, the focus of civil legislation is primarily to protect and increase the safety of the victim and any children.

Family Law Act 1996

The main piece of legislation that facilitates this approach is Part IV of the Family Law Act 1996. This legislation provides a civil remedy of an injunction for the protection of victims experiencing domestic violence. The Act also allows victims to apply for an occupation order, which regulates the occupation of the home shared by a couple and their children. The court can make these orders on application or of its own volition, if it considers it should be made for the benefit of a party or any children.

In order to make the order the court has to apply the "balance of harm" test. The court needs to ascertain which person and/or children living with the couple will be most at risk if an order is/is not made.

It is important that children who experience violence or who witness violence are also protected. **The Adoption and Children Act 2002** amended the definition of 'harm' to include the harm suffered by children who witness

domestic violence. In addition, the **Children and Adoption Act 2006**, once implemented, will require risk assessments to be carried out in cases where the court considers that a child is at risk of harm.

Protection from Harassment Act 1997

This Act has both criminal and civil remedies for domestic violence. The main benefit of the civil provisions has been to aid those individuals who are unable to get an injunction under the Family Law Act 1996. The remedies include injunctions and claims for damages.

Civil Partnership Act 2004

This Act came into force on the 5 December 2005 and created a new form of legal relationship, which may be formed by two persons who are:

- ◆ the same sex;
- ◆ not already in an existing civil partnership or lawfully married;
- ◆ not within the prohibited degrees of relationship; and
- ◆ both aged sixteen years or over.

The relevance of this Act to violence against women is that it amends the Family Law Act 1996, so that civil partners can also benefit from the protection offered by the Family Law Act 1996, by way of non-molestation orders and occupation orders.

Forced Marriage (Civil Protection) Act 2007

This Act will provide injunctive relief and damages for victims of forced marriage. It also enables the court to act pre-emptively by issuing a Forced Marriage Protection Order in favour of those facing forced marriage. The Act will be implemented in autumn 2008.

Immigration Rules- DV concession 1999

A person from abroad is granted two years leave to enter or remain in the UK by virtue of the fact that they are either married to or are the unmarried partner of a UK citizen. This is commonly known as the 'probationary period' and if the relationship breaks down within that period, the person is required to leave the UK unless they qualify to remain on any other basis.

In response to extensive campaigning by the voluntary sector, the Home Office incorporated the 'Domestic Violence Rule' into the Immigration Rules. As a result of this change, anyone who experiences domestic violence, during the probationary period may apply for indefinite leave to remain in the UK. The applicant will have to show that the relationship has broken down permanently as a result of the violence and will also have to produce evidence

of the violence. The concession also deals with situations where the domestic violence is being perpetrated by another member of the family, the partner is unwilling to offer protection and the applicant has left their partner for this reason.

The Government is aware of the acute problems faced by women with insecure immigration status, who suffer violence and is currently finalising a new scheme which will offer help to these particularly vulnerable victims.

Conclusion

Legislation is commonly used to send a message that certain types of behaviour are disapproved of and will be sanctioned by the State. It can also act as a deterrent and offer protection to women experiencing violence. However, legislation on its own is not sufficient to tackle violence against women. It needs to be enacted and implemented appropriately, by police officers, lawyers and judges. Many women still report an unhelpful and judgemental approach from prosecutors and police. Although the definition of violence against women includes psychological abuse, many women still find it difficult to report and when they do, it is often very difficult to prosecute successfully.

In order to successfully hold abusers to account, prioritise the safety of women and children and prevent violence against women, a holistic approach has to be adopted. Legislation has to be underpinned by mechanisms to ensure that victims are fully supported. Legislative reforms also need to be coupled with general education programmes, training for police, prosecutors and judges, awareness raising campaigns and education programmes for children and young people.

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