



NEAR EAST UNIVERSITY  
INSTITUTE OF GRADUATE STUDIES  
DEPARTMENT OF INTERNATIONAL LAW

## **WHAT ARE THE LEGAL RESPONSES TO DOMESTIC VIOLENCE IN THE UK?**

LL.M THESIS

Ruvarashe Lisa MUTENDI

**Nicosia  
2021**

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**MASTER'S THESIS**

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2021**

## Approval

We certify that we have read the thesis submitted by Ruvarashe Lia Mutendi titled “ **What are the Legal Responses to Domestic Violence in the UK?**” and that in our combined opinion it is fully adequate, in scope and in quality, as a thesis for the degree of Master of Laws in International Law.

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### **Declaration**

I hereby declare that all information, documents, analysis and results in this thesis have been collected and presented according to the academic rules and ethical guidelines of Institute of Graduate Studies, Near East University. I also declare that as required by these rules and conduct, I have fully cited and referenced information and data that are not original to this study.

Ruvarashe Lisa Mutendi  
01/01/22

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Ruvarashe Lisa Mutendi

## **Abstract**

### **What Are The Legal Responses to Domestic Violence in The UK?**

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The legal responses to domestic violence stem from how domestic violence is defined. It is the definition of domestic violence that gives the law reasons to intervene and how to intervene. Because domestic violence infringes and violates human rights there is need therefore for the law to intervene in such matters by bringing relevant solutions. The UK criminal law considers domestic violence as a punishable offense and various orders can be put in place to guarantee the protection and safety of the victims under the civil law. This thesis shall therefore look at the two main ways that the law uses in responding to domestic violence; the civil law and criminal law. Firstly, this thesis shall discuss the remedies offered in civil law as well as the legislation put in place for the protection of victims for example the PHA 1997 and FLA 1996. Secondly, there will be a discussion of the responses put in place by criminal law. Lastly, I shall look at some of the hindrances and difficulties that the law encounters in dealing with domestic abuse cases.

**Keywords:** violence, abuse, victims, offender, courts.

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**ABBREVIATIONS****CPS ..... Crown Prosecution Service****DAA ..... Domestic Abuse Act****DAPO..... Domestic Abuse Protection Order****DAPO ..... Domestic Abuse Protection Notice****FLA ..... Family Law Act****MHA..... Matrimonial Homes Act****PHA ..... Protection from Harassment Act****S ..... Section**



## CHAPTER I

### Introduction

#### Purpose of the Research Study

This research sought to explain the legal responses of the English law in domestic violence or abuse cases by discussing the remedies and solutions offered by the local legislation.

#### Problem Statement

Also known as domestic abuse or family violence, domestic violence is a single or recurring incident of controlling, threatening or coercive behavior by one person to another in a domestic set up or a family setting, for example civil partnership, cohabitation or marriage.<sup>1</sup> In as much as women are more likely to face domestic abuse, this does not leave men unsusceptible to abuse, men also face the same abuse, and in most cases, violence against men is often overlooked and ignored due to social stigmas regarding male victimization.<sup>2</sup>

In most cases, women experience violence more than men and this abuse is not only limited to physical abuse, which people are accustomed to when they hear of violence. Violence comes in different forms and it is the hands of law-making bodies to bring a clearer picture of domestic violence and the consequences thereof. National statistics suggest that one out of three women suffer domestic violence and one out of six men often suffer domestic abuse at some point in their lives. According to Crime Survey, the year

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<sup>1</sup> Crown Prosecution Service, 'Legal Guidance, Domestic Abuse' (*cps.gov.uk* 30 June 2017) <https://www.cps.gov.uk/legal-guidance/controlling-or-coercive-behaviour-intimate-or-family-relationship> accessed 15 December 2021

<sup>2</sup> Julie C. Taylor and others, Barriers to Men's Help Seeking for Intimate Partner Violence. *Journal of Interpersonal Violence* (2021) <https://journals.sagepub.com/doi/full/10.1177/08862605211035870#:~:text=The%20barriers%20identified%20from%20previous,and%20control%20within%20the%20relationship>. Accessed 15 December 2021

ending March 2021 has seen an increase in domestic violence by 6% from the recorded number in March 2020<sup>3</sup> showing the prevalence of domestic abuse in the society.

There is a difference however; between the violence faced by women and that faced by men, as violence against men is in most cases self-defense<sup>4</sup>. In some jurisdictions with patriarchal societies, where there is no gender equality and no laws whatsoever against abuse, domestic violence cases are usually high and often justified and accepted by the society regardless of the negative effects and impacts that are as a result of violence.<sup>5</sup> This then creates a rift for the law to intervene in domestic violence issues as most victims are not able to publicly open up and report such issues. Some victims are not even given the platform to report the abuse and some are not even heard or given attention.<sup>6</sup>

Even though it is mostly handled by civil law and civil courts, domestic violence is not only a civil law matter as some of its characteristics fall under criminal offenses<sup>7</sup>. Half of the domestic abuse related crimes do not result in arrest and most of them lack enough evidence to proceed to prosecution. Many of the offenders have the victims protecting their abusive behavior from the public and the police by using threats<sup>8</sup>. Remedies have been put in place for various degrees of domestic violence in the civil jurisdiction such as the orders found in Part IV of the FLA<sup>9</sup>.

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<sup>3</sup>Office for National Statistics, 'Crime and Justice' ([ons.gov.uk](https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/bulletins/domesticabuseinenglandandwalesoverview/november2021), 24 November 2021) <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/bulletins/domesticabuseinenglandandwalesoverview/november2021> accessed 27 November 2021

<sup>4</sup> Jonathan Herring, *Family Law, A Very Short Introduction* (1st edition 2014) p.63

<sup>5</sup> *Gender Identity, Gender-based Violence and Human Rights*, <<https://rm.coe.int/chapter-1-gender-identity-gender-based-violence-and-human-rights-gende/16809e1595>> accessed 1 January 2022

<sup>6</sup> Jonathan Herring, *Family Law* (5th edition, Longman, 2011) 315

<sup>7</sup> Domestic Abuse Act 2021, pt 6

<sup>8</sup> *ibid.* 6

<sup>9</sup> Domestic Abuse Act 2021, ss 33, 35, 36, 37, 38, 42

However, the law has been slow in responding to domestic abuse cases, as it was only in 1991 when it was held that a husband could be charged for raping his wife. In *R v R*<sup>10</sup>, the husband was charged with attempted rape of his wife even though they had not divorced formally but just separated informally. Domestic abuse hence falls under civil law as well as criminal law, remedies for domestic abuse under both systems may be sought.<sup>11</sup> It is only recently that the government and the police are stepping in to resolve issues between couples which at one point in time, was regarded as a private matter without relevance to the state<sup>12</sup>. It is only now in 2021, that an act against domestic abuse was enacted<sup>13</sup> which is evidence of how slow the law is progressing in this area.

There are a number of legal remedies that can be applied in court such as; non-molestation order, occupation order and protection against harassment. But for these remedies to be successful in changing the society, victims have to stand up and report the violence which is something a few find courage to do. Though acknowledgement of the abuse is still a problem, the FLA 1996, the DAA 2021 and other enacted legislation but mostly the Family Law Act has managed to oust the abuser, to protect the victim's property rights and also protecting their human rights that is the right to safety and respect for family.<sup>14</sup>

However, the courts still want solid proof so as to convict and/or offer protection to the victim<sup>15</sup>. Another issue which hinders the success of the intervention by the law is the extent to which the state should be involved

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<sup>10</sup> *R v R* [1991] 3 WLR 767, 771-2.

<sup>11</sup> *Domestic Violence A Guide to Civil Remedies and Criminal Sanctions*, <https://lx.iriss.org.uk/sites/default/files/resources/Domestic%20violence.pdf> accessed 28 December 2021

<sup>12</sup> Taylor (n2)

<sup>13</sup> Domestic Abuse Act 2021

<sup>14</sup> *ibid.* 9

<sup>15</sup> Crown Prosecution Service, 'Domestic Abuse' ([cps.gov.uk](https://www.cps.gov.uk) 28 April 2020) <https://www.cps.gov.uk/legal-guidance/domestic-abuse> accessed 31 December 2021

regardless of the fact that the victim wants the intervention or not, the law has to rely and respect the remedies that the victim will seek for unless if criminal proceedings are involved where the matter is no longer what the victim wants but now in the hands of the prosecution.<sup>16</sup>

Domestic abuse under criminal law will be mentioned lightly in the third chapter as the main focus of this paper is on the civil law remedies. The acknowledgement and understanding of domestic violence are determined by different societal norms, cultures and moral ethics. Some women view it normal to be hit by their husbands, while some husbands view it as normal to control every aspect of their wives' lives.<sup>17</sup>

At times and in most cases, victims do not regard themselves as victims and the same is true for the offenders as they might not see anything wrong in their behavior and conduct. There are different versions and explanation of what women constitute to be violence and events leading thereto and what men think.<sup>18</sup> However, the government is now using a definition of domestic abuse that was created into a statutory definition from the existing definition, "any incident of threatening behavior, violence or abuse (psychological, physical, sexual, financial or emotional) between adults who are or have been intimate partners or family members regardless of gender and sexuality"<sup>19</sup>, to define what domestic violence is.

### **Research Questions**

As stated above, the main responses to domestic abuse come from civil and criminal law; under which various remedies and injunctions can be sought. Therefore, the focus questions in this analytical research were:

Question one: How does civil law respond to domestic abuse?

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<sup>16</sup> Herring (n 6) 315

<sup>17</sup> Taylor (n2)

<sup>18</sup> Carol Smart, Amanda Wade, and Bren Neale. 'Objects of Concern-Children and Divorce' (1999) Child & Fam. LQ, 11, 365.

<sup>19</sup> Home Office, '*Domestic Violence: A National Report*', (2005) para 10 London: Home Office

Question two: How does criminal law respond to domestic abuse?

Question three: In responding to domestic violence, what are the difficulties faced by the English law?

## CHAPTER II

This chapter is an overview of previously conducted researches and past legislation enacted towards curbing domestic violence in the UK. The information and various opinions gathered from different scholars is beneficial in providing understanding and enlightenment of this study.

### Review of Literature

Domestic violence as the name suggests is violence taking place in a family setting considered to be a private setting. The reluctance of the law's intervention has been mainly because of the private setting of the family. As other scholars suggest, home is a safe haven, a place where security and comfort are guaranteed, yet in reality it is not so.<sup>20</sup> Instead of being a safe haven, home has become a dangerous place where a person is most likely to encounter attacks than a person on the street.<sup>21</sup> A domestic assault becomes more dangerous as it is between intimate individuals in most cases living together. Violence at home is more serious because it is likely to be of a recurring nature and likely to be hidden and go unreported, unlike public or street assaults or violence, domestic assaults severely infringe a person's freedom and breaks trust.<sup>22</sup>

Domestic abuse or domestic violence has always been a cause of concern in the society however, it is not until the 20th century that it began to be recognized as a legal problem, a social problem requiring legal intervention.<sup>23</sup> The recognition of the matter then led to the different definitions of what constituted domestic violence in order to tackle the issue better<sup>24</sup>. Apparently

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<sup>20</sup> Mary P. Koss and others. *No safe haven: Male violence against women at home, at work, and in the community*. (1994)

<sup>21</sup> Mandy Burton, *Legal Responses to Domestic Violence* (Routledge 2008). 63

<sup>22</sup> Herring (n 4) 273

<sup>23</sup> Russell P. Dobash and Emerson R. Dobash, 'Women's Violence to Men in Intimate Relationships', *British Journal of Criminology*, 44, 324-349

<sup>24</sup> *ibid.* 21

since the 1970s, defining domestic violence has not been easy as the definitions have changed over time.<sup>25</sup>

Even up to now, the Domestic Abuse Act 2021 had to be enacted upon other existing Acts to provide a clearer definition and perspective of domestic abuse and what it entails. It was in the middle of the 1970s, that there was the development of domestic relationships definition and the first statute offering civil remedies and precise protection against domestic violence. Although an injunctive relief to heterosexual parties of a marriage contract and cohabitants living as husband and wife was provided for by the Domestic Violence and Matrimonial Act of 1976, another legislation was made which restricted the injunctive relief to spouses only.<sup>26</sup>

As years progressed, the Family Law Act widened the definition of domestic violence by introducing the notion of associated persons to include not only heterosexual spouses and cohabitants but other relationships as well yet the debate continued of which relationships to consider as domestic. It must be noted that these developments were not just happening in civil law but criminal justice agencies were playing their part.<sup>27</sup> The criminal justice agencies however could not allocate a specific criminal offence to domestic violence and up to now there has not been the criminalization of domestic violence, however, the Crown Prosecution Service and the police identified offences that they could attach to the existing criminal law for example rape, manslaughter and battery.<sup>28</sup>

The Crown Protection Service then defined domestic violence as a criminal offence that arose from emotional, financial, physical, psychological and sexual abuse between current and former family members and intimate partners in close relationships. This definition then widened the narrow

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<sup>25</sup> Burton (n 21) 11-12

<sup>26</sup> *ibid.*

<sup>27</sup> Burton (n21)

<sup>28</sup> *ibid.*

definition adopted by the Home Office in 2003<sup>29</sup>, as it began to encompass other forms of violence yet it still confines itself to criminal law. Home Office then moved from its narrowed definition to redefine domestic violence as an incident of abuse or violence, threatening behavior, controlling or coercion between family members, intimate partners aged 16 and above regardless of their sexuality and or gender.<sup>30</sup>

The reason why the Crown Prosecution Service confined itself is because offences that are non-physical for example emotional and psychological abuse are much difficult to incorporate into the existing criminal law compared to actual threats of violence and acts of violence, hence the reason why non-physical abuse is now covered by civil legislation according to the Law Commission.<sup>31</sup> At present moment, the Domestic Abuse Act 2021 has set forth a definition used across the government.

The mere recognition of domestic violence as social problem did not make it a legal one, it only became a legal problem when the legal system played a huge part in consulting the problem and providing solutions.<sup>32</sup> Domestic violence cases are heard by various courts in the UK depending on the court hierarchy<sup>33</sup>, the nature of the case and according to the jurisdiction of that area for example Scotland's jurisdiction differs from that of Wales.

Nonetheless, courts are not the only key player when it comes to intervening and dealing with domestic abuse even though they play a great deal in the interpretation of statutes, developing common law and setting precedence for

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<sup>29</sup> Safety and Justice: *The Government's Proposals on Domestic Violence* <https://webarchive.nationalarchives.gov.uk/ukgwa/20100418065544/http://www.homeoffice.gov.uk/documents/2003-cons-domestic-violence-cons/domesticviolence2835.pdf?view=Binary> accessed 20 December 2021

<sup>30</sup> *ibid.*

<sup>31</sup> Burton (n21) 73

<sup>32</sup> Michael D.A. Freeman, *The State, the law, and the family: critical perspectives*. (Vol. 273. Routledge, 1984)

<sup>33</sup> Courts and Tribunals Judiciary, (*judiciary.uk*, December 2011) <https://www.judiciary.uk/related-offices-and-bodies/advisory-bodies/fjc/guidance/domestic-violence/> accessed on 28 December 2021'



future cases. The legislative and executive bodies also play a role in enacting the correct and relatable laws. The police come in as well with the enforcement of these laws and together these bodies create one front against domestic abuse.

The first piece of legislation specifically designed for domestic violence was the Domestic Violence and Matrimonial Proceedings Act 1976 (DVMPA) which empowered the courts to grant heterosexual cohabitants and spouses' injunctions.<sup>34</sup> These injunctions prohibited molestation of the victim and their children and the power of arrest was also attached, orders to exclude the abuser from the matrimonial home were also made available if the courts were convinced and satisfied that the offender had used actual bodily harm and could do it again.

After the DVMPA, the Domestic Violence and Magistrate's Courts Act which only applied to spouses was enacted. The Act granted the Magistrate's court the power to grant protection orders to cases where violence had been used or threatened to be used by the abuser towards the victim and/or child.<sup>35</sup> The order would strictly prevent the offender from threatening and/or using violence against the victim and if the victim was still in danger, then the abuser would be excluded from the matrimonial home.

As time passed, the Matrimonial Homes Act of 1983 was enacted not directly aimed at domestic violence but it amended the Domestic Violence and Matrimonial Proceedings Act through the emancipation of women and giving them the right of occupation that could be enforced against third parties and giving the power to regulate the occupation of the home to the courts. In the case of *Richards v Richards*<sup>36</sup>, the conduct of both parties was more important than their needs and that the criteria for excluding a spouse from the shared home was as set out in s 1(3) of the MHA. The same s 1(3)

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<sup>34</sup> Mandy Burton, *Legal Responses to Domestic Violence* (Routledge 2008) Routledge. 7

<sup>35</sup> *ibid.*

<sup>36</sup> *Richards v Richards* [1984] AC 174 para 24.

applied even to exclusion orders made by cohabitants hence proving that it is not only spouse conduct under scrutiny but that of cohabitants in need of protection from abuse as well<sup>37</sup>.

It is worth noting that the some of the earliest researches about domestic abuse were originally done in the UK. The research continued to develop until campaign and activism against violence were introduced.<sup>38</sup> The research surfaced that inequality between men and women as well patriarchy were the main causes of domestic violence.<sup>39</sup> The law in trying to raise awareness and to effectively respond violence, has also paid attention to honor-based-violence.

Honor-based-violence is related to,” practices used predominantly to control women and girls’ behavior within families as a means of protecting cultural and religious beliefs, values and social norms in the name of honor.”<sup>40</sup> The acts done are criminal offences such as rape, female genital mutilation and forced marriages to mention just a few.<sup>41</sup> The problem with honor-based-violence is that it is justified by minority communities as religious law and sometimes civil law. There is a clash between such laws and the law against domestic abuse hence several frontline workers in various authorities and organizations do not really know how to tackle the issue whether to report the issue as ordinary domestic abuse or honor-based violence.<sup>42</sup>

According to Buzawa, agencies have come together to design specialist responses towards domestic abuse.<sup>43</sup> The specialist services such as those

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<sup>37</sup> *Lee v Lee* [1984] FLR 243 para 2.

<sup>38</sup> Amanda L. Robinson, *Domestic Violence and Abuse in the UK* 110

<sup>39</sup> Russel P. Dobash and Emerson Dobash, *The Myth of Sexual Symmetry in Marital Violence* (1992)

<sup>40</sup> HM Government, *Ending Violence Against Women and Girls Strategy 2016-2020*. London Home Office 2016

<sup>41</sup> ‘Forced Marriage’, (*gov.uk*) <https://www.gov.uk/stop-forced-marriage> accessed 26 November 2021

<sup>42</sup> Eve S. Buzawa and Carl G. Buzawa, *Global Responses to Domestic Violence* (Springer 2017) 110

<sup>43</sup> *ibid.*

advocating for victims, those offering accommodation to victims who have fled from abuse and other groups offering support continue to influence a change and improvement in the justice responses.<sup>44</sup> One notable specialist service is that offered by the Independent Domestic Violence Advisor. The IDVA is an independent professional specialist who is trained to advocate for victims especially for those at high-risk.<sup>45</sup>

The work of the IDVAs has been seen as quite effective as they provide immediate assistance and safety in a short period of time thus averting crisis.<sup>46</sup> As they continued to grow the IDVAs then branched out to Specialist Domestic Violence Courts. These courts are designed specifically to hear domestic abuse cases.

## **Theoretical Framework**

### ***What is Domestic Violence?***

Domestic violence which I shall interchange with domestic abuse under UK law is the behavior of a person of the age of 16 and above person towards another person who is also 16 years and above if both are personally connected to each other. This behavior consists of, “physical or sexual abuse, violent or threatening behavior, controlling or coercive behavior, economic abuse, psychological, emotional or other abuse and it does not matter whether the incident happened once or was recurring.”<sup>47</sup> When the Act talks of people personally connected it refers to spouses, former spouses, civil partners, former civil partners, people in a valid or non-valid

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<sup>44</sup> *ibid.* 116

<sup>45</sup> *ibid.*

<sup>46</sup> Coy, M. and Kelly, L. *Islands in the Stream. An Evaluation of Four London Independent Domestic Violence Schemes* (2011)

<sup>47</sup> Domestic Abuse Act 2021,s 1

civil partnership, people sharing an intimate personal relationship, relatives or parents who have had a parental relationship with each other<sup>48</sup>.

Domestic violence is a main social problem raising a host of complex legal disputes. It is any pattern of abusive behavior in intimate relationships, where one partner wants to gain power and control over the other. Such behaviors hurt, coerce, frighten, threaten, injure, intimidate and manipulate the victim. According to Schedule 1, domestic violence means any “incident, or pattern of incidents, of controlling, coercive or threatening behavior, violence or abuse (not just physical but sexual, emotional, financial and psychological) between individuals who are associated with each other.”<sup>49</sup> These patterns and incidents of controlling and coercive behavior have been expanded to those aged sixteen and above, who have had an intimate relationship or are in one, family members irrespective of their gender and sexuality.

Domestic violence can be directed towards anyone be it heterosexual or homosexual couples, cohabiting, separated, divorced or married, the law now considers same principles for same sex couples, as amended in Part IV of the Family Law Act<sup>50</sup>. Domestic abuse is not circumscribed to people living together as a couple but also to family members for example nephews and nieces<sup>51</sup>. Abuse is also not limited to physical attacks only but the legislation has widely included mental harm that is emotional abuse and other non-physical abuse.<sup>52</sup>

Although the wide definition is not supported by many, it clearly shows that violence is not only about the outward, what people see, but it is about the behavior behind and its effects whether minimal or great and the definition covers quite a lot. As Ward LJ said, “domestic violence, of course, is a term

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<sup>48</sup> Domestic Abuse Act 2021, s 2

<sup>49</sup> Legal Aid, Sentencing and Punishment of Offenders Act 2012, Sch 1(amended)

<sup>50</sup> Domestic Violence, Crime and Victims Act 2004, s 3

<sup>51</sup> Family Law Act 1996, s 63(1)

<sup>52</sup> Domestic Abuse Act 2021, s 1

that covers a multitude of sins. Some of it is hideous while some of it is less serious.”<sup>53</sup>

In over half violent relationships and/or families, it is highly likely that children have experienced or witnessed violence. Most children have been hit, beaten or sexually abused and this affects children of every age and such children end up abusers themselves or facing abuse. Regarding unborn children, a fetus in the womb can be still be affected by violence. Maltreatment of children takes place as both parents often neglect their children and tend to focus more on dealing with their differences which therefore ends up fringing the child’s rights specifically the right of protection from all forms of maltreatment<sup>54</sup>.

Children refers to people of the age of 18 years and under, these can also be victims of domestic abuse if they are personally connected to either the offender or victim meaning that the offender or victim has “parental responsibility” of the child, they are the child’s parent<sup>55</sup> or they are relatives<sup>56</sup>. Parental responsibility “means all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property.”<sup>57</sup>, including the guardian's rights, powers and duties of the child’s estate<sup>58</sup>. The definition of relative is given under s 63(1) of the FLA

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<sup>53</sup> *Re P(Children)* [2009] 1 FLR1056 para 5.

<sup>54</sup> Child Rights International Network, Child Rights International Network [1989], art 19

<sup>55</sup> Family Law Act 1996, s 2(2)

<sup>56</sup> Family Law Act 1996, s 3(3)(b)

<sup>57</sup> Children Act 1989, s 3(1)

<sup>58</sup> Children Act 1989, s 3(3)(2)

1996<sup>59</sup>. A child becomes a victim of domestic abuse if they witness the abuse that is seeing, hearing or experiencing the effects of the abuse<sup>60</sup>.

### ***Causes of Domestic Violence***

The causes of domestic violence are diverse and differ from individual to individual. There is no one thing we can point at as the sole however, patterns of behaviors, habits, lifestyle etc. can be some of the causes of domestic abuse. For example, low self-esteem people tend to be abused or to become abusers<sup>61</sup>. Usually, the victims with low self-esteem believe that they cannot be loved hence enduring the abuse out of fear of rejection and they in most cases believe that the abuser will change their behavior. On the other hand, if the abuser has low self-esteem, they will try to gain confidence by abusing, as if violating another person's rights will hide their low self-esteem or make them gain confidence. This is the same as desiring to manipulate, gain power and control of the victim, that is controlling the victim's social life, routines, associates, finances and decisions.<sup>62</sup>

Additionally, some mental illnesses and disorders can be a cause of violence, people suffering from bipolar disorder or schizophrenia may not be able to control their anger when they have their highs and lows. Because of their mental instability and aggressive behavior, such people can end up being violent to those around them especially when and if they are skipping medication and/or not following a medication routine. People suffering from depression or other mood disorders are likely to be victimized. The abuse of

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<sup>59</sup> A relative is, "the father, mother, stepfather, stepmother, son, daughter, stepson, stepdaughter, grandmother, grandfather, grandson or granddaughter of that person or of that person's spouse, former spouse, civil partner or former civil partner], or the brother, sister, uncle, aunt, niece, nephew or first cousin] (whether of the full blood or of the half blood or by marriage or civil partnership)] of that person or of that person's spouse, former spouse, civil partner or former civil partner]."

<sup>60</sup> Domestic Abuse Act 2021, s 3(2)

<sup>61</sup> Diane Goldstein and Alan Rosebaum, *An Evaluation of the Self-Esteem of Maritally Violent Men*. Family Relations 34, no.3 (1985) 425-428

<sup>62</sup> *ibid.*

alcohol or other illegal substances and drugs may cause a person to be either vulnerable to abuse as the need for finances to purchase alcohol or drugs may make them vulnerable to abuse, or the intake of such substances may cause a person to act aggressively and violent towards others.

Experiencing domestic violence in childhood or while growing up is likely to make a person justify abuse be it abusing someone or being abused as they would have witnessed in their childhood, research has it that half of the people who experienced domestic violence as they grew up are more likely to experience abuse again later in life.<sup>63</sup> Lastly, societal beliefs play a role in violence.

Patriarchal societies normalize the abuse of women and children by the husband or father as they say that the male figure should have control and authority over the family. Such societies do not believe in emancipation of women, women standing up for themselves and advocating for their rights, this is usually due to low levels or absolutely no education and ignorance. Uneducated societies usually do not believe in advocating for the emancipation of women and equal rights<sup>64</sup> therefore, women who stand up against their husbands often get aggressive responses from their husbands.

### ***Coercive Control***

Coercive control is a continuous pattern of threatening, intimidating and controlling behavior including some or all of the forms of domestic abuse that is sexual, physical, financial, emotional including coercions by a spouse, partner or threats from an ex-spouse, ex-partner or persons personally

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<sup>63</sup> Office for National Statistics, 'Crime and Justice' ([ons.gov.uk](https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/peoplehowereabusedaschildrenaremorelikelytobeabusedasanadult/2017-09-27), 27 September 2017)  
<https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/peoplehowereabusedaschildrenaremorelikelytobeabusedasanadult/2017-09-27> accessed 31 December 2021

<sup>64</sup> Taylor (n2)

connected to each other<sup>65</sup>. In most cases it is women who face such behavior from their partners.

Coercive control traps victims in the abusive relationship making it impossible or risky to leave due to fear instilled by threats from the abuser. This can have a severe impact on the victim as it instills fear in the victim, lowers the victim's self-esteem, causes serious alarm and distress<sup>66</sup> which can result in the victim giving up work, changing normal routines, cutting and losing contact with family and friends. Coercive control can even end up damaging a victim's physical and emotional well-being.

When deciding the case, the court will decide based on whether a reasonable person if engaged in such behaviors having all the information the abuser had would have recognized that the behavior would have serious effects on the victim<sup>67</sup>. Controlling and coercive cases require the victim and abuser to be personally connected or associated<sup>68</sup>, that means the victim and abuser have an intimate relationship or the victim lives with the abuser, or they are family members or children.

The law provides protection for victims of such cases using the Protection from Harassment Act though at first it aimed at protection against stalkers but was then amended to cover many forms of harassment.<sup>69</sup> Remedies can be sought both under criminal and civil law, in criminal cases the matter must be proved beyond reasonable doubt. A lesser standard of proof is used in civil proceedings where the case needs to be proved on the balance of probabilities in order to obtain a civil order.

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<sup>65</sup> Serious Crimes Act 2015, s 76 (1), (2)

<sup>66</sup> Serious Crimes Act 2015, s 76 (4)(b)

<sup>67</sup> Serious Crimes Act 2015, s 76 (5)

<sup>68</sup> Serious Crimes Act 2015, s 76 (2)

<sup>69</sup> ([api.parliament.uk](https://api.parliament.uk/historic-hansard/lords/1997/jan/24/protection-from-harassment-bill)) <https://api.parliament.uk/historic-hansard/lords/1997/jan/24/protection-from-harassment-bill> accessed 1 January 2022



### ***Domestic Abuse in Marriage***

In as much as conflict is inevitable and often at times a part of intimate relationships and family, what matters most is resolving the conflict and how the conflict is resolved. Women tend to suffer abuse more than men in most marriages and a number of them remain quiet and do not report the abuse faced.<sup>70</sup> Because it takes place in a private setting, domestic abuse in marriage has often been underestimated and the law has been reluctant in intervening. Marital rape was not considered a crime as man and wife were considered one person through the marriage contract hence it was difficult to then commit a crime against oneself.<sup>71</sup>

Hale also believed that the woman's body was for the husband hence the husband did not have to ask for permission to have sexual intercourse with his wife because after signing the marriage contract the wife would have given her binding and unchangeable consent to sexual intercourse with her husband<sup>72</sup>. "For the husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract the wife hath given up herself in this kind unto her husband, which she cannot retract"<sup>73</sup>. Primarily due to the influence of Hale, the exemption to the law of marital rape was in England and Wales until 1991 and was then repealed by the House of Lords in *R v R*<sup>74</sup>.

The defendant attempted to rape his wife when the couple was already separated but not formally separated or legally divorced. Lord Keith

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<sup>70</sup> Domestic Violence Research, ([domesticviolenceresearch.org](https://domesticviolenceresearch.org), 2016)  
<https://domesticviolenceresearch.org/domestic-violence-facts-and-statistics-at-a-glance/> accessed 31 December 2021

<sup>71</sup> Sir Matthew Hale, *History of the Pleas of the Crown* (1736)

<sup>72</sup> *ibid.*

<sup>73</sup> Matthew Hale, *Pleas of the Crown* (1847) 629

<sup>74</sup> *R v R* [1991] 3 WLR 767.

overturned the matrimonial exception to rape, and further said, "Hale's proposition involves that by marriage a wife gives her irrevocable consent to sexual intercourse with her husband under all circumstances and irrespective of the state of her health or how she happens to be feeling at the time. In modern times any reasonable person must regard that conception as quite unacceptable."

Abuse in marriages is not only limited to sexual abuse but there are also other cases of abuse for example physical assault where husbands beat up their wives or financial abuse where one spouse limits or prevents the other from using finances or making investments. A long time back, husband and wife issues were considered private and no public interference was welcome. The wife was as a puppet to her husband meaning that the husband could do whatever he wanted with his wife even beating her with a stick of a thickness of the thumb<sup>75</sup>.

According Sir Matthew Hale<sup>76</sup>, a famous seventeenth century jurist, the husband was allowed to use necessary force on his family since he was in control of his family as the head of the family, but what did necessary force mean? And to what extent was this force applied? This law already had loopholes and exploited the weaker members of the family as there was no scale of weighing and judging how much force was necessary or the right amount of force to be exerted on the family.

In *Re Cochrane*<sup>77</sup>, a husband who was left by the wife for no good reason forcefully brought back the who then decided to obtain a habeas corpus. The judge discharged the case and ordering the wife to return to her husband's custody. Quoting some old law books, the judge in the above stated cases

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<sup>75</sup> Henry Ansgar Kelly, "*Rule of Thumb*" and the Folk law of the Husband's Stick Vol. 44, No. 3 (September 1994) 341

<sup>76</sup> *ibid.* 56

<sup>77</sup> *Re Cochrane* (1840) 8 Dow PC 630, Coleridge J.

ruled that the husband had the power and the dominion over his wife to keep her by force and beat her but in a non-cruel manner.

Subsequently, this case was overruled in *Jackson*<sup>78</sup>, where a husband who had kidnapped his wife who had left him for another man had no right to detain the wife against her will hence a habeas corpus was granted to the wife. In obiter, Lord Halsbury LC stated that the old entitlement was now obsolete. Thus far we see the slow progress that the law has been making and a number of bills and acts are being passed and some amended in order to avoid the infringement of the victim's rights.

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<sup>78</sup> *R v Jackson* [1891] 1 QB 671, (CA).

## **CHAPTER III**

### **Methodology**

This chapter sheds more light on the research design, data collection and analysis as well as the analysis of findings.

#### **Research Design**

This research was done in an analytical qualitative manner in order elucidate the responses at law in the UK against domestic violence.

#### **Purpose of the Study**

From the review of literature done in the previous chapter, this study aims at elucidating and breaking down the legal responses towards domestic violence. The study seeks to bring out the major remedies, injunctions and sentences given under the UK civil law and criminal law.

#### **Research Questions**

The answers given to the questions below helped in bringing out the concept of domestic violence, the justice responses as well as the limitations to the legal responses:

Question one: How does civil law respond to domestic abuse?

Question two: How does criminal law respond to domestic abuse?

Question three: In responding to domestic violence, what are the difficulties faced by the English law?

The variables selected for this study are dependent variables and independent variables. In this case the dependent variable is the case

law whereas the independent variable is the legislation enacted. Both variables help in understanding the study.

### **Sources of Data**

The data used in this study was majorly collected from the Near East University Grand Library and Hein Online law journal databases. These platforms together with other databases and websites helped the researcher compile the information into a meaningful solid research.

### **Limitations of the Research Design**

Because the study was confined to a qualitative style, statistics of the successes or failures of the legal responses could not be made. However with the help of statistics compiled by the government and other online resources, an evaluation could be made.

## **CHAPTER IV**

### **Findings and Discussion**

One of the first responses to domestic abuse was through civil law, even though it had loopholes.<sup>79</sup> Over the time, civil law has changed and upgraded to cater for almost everyone going through abuse from same sex couples to heterosexual couples, children and even relatives. A number of legislations have been enacted to cover the varying degrees to domestic abuse. I shall mention the remedy provisions set out in these Acts.

#### **Findings for Research Question I**

##### **Part IV of the Family Law Act 1996**

The FLA provides victims with easily accessible remedies at law in all family courts. Even though the Act came as an easy way out, victims still have to seek for remedies themselves.<sup>80</sup> Section 60 of the act which was supposed to have permitted third parties to apply on behalf of the victim was never implemented because the government felt that they would up with strained resources.<sup>81</sup>

Occupation and non-molestation orders, are civil remedies provided for under Part IV of the (FLA 1996). The purpose is to offer protection to people experiencing abuse in familial type relationships. The court grants occupation orders and non-molestation orders for the protection of the victim that is the applicant from the offender that is the person against whom the injunction is made. To further protect the victim and/or their children, the court can make a non-molestation order even without formal application. It is possible to apply for both orders because sometimes the non-molestation order on its own

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<sup>79</sup> Burton (n21)

<sup>80</sup> *ibid.* 47

<sup>81</sup> *Ibid.*

does not provide sufficient protection hence an occupation order can be applied for.

Two types of occupation orders are available; the declaratory order and the regulatory order. On one hand, a declaratory order simply declares the interests of the applicant in the home and on the other hand, a regulatory order excludes the offender from the home as well as the area surrounding the home. Therefore, application for both orders is allowed and most victims opt to declare their interests in the home as well as exclude the offender.<sup>82</sup>

An occupation order is responsible for regulating the occupation of the home shared by the couple and their children so as to protect the children from domestic violence as well as the victim and/or the abuser.<sup>83</sup> The order can sometimes totally exclude the offender from the property or divide the property between the two in order to exclude the abuser from a part of the house or property which can be draconian but necessary.

If it so happens that the abuser is no longer staying in the home, the occupation order will then be used in preventing the abuser from entering again the property or accessing a specified area of the home according to s 35 of the Act. These orders are valid for either six months or one year with an option of lasting until “further order”. In some cases, an extension of one six-month period is granted if and when the applicant has no interest in the home for example a cohabitant or former cohabitant.

Because of the different parties' circumstances, the court applies the “balance of harm” test before issuing the occupation order. This test seeks to find out which party and/or children will be affected the most if an order is made, or is not made. This assessment of the court is based on s 33 (6) of the Act. In the case of *Chalmers*<sup>84</sup>, because there was no significant harm

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<sup>82</sup> Mandy Burton, *Legal Responses to Domestic Violence* (Routledge 2008). 20

<sup>83</sup> Family Law Act 1996, s 33

<sup>84</sup> *Chalmers v Johns* [1998] ECWA Civ 1452, [1999] 2 FCR 110.

likely to befall the child and the woman, the Court of Appeal refused to give the order.

The courts tend to focus more on the needs of the children and their well-being rather than on fault finding. A husband, in the case of *Re L (Children)*<sup>85</sup> was removed from the house under an occupation order. It was ruled that the children witnessing the violence was harmful to them even though it seemed not serious thus justifying the order because they were at risk of suffering further emotional harm without the order.

The court reaffirmed the opinion that occupation orders should be a final course of action in the case of *Re Y (Children)*.<sup>86</sup> The couple of 20 years with a son aged 13 years and a 16-year-old pregnant daughter, during the divorce proceedings, the husband requested for an occupation order against the wife and a residence order for the son. Using the balance of harm test, the judge concluded that the husband would face greater harm as he was half blind and diabetic and was likely to have difficulties in getting the council accommodation.

The case was appealed, and the Court of Appeal concluded that the balance of harm test was not satisfied and felt that the husband was overplaying his disabilities and that even if he was not overplaying, the wife's conduct could definitely not be attributed to it as the husband had been violent towards the wife; as he had a record of striking her in the previous years, yet the wife had not acted violently towards the husband. Hence, the court had the couple continue sharing the house as per their previous arrangements until the divorce was finalized.

In granting orders, the courts do not ignore the needs of the parties. In *B v B*<sup>87</sup>, the victim who had a baby temporarily moved out and sought for an

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<sup>85</sup> *Re L (Children)* [2012] EWCA cv 721.

<sup>86</sup> *Re Y (Children) (Occupation Order)* (2000) 2 FCR 470.

<sup>87</sup> *B v B* [1999] 1 FLR 715, Times 5/1/99, (CA).



occupation order against her violent husband who also had a son from a past relationship. The court considered the significant harm to be faced by the mother and baby in unsatisfactory accommodation if the order was not granted.

Likewise, the court considered the significant harm that the husband and son would face if they were removed from the flat. The court finally decided that removing the husband from the flat would greatly affect the son's welfare and education because the local authorities could not house the husband. Hence the courts put into consideration not only the housing needs of the children and the parties but also the financial resources of each party as stated in s 33 (6).<sup>88</sup>

A non-molestation order on the other hand is issued against the abuser to prohibit or forbid or deter the abuser from threatening or using or even causing domestic violence, pestering or communicating with the victim or molesting the victim and the children. Molestation, as per the definition given in *Horner v Horner*<sup>89</sup>, is “any conduct which can properly be regarded as such a degree of harassment as to call for the intervention of the court”.

A non-molestation order can also prevent and restrict the abuser to a certain distance from the victim that is their home or workplace and even the children. Even though the Act offers the opportunity to seek non-molestation orders, the Act does not give a definition for molestation however it includes intimidation, pestering, threats and harassment.<sup>90</sup> The abuser is by all means forbidden from using or threatening violence against the victim, instructing, persuading or suggesting that any other person to do so as a way to protect the children involved.

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<sup>88</sup> Family Law Act 1996

<sup>89</sup> *Horner v Horner* [1982] 2All ER 495, (CA).

<sup>90</sup> Family Law Act 1996, s 42

A non-molestation order is easily granted but only to associated persons as stated by s42<sup>91</sup>. If the health and well-being of the children or the victim is at stake, the order will be granted. In the case of *C v C*<sup>92</sup>, the husband could not obtain the order simply because he wanted to protect his image and reputation, there has to be actual evidence of molestation however, there was a different outcome in the *Johnson* case<sup>93</sup> where the court held that any conduct with an intention of causing harassment amounts to molestation.

Breaching the order is a punishable crime with a maximum of five years imprisonment. Women's groups view the molestation orders as a delay in properly responding to abuse because it warns the offender of not repeating the abuse instead of punishing them. The men's groups on the other hand complain once one is labeled an abuser the title sticks lessening their chances of winning the case<sup>94</sup>.

### **Protection from Harassment Act 1997**

Pursing any course of conduct or using speech that a person knows or is ought to know that it amounts to harassment of another person is prohibited. To use this Act, the victim must prove that the offender harassed the victim however, the Act itself does not give definition to the term harassment thus the normal and general meaning of the word is used.

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<sup>91</sup> The categories of associated people are as follows; "they are or have been civil partners of each other, they are or have been married to each other, they are former or current cohabitants, they live or lived in the same household at one point in time, another reason is one of them being the other's tenant, lodger, employee or boarder, they are relatives." Associated people can be engaged that is there's an agreement to marry one another be it that the agreement is still binding or has been terminated, they have or have had an intimate personal relationship with each other which is or was of significant duration, they have entered into a civil partnership agreement as defined by section 73 of the Civil Partnership Act 2004 be it that agreement has been terminated or not or they are parties to the same family proceedings.

<sup>92</sup> *C v C* [1998] 1 FLR 554, [1998]1 FCR 11.

<sup>93</sup> *Johnson v Walton* [1990] 1 FLR 350, (CA).

<sup>94</sup> Jonathan Herring, *Family Law, A Very Short Introduction* (1st edition 2014) 74

The opinion of a reasonable man amounts to what harassment is, including causing alarm or distress to the victim, therefore the victim need not prove that they suffered a psychological recognized illness or physical harm, as required by the ss 18, 20 and 47<sup>95</sup>. According to *R v Colohan*<sup>96</sup>, the fact that the offender is schizophrenic and unaware that his/her conduct is of harassing nature does not constitute a defense. The jury rejected the argument that a reasonable schizophrenic offender would be conscious that their conduct was harassing because the jury only considers what a normal reasonable person would have known.

Remedies for domestic violence are found in the Protection from Harassment Act (PHA 1997), under both civil law and criminal law most of these remedies are similar to the ones in the FLA 1996. Originally this Act was made with an intention to address stalking, however, people ineligible to apply for any one of the orders under the FLA 1996 because of being unable to meet the requirements for association through cohabitation or family relationships have relied on this Act for solutions and remedies. This has been changed by the Domestic Violence Act 2004 s 3 which gives access to same sex and cohabiting couples to the Part IV of the FLA as well as unmarried couples and non-cohabitants<sup>97</sup>.

The PHA can be used in seeking injunctions and claiming damages for harassment and it also offers protection to victims by restraining the abuser and their behavior as well as excluding them from the victim's workplace and home. In *Singh v Bhakar*<sup>98</sup>, the applicant was awarded £35,000 in damages because of the harassing conduct she faced during her marriage from her mother-in-law. This case is significant in surfacing that the victim can also be awarded damages for the domestic violence faced. The Act does not restrict applications, anyone can without any limitations apply for damages or an

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<sup>95</sup> Offences Against the Person Act 1861

<sup>96</sup> *R v Colohan* [2001] 3 FCR 409, [2011] EWCA Civ 1541, [2012]1 WLR 1510.

<sup>97</sup> Domestic Violence, Crime and Victims Act 2004, s 4

<sup>98</sup> *Singh v Bhakar* [2006] 2 FLR.

injunction against anyone else under this Act, associated or not associated. Section 3 of the Act states that based on an actual or apprehended breach of section 1 proceedings can be made<sup>99</sup>.

Juxtaposing this section to the criminal side of the Act, it is the exact opposite as proof of a course of conduct is required showing and proving that indeed the offender harassed the victim on at least two separate occasions. No matter how terrifying or serious the incident was, if it happened only once then it cannot amount to an offence of harassment. Harassment only amounts to an offence only when the course of conduct involved conduct has occurred on two occasions that are separated. The composition of a course of conduct is a nexus that connects the harassing behavior or any other behavior in question into a course of conduct as was the case of *Lau v DPP*<sup>100</sup>, two incidents of harassment which were four months apart were held not a course of conduct.

Breach of this act can give rise to the payment of damages and an injunction restricting someone from engaging in harassing conduct. All applications are made to the High Court or the county court under section 3 of the Act as Family Proceedings Courts do not handle these cases. It will be unnecessary to apply for civil proceedings if the police under sections 2 or 4 of the Act have already initiated criminal proceedings.

Breaching an order under this Act is a criminal offence, however, no provision under the Act for a Power of Arrest has been made as in the case of Family Law Act. A warrant of arrest can be applied for if the offender has breached the restraining order. The warrant can only be issued if the judge has reasonable grounds to believe that the offender has not acted in accordance with part of the order, or the whole order.

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<sup>99</sup> Protection from Harassment Act 1997

<sup>100</sup> *Lau v DPP* [2000]1 FLR 799.

## **Civil Partnership Act 2004**

The Civil Partnership Act formed a legal relationship for two people of the same sex; who are not in a civil partnership or legally married; not within the proscribed degrees of relationships and those aged sixteen years and above<sup>101</sup>. A civil partnership is not the same thing as marriage or equivalent to marriage but it is a parallel relationship of similar commitment and seriousness. It recognizes the legality of same-sex couples and also recognizes civil partnerships and same-sex marriages registered under foreign law as legal in the UK.

Amendment of Part IV of the FLA 1996 has been done by the CPA to ensure the same application of provisions to civil partners as it is for married couples, for example, where a provision states that a spouse should apply, civil partners also can apply because they have the same rights.<sup>102</sup> The list of associated persons mentioned in FLA 1996 was also amended to include same-sex cohabitants.<sup>103</sup>

## **Domestic Abuse Act 2021**

Finally, for the first time, the definition of domestic abuse is created through the Domestic Abuse Act making it a statutory definition. The definition helps in ensuring a proper consideration and understanding of domestic abuse and how unacceptable it is to both victims and authorities. However, the Act does not specify that domestic abuse is an offence under criminal law. It is important for the victim to know and understand what abuse is, but it is of paramount importance for local authorities, statutory bodies, support groups and members of the public to have a clear understanding of domestic abuse so that maximum protection and support can be given to victims.

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<sup>101</sup> Civil Partnership Act 2004, s3

<sup>102</sup> Civil Partnership Act 2004, s 82

<sup>103</sup> Domestic Violence Act 2004, s 3

With this understanding, victims will be more comfortable and confident to report abuse because of an assured right to justice and protection. Most violence cases go unreported because victims sometimes feel insecure and are not sure if they will get maximum protection from the offender. The statutory definition further expands and explains that abuse is not confined to sexual or physical abuse nevertheless it can also be economic abuse, emotional abuse, coercive or controlling behavior<sup>104</sup>.

The statutory definition comes in two parts, the first part being about the relationship between the offender and the victim and the second part defines what constitutes abusive behavior. It was of great importance to have the definition of what constitutes abusive behavior as it helps when reporting abuse cases as some victims suffered in silence under the assumption that what they went through does not constitute abuse.

The relationship between the victim and the abuser was so as to include the different familial relationships, ex-partners and children. The Act states that abuse has to be between persons that are 16 years and above<sup>105</sup>, hence lowering the age from 18 years to 16 years in order to include and capture even young individuals in relationships yet being careful not to overlap child abuse which is abuse directed towards a person under 18<sup>106</sup>.

The Act also gives a range of the abusive behaviors including economic abuse. Economic abuse involves interference with the victim's ability to maintain, use and acquire economic resources<sup>107</sup>, this interference can be coercive or controlling for example solely controlling the family's income or damaging the victim's property thus making the victim dependent on the abuser narrowing their chances of breaking free and escaping the abusive relationship.

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<sup>104</sup> Domestic Abuse Act 2021, s 1(3)

<sup>105</sup> Domestic Abuse Act 2021, s 1(2a)

<sup>106</sup> Domestic Abuse Act 2021, s 3(4)

<sup>107</sup> Domestic Abuse Act 2021, s 4

## **Domestic Violence Against Children**

Recently, attention has begun to be given to women who experience violence not just women but mothers. As controversial as domestic abuse is especially against women, in the 90's violence towards a mother and the child was disregarded and unrecognized. The violence was unrecognized because of lack of visible harm to the child thus confining abuse to physical assaults only but this has been changing in modern day.

Children are regarded as victims by Part 1 of the Act<sup>108</sup> by virtue of witnessing or experiencing the impacts of violence and being related to either the victim or abuser or both. Children being recognized as victims will help in addressing the children's needs, providing and protecting them. The Act maintains a gender-neutral definition of domestic abuse so as not to stereotype or exclude anyone from protection, access to justice and access to services provided.

When a relationship dissolves and spouses have to go their separate ways, the fate of the children can be unclear. It would be unfair for the child not to have both parents hence the Children Act 1989 provides a contact order that can be applied for by the parent who is not in the child's life.<sup>109</sup> The contact order allows the parent to visit, stay and call the child. The court is quite flexible with contact orders because sometimes it leaves the arrangement up to the parents' decision. The court however, can limit or specify the nature of contact it allows or the proximity allowed.<sup>110</sup>

The reason why the court sometimes leaves the agreement to be between parents is because the child's best interests are easily met when both parents have a mutual understanding. If an agreement is reached by both

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<sup>108</sup> Domestic Abuse Act 2021

<sup>109</sup> Children Act 1989, s 8

<sup>110</sup> *ibid.*

parents, then there will not be any need for the order.<sup>111</sup> Usually, parents do not always reach a mutual agreement because in the event of a violent father agreeing to an agreement out of court, the mother of the child might feel unsafe without a contact order due to various reasons mainly trauma.<sup>112</sup>

The crime survey of the year ending March 2020 by the Office for National Statistics concluded that in the age range of 16-74 years, 1.6 million women experienced domestic abuse and 750,000 men experienced domestic violence as well, meaning that both genders are at risk of violence hence the Act cannot be one-sided and disregard the other gender<sup>113</sup>. Subsequently, guidance will be released in 2022 stating that majority of the victims are women in order to have more women support groups and that the female victims will get all the support and protection needed.

The Children Act was amended to allow the court to put an attachment of the power of arrest, to exclude or remove and to deny the abuser from entering child's home or a defined area.<sup>114</sup> However, instead of excluding the abuser, the court can accept an undertaking from the abuser. An undertaking is legally binding because it is a promise, oath or pledge to the court to do something and failure to uphold it or breaching the undertaking will result in fine and civil court proceedings because breaching an undertaking is considered a contempt of court.<sup>115</sup>

Passed in November 2002, the Adoption and Children Act clarifies that when considering applications under s 8 of the Children Act 1989, the court must also consider whether a child is likely to suffer harm or has already suffered

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<sup>111</sup> Children Act 1989, s 1(5)

<sup>112</sup> Mandy Burton, Legal Responses to Domestic Violence. (2008 Routledge) 30

<sup>113</sup> <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/domesticabusevictimcharacteristicsenglandandwales/yearendingmarch2020> accessed on 15 December 2021

<sup>114</sup> Family Law Act 1996, schedule 6

<sup>115</sup> CCR ORDER 29 - COMMITTAL FOR BREACH OF ORDER OR UNDERTAKING  
[https://www.justice.gov.uk/courts/procedure-rules/civil/sched\\_ccr/ccrorder29](https://www.justice.gov.uk/courts/procedure-rules/civil/sched_ccr/ccrorder29)> accessed 27 December 2021



harm, taking into consideration that a child may suffer because of witnessing violence and not just from experiencing violence. The amendment that was done in 2005 now gives applicants and respondents an opportunity to raise concerns about harm in early stages to courts so that an assessment of whether the incidents of domestic violence have adversely impacted the child and/or might disturb the child in the future<sup>116</sup>.

Civil law now offers a defense of provocation however, for the defense to be binding it has to be, “sudden and temporary.” *R v Duffy* case, it was held that loss of self-control had to be sudden without any cooling off period.<sup>117</sup> The courts understand that with cases of violence one can be provoked to retaliate. The ruling of the *Duffy* case about loss of self-control seemed unfair to women because of the time lapse. It is said that men react quicker than women and the physical capacities of the two are incomparable hence women cannot just strike someone dead without a weapon.<sup>118</sup>

After a second look at the matter, the courts decided and accepted accumulative provocation which accumulates over time as the victim endure the abuse. The case of *Ahluwalia*<sup>119</sup>, stressed that a delay will result in the defense of provocation invalid, however, the history of the abuse endured has to be put into consideration. It is difficult to prove provocation sometimes but it is not totally impossible.

## **Findings for Research Question II**

### **Criminal law and domestic abuse**

Up to now domestic abuse has not been criminalized rather particularly acts or offenses involved in the abuse are criminalized for

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<sup>116</sup> <https://www.legislation.gov.uk/ukxi/2005/3504/contents/made> accessed on 25 December 2021

<sup>117</sup> *R v Duffy* [1949] 1 All ER 932.

<sup>118</sup> Burton 76

<sup>119</sup> *R v Ahluwalia* [1992] 4 All ER 889; (1993) 96 Cr App R 133; [1993] Crim LR 63; (1992) 142 NLJ 1159.

example rape, stalking and more. Criminal law merely punishes offences associated arising from domestic abuse, no specific offence called domestic violence or domestic abuse has been introduced as yet.

Scholars like Tadros, argue that domestic violence should be a specific offence under criminal law, his main argument is that of the diminished freedom of the victim because of the limited options the victim has and how the offender denies the victim the freedom to exploit the available options against domestic violence. The need for a specific offence is because the criminal law system has been failing to effectively deal with abuse as an average of two women lose their lives each week to domestic violence.<sup>120</sup>

Like all criminal cases, domestic abuse cases will be dealt with by the Magistrate's court and if a charge for a criminal offence arises then the case is sent to the Crown court. Victims cannot persist that the Crown Prosecution Service initiates criminal proceedings because it is up to the CPS to determine whether to proceed with the case or not.

### **Protection from Harassment Act 1997 (the criminal side)**

The Protection from Harassment Act can be relied on and used by people without children with the abuser, people that are not married to the abuser and people who are not qualified to seek remedies and protection under the Family Law Act as set out by Annex A and Part I. Under the PHA 1997, there are two criminal offences which are harassment and fear of violence.

Section 4 classifies harassment is classified as a summary offence that can be tried at the Magistrate's court and in the Crown court as an indictable offence. One becomes guilty of the offence if this/her course of conduct on two occasions which he/she knows of or ought to have known causes the other person to fear. Under section 2, a person is forbidden from pursuing a

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<sup>120</sup> Victor Tadros, *The distinctiveness of domestic abuse: A freedom based account*. (Oxford University Press 2005) 999-1014

course of conduct that he/she knows or should have known amounts to harassment of others as a reasonable person would.

This course of conduct must have occurred on a minimum of two occasions. Criminal proceedings can therefore result in a conviction coupled with a restraining order. The restraining order provides protection to the victim by prohibiting the abuser from various conducts, but however cannot give any orders when it comes to property rights. If the police suspect a person for committing the offence of harassment or causing fear, they have the power to arrest and to take the case to the Crown Prosecution Service.

### **Domestic Violence, Crime and Victims Act 2004**

Through the amendment of s 5 of the Protection from Harassment Act 1997 (s 5A), courts are now empowered to impose a restraining order when sentencing for an offence to which the offender has been tried or acquitted.<sup>121</sup> The amendment also allows imposing a restraining order against any other offence. The offender has rights under the Act to represent him or herself in court as well as making representations in court if an application to dismiss the order is made.

Restraining orders are only granted if the offender has been convicted of putting the victim in fear of violence or harassing the victim as required by s 2 and s 4 of the PHA 1997. The purpose of the order is not to punish the offender but to offer protection to the victim and prevent the offender from harassing the victim by all means possible because the case might be acquitted but sometimes the victim still needs protection. The court imposes the restraining order based on evidence that was brought forward in the trial or additional inadmissible evidence in the criminal court but admissible in the civil courts.

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<sup>121</sup> Domestic Violence, Crime and Victims Act 2004, s 12

Sections 1, 2, 3 and 4 have an impact on the Family Law Act. Additional considerations are given, according to s 2, to parties that are cohabitants or former cohabitants. Cohabitants of same-sex couples have equal access to non-molestation orders<sup>122</sup> and occupation orders, the consequences of a breach of the non-molestation order as set out in s 1 as a criminal offence to which a punishment of imprisonment on indictment for five years' can be given. The Act also validates couples that never cohabited or married each other as qualified to seek for non-molestation and occupation orders.<sup>123</sup>

### **Clare's Law**

Domestic Violence Disclosure Scheme is another term for Clare's Law. The name was given after a deceased woman called Clare Wood who was killed by her ex-boyfriend, George Appleton who had a history of being abusive and violent towards women, Clare was murdered in 2009.<sup>124</sup> The Scheme has two functions; the first one allows a person that is a potential victim and not just a random third party, to ask information about an individual's past criminal records and convictions associated with violent behavior and domestic abuse offences. This information is shared so as to protect the potential victim from any risks of harm. The second function is the right to know which permits the police to proactively disclose information where the person might be in danger.

### **The Domestic Violence Protection Orders (DVPOs) and Domestic Violence Protection Notices (DVPNs)**

With the authorization of a Superintendent, a Domestic Violence Protection Notice is issued if the police reasonably believe that the offender did use violence or threatened to use violence against the victim and because of that the victim is now at risk of violence in the future<sup>125</sup>. The Protection Order must

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<sup>122</sup> Domestic Violence, Crime and Victims Act 2004, s 3

<sup>123</sup> Domestic Violence, Crime and Victims Act 2004, s 4

<sup>124</sup> <<https://www.gov.uk/government/publications/domestic-violence-disclosure-scheme-pilot-guidance>> accessed on 22 December 2021

<sup>125</sup> Domestic Abuse Act 2021, s 22

be granted by the Magistrate's court not later than 48 hours after the Notice is made, the Order lasts between 14 days to 28 days providing the immediate protection a victim might need. The Domestic Violence Protection Orders and Domestic Violence Protection Notices are going to be repealed by the Domestic Abuse Protection Orders and the Domestic Abuse Protection Notice by the Domestic Abuse Act 2021<sup>126</sup>.

A Domestic Abuse Protection Order according to s 27 of the Domestic Abuse Act 2021 is an order with a purpose of preventing the offender from being abusive towards a victim who he is personally connected to and is 16 years and above. However, before making an order the court considers the welfare of those under 18 likely to be affected by the order, the applicant's opinion about the order and the opinion of a relevant occupant. A relevant occupant is someone other than the abuser who lives in the surrounding location of the abuser's property and for who the protection order is made<sup>127</sup>.

The Sentencing Guidelines Council (SGC) issued a guideline to define the sentencing of domestic violence in 2006, the guidelines equate all offences by stating that an offence committed in a domestic and an offence treated in a non-domestic context are all regarded as serious, there is no comparison attached. Offences taking place in a domestic context might be more serious and can result in aggravating factors<sup>128</sup> and the guideline provides a list of these factors. All of the domestic abuse related offences are associated with the abuse of trust and power, vulnerability of the victim, direct or indirect exposure of children to domestic violence to mention just a few are some of the aggravating factors.

## **Crown Prosecution Service**

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<sup>126</sup> <https://www.gov.uk/government/publications/domestic-abuse-bill-2020-factsheets/domestic-abuse-protection-notices-orders-factsheet> accessed on 25 December 2021

<sup>127</sup> Domestic Abuse Act 2021, s 33(2)

<sup>128</sup> Mandy Burton, *Legal Responses to Domestic Violence* (Routledge 2008) 75

To continue or not to continue with the criminal prosecution in the event that the victim withdraws the case, the CPS and the police ought to know that in criminal proceedings it is the state bringing a case against the defendant who in this case is the abuser hence unlike in civil proceedings, the victim does not have veto power over the proceedings.<sup>129</sup> Another reason would be the suspicion that the offender would have persuaded or threatened the victim to withdraw the case.

In the event that the victim withdraws the case, the welfare of the children has to be considered whether or not they will have maximum protection and safety if the issue continues unresolved. Such issues result in a conflict between the interests of the victim against the interests of the state which would be to prosecute the offender.<sup>130</sup> However, going against the victim's wish might discourage the victims thereby resulting in fewer reports of abuse<sup>131</sup>.

The introduction of Specialist Domestic Abuse Courts (SDAC) was done so as to make it easier for victims of domestic abuse to bring forward their cases, to assist victims in accessing the criminal justice system easily, to ameliorate the victim's experience of the proceedings and to improve the number of successful outcomes.<sup>132</sup>

At this stage offenders appear for the very first time in court as they are sentenced. The courts have trained specialist personnel highly aware of the main features associated with domestic violence. The police and the Prosecutors are trained specifically to deal with domestic abuse cases and victims. In order to improve the victim's court experience as well as granting

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<sup>129</sup> Jonathan Herring, *Family Law, A Very Short Introduction* (1st edition 2014) 317

<sup>130</sup> *ibid.*

<sup>131</sup> *ibid.*

<sup>132</sup>

[https://www.towerhamlets.gov.uk/ignl/community\\_and\\_living/community\\_safety\\_crime\\_preve/domestic\\_violence/SDAC.aspx](https://www.towerhamlets.gov.uk/ignl/community_and_living/community_safety_crime_preve/domestic_violence/SDAC.aspx), accessed 6 January 2022

maximum protection to them, victims have their separate waiting areas, entrance doors and exit doors to avoid contact with the offenders.<sup>133</sup>

The safety of victims is prioritized. Domestic Violence Advisors are there to offer specific advice and support to victims because most victims do not know how to go about the processes or which remedies to seek and apply for. Because these courts only deal with domestic violence specifically, it means there is a great likelihood of successful outcomes as the prosecution process delays are significantly reduced through the sharing of information across agencies resulting in managing the cases effectively.<sup>134</sup>

The SDAC tries its best to be there for the victim and to prepare the victim for the proceedings they choose to attend the proceedings as they have an option not to attend. An opportunity to attend a pre-court visit is granted to victims and witnesses to have an idea of what happens during trial as well as to have an idea of what to expect during their own trial. This visit is organized by the Witness Service and they also accept requests of safety measures from the victims and witnesses for their trial day. This is a good move towards mentally and emotionally preparing victims and witnesses rather than catching them by surprise.

If a victim chooses to attend court, they will have a Domestic Violence Advocate (IDVA) to assist and support them throughout the process. It is the role of the IDVA to get consent from the victim to share their current information with the relevant court agencies so that they know what the victim wants out of the case, be it compensation or protection orders. This helps in assisting the victim in a better and favorable manner. So far it is evident that the UK law to a greater extent is trying its very best to respond positively domestic violence.

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<sup>133</sup>Kayliegh Richardson and Ana Speed, 'Two Worlds Apart: A Comparative Analysis of the Effectiveness of Domestic Abuse Law and Policy in England and Wales and the Russian Federation' (2019)

<sup>134</sup> Specialist Domestic Violence Court Programme, Resource Manual 2<sup>nd</sup> edition (2008)

IDVAs work together with a number of agencies, some are voluntary while some are statutory nevertheless, IDVAs are pretty much independent.<sup>135</sup> The partnership is solely based on the safety and protection of victims. In responding to sexual abuse and assaults, the independent sexual violence advisers were put in place for sexual assault victims. A training course is offered for IDVA so that the personnel are equipped with the right framework and correct standards of practice thus ensuring victims of professional assistance.<sup>136</sup>

IDVAs work with other specialist services in homicide and other serious injuries. A study made in 2009 showed that indeed IDVA was positively impacting on victims and the strong support offered made victims feel safer.<sup>137</sup>

## **CHAPTER V**

### **Discussion**

This chapter presents the discussion of the reviewed literature in comparison with the findings of the study.

### **Difficulties Faced by The UK Law in Responding to Domestic Abuse Cases**

In as much as the law has reached out to several victims and has been successful in protecting them, not every victim has had favourable responses and the law itself has not been able to impact every victim. The following are some of the reasons why the law has not completely responded to domestic violence cases.

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/597435/DomesticAbuseGuidance.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/597435/DomesticAbuseGuidance.pdf) accessed 5 January 2022

<sup>136</sup>< <https://www.justiceinspectorates.gov.uk/hmicfrs/wp-content/uploads/2014/04/improving-the-police-response-to-domestic-abuse.pdf>> accessed 5 January 2022

<sup>137</sup> A place of greater safety, (caada.org.uk, 2012)  
[https://www.caada.org.uk/commissioners/A\\_Place\\_of\\_greater\\_safety.pdf](https://www.caada.org.uk/commissioners/A_Place_of_greater_safety.pdf) accessed 8 June 2021



### **Lack of evidence**

In most cases, domestic violence takes place between spouses or two people in their home and usually there are no other witnesses except the two parties hence it becomes a one person's word against the other.<sup>138</sup> The courts may end up making a wrong decision in such cases for example, issuing an occupation order to an innocent party or making orders that infringe the victim's rights or put him/her in a more compromising position.<sup>139</sup>

There may be problems in proving beyond reasonable doubt that an offence was committed if there are no witnesses except for the victim's word of mouth. Some people use this as a leeway to impose themselves as victims when actual fact they are the offenders. Due to fear, emotional strain, threats from the offender and trauma; some the victims cannot properly narrate what happened or give an account of the events which transpired.<sup>140</sup>

In criminal proceedings, without evidence, it will be difficult to obtain a conviction as prosecution cannot continue without evidence. Most victims are not keen on reporting the abuse they have gone through and sometimes feel the need to protect the abuser because sometimes he is the breadwinner of the family and the victims will have no one else to rely on if the breadwinner is convicted.

Another reason why it might be difficult to present evidence is because some forms of the abuse faced are not just physical for example psychological abuse. Hence, it might be difficult to prove the harm caused unless if there is an examination by the doctor, of which, most effects of the psychological harm will begin to show after a period of time.

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<sup>138</sup> Jonathan Herring, *Family Law* (5th edition, Longman, 2011)

<sup>139</sup> Yvette Cooper, The Law is Failing Domestic Abuse Victims in England and Wales. But We Can Change It. <https://www.theguardian.com/commentisfree/2021/nov/19/law-uk-domestic-abuse-victims-assaults-justice> accessed 6 January 2022

<sup>140</sup> <https://www.cps.gov.uk/legal-guidance/controlling-or-coercive-behaviour-intimate-or-family-relationship> accessed 3 January 2021

Another controversial issue arising is whether criminal prosecution should commence when the victim does not want the prosecution to proceed. Traditionally, the approach was that if the victim withdrew the complaint then the criminal prosecution would be stopped however in as much as it is a case between two people, under criminal law the victim is now under the state unlike civil cases making it a case of the state against the offender. Consequently, the prosecution cannot be stopped since it will be out of the victim's hands and power but now the state is in authority against the defendant.<sup>141</sup>

"Pro-prosecution" policies therefore support the idea that proceedings should be commenced and that it is highly suspicious for the victim to just drop the charges. In civil proceedings, dropping the charges against the offender makes it difficult for the law to intervene. The police and the courts have to adhere to the wishes of the victim thus they cannot take the issue further without any charges or claims from the victim.<sup>142</sup>

Victims end up dropping charges due to duress, threats, social stigma, fear of the unknown with regards to the welfare of the family if the victim was financially dependent on the abuser and in certain cultures this might have negative social disadvantages. Proceeding with the case against the victim's wish can result in the victim changing their statements in court or giving false statements as well as altering evidence of what happened. This therefore, creates a conflict of interest and ultimately discontinuance of the case.

## **Privacy**

The setup of a family has always been private one and the traditional image of a family is a place of safety however abuse and violence is most common in families. In trying to maintain the family image or the family's reputation,

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<sup>141</sup> Herring (n128)

<sup>142</sup> <https://www.endvawnow.org/en/articles/809-pro-prosecution-policy.html> accessed 5 January 2022

some victims choose not to report the violence suffered. Most abusers argue that the intervention by the police in their family issues is an infringement of their right to privacy.

### **Lack of victim protection**

There is no specific offence of domestic abuse so the punishment of offenders will be for the acts within the violence that constitute an offence for example rape or manslaughter.<sup>143</sup> The nature of criminal law focuses more on punishing the offender rather than protecting the victim. The offender in most domestic abuse cases is sentenced to for example two years imprisonment or community service and the victim might still have insecurities about their safety despite the issuing of court orders.

The Domestic Abuse Act 2021 has introduced the Office of a Domestic Abuse Commissioner currently held by Nicole Jacobs. The Domestic Abuse Commissioner protects and supports victims, promotes awareness, improves performance of public authorities and other voluntary organizations etc.<sup>144</sup> to ensure consistency and better responses to abuse cases. The Act also transforms the justice response system by helping victims present their best evidence in the criminal courts and ensuring that victims do not face further trauma in family courts by being cross-examined by their abusers.

In cases where the balance of harm test has been made and the courts require both parties to continue sharing a house after dividing and allocating rooms to each party until a divorce is finalized or until other settlement plans are made, the victim might still feel unsafe and insecure about living with the offender. victim applies for an occupation order, there are two kinds of orders, the first one involves domestic violence and the victim really needs protection and the second involves no violence but the dispute is about who should occupy the home and the family deals with them both under ss 33, 35

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<sup>143</sup> <https://www.justice.gc.ca/eng/cj-jp/fv-vf/laws-lois.html> accessed 3 January 2021

<sup>144</sup> Domestic Abuse Act 2021, s 7

and 36 hence there might not be really the solution that the victim needs or is ideal for her situation.<sup>145</sup>

### **Victim Independence**

There may be difficulties in finding an ideal solution once domestic violence has been proved. The victim may have ideal solutions and remedies for the case which sometimes might not be solutions that the courts will grant. The victim might want the abuser removed from home, sent to rehabilitation or anger management sessions yet the courts decide to convict the abuser and sentence him to imprisonment.<sup>146</sup>

As I mentioned earlier, the imprisonment of the abuser may cause further harm to the victim where she was solely dependent on the abuser. In other scenarios, the victim may wish for a longer punishment than the one served by the law. Section 60 allows for civil proceedings to be brought on behalf of the victim but the court can make orders under their own motion in s42<sup>147</sup> of the same act hence providing the victim with the protection that she does not want.

Under criminal law, more focus is directed towards punishing the offender and encouraging arrests so that victims are encouraged to speak up against domestic abuse. Albeit, the autonomy of the victim is left threatened by the offender on one side violating the victim's rights and the state on the other trying to offer 'protection'.

### **Legal funding**

As it is known that there is no legal aid offered for family law proceedings, victims of domestic abuse may find it harder to bring up a claim because not

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<sup>145</sup> Family Law Act 1996

<sup>146</sup> Jonathan Herring, *Family Law* (5th edition, Longman, 2011) 317

<sup>147</sup> Ibid.

all victims are financially stable to finance the costly process of litigation.<sup>148</sup> Most cases do not end with the abuser being convicted and sentenced at once, some require a number of hearings going back and forth to the courts before a final verdict is given. Some cases are complicated hence the need of legal representation in court and lawyers are costly.

Now with the prohibition of cross-examination between the parties it means having legal representation which is quite expensive, the application of some of the orders can be complicated or overwhelming to the victim hence the need of a solicitor assist them.<sup>149</sup> Some cases are complicated and require a huge input of time and resources in gathering up the evidence needed. With every hour that the solicitor spends working on the case, the bill will be rising. In order to avoid litigation costs, victims end up not reporting the abuse they have gone through.

Legal aid might be provided for obtaining protection orders such as occupation and injunction orders but there is still need for a financial contribution, which victims surviving on a low income might not afford.<sup>150</sup> Most victims wish to avoid the aftermath which in most cases is divorce, financial settlements and child custody, for the victim to win such cases they need to have evidence in order to prove that they suffered violence of which there might not be enough evidence to prove or to convince the judge.<sup>151</sup>

### **Ignorance of the law**

A lot of people are not aware of their fundamental rights, constitutional rights and the laws put in place to protect them. This is one of the main reasons why victims do not report abuse because they do not know that what they went through in an infringement to their rights and a punishable offense.

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<sup>148</sup> Courts and Legal Services Act 1990, ss 58 and 58A

<sup>149</sup> <https://www.gov.uk/government/publications> accessed 5 January 2022

<sup>150</sup> <https://www.gov.uk/legal-aid/eligibility> accessed 1 January 2021

<sup>151</sup> Burton 47

Some victims are informed about their rights and about domestic abuse but lack knowledge of the remedies and protection that can easily be granted unto them.<sup>152</sup>

A lot of victims worry about their children's welfare, what will happen to their children, where they will live and how they will sustain themselves.<sup>153</sup> Few of them know and understand the legislation enacted to protect them for example non-molestation and occupation orders, public housing offered as well as compensation that can be awarded if they win the case. Almost every day, victims have their human rights infringed and violated yet they stay in silence and in fear hence the need of raising awareness about human rights and the protection of victims that is offered at law.

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<sup>152</sup> Jonathan Herring, *Family Law, A Very Short Introduction* (2014) 48

<sup>153</sup> <https://gov.wales/sites/default/files/publications/2019-08/cafcass-cymru-impact-on%20children-experiencing-domestic-abuse.pdf> accessed 6 January 2022

## **CHAPTER VI**

### **Conclusion and Recommendations**

Conclusions based on the findings of this research are presented in this chapter in accordance with the objective and sub-objective of the research and recommendations are given accordingly.

#### **Conclusion**

The definition of domestic abuse has brought to light that domestic abuse is not limited to physical harm/aggression for example actual bodily harm but has been expanded to the inward and unseen factors such as trauma, emotional hurt, coercion, psychological as well as financial abuse. Such factors in the past were easily ignored as they were perceived not to constitute to assaults but the law now recognizes all forms of violence. Also, the law now incorporates majority of relationships as vulnerable and susceptible to domestic violence.

The UK law like any other jurisdictions has recognized domestic abuse as a problem in the society and has been working towards rectifying the issue. With the achievements so far and the legislation put in place against domestic abuse, there is still room for improvement on the legal response to such cases. Even with the introduction of different legislation against domestic abuse, there is still need of managing the loopholes in the legislation and its implementation. Home, which should be a place of security and comfort is very much still a dangerous and unsafe place for many hence the need for proper public housing, temporary shelter for victims, medical care and even education.<sup>154</sup>

The law is trying to break barriers in reaching out to the victims even though family is regarded private. Amendments that have been made to the legislation for example the Family Law Act and the Domestic Abuse Act have provided flexibility in the incorporation of victims of different gender and

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<sup>154</sup> Herring (n16)

sexuality thus protecting all victims without discrimination. So far, the law has managed to penetrate in the private family setting and has restored harmony and order.

The Domestic Violence, Crime and Victims Act brought about the training of the police to recognize domestic abuse and coercive control and it has increased the police's response to domestic abuse cases which in turn has resulted in an increase in arrests made.<sup>155</sup> The Domestic Abuse Act creates the office of the Domestic Abuse Commissioner as well as giving the courts, local authorities and the police great power and greater responsibility and accountability for the protection of victims. The police as the first responders to domestic abuse now have the power to issue Domestic Abuse Protection Notice which give immediate legal protection to the victim and the courts can issue Domestic Abuse Protection Orders.

Awareness has to be raised to the general public, the general population have to be educated on their rights and the laws in support of them in order to shed more light on this issue that is not so much spoken of, giving them more knowledge on domestic abuse, what to do and where to go when faced with such issues. Cases of domestic violence have to be spoken about so that victims get encouraged to come out of their shells. Emancipation of women could also help in curbing domestic abuse. This involves various agencies working together in raising awareness and perhaps the spread of independent domestic violence advisors to assist victims.

### **Recommendations**

Having a specific offence of domestic abuse will help in effectual investigations and prosecution of domestic abuse. This will send a clear message to offenders about the consequences attached to their actions as some are reluctant because they have never been arrested just a couple of

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<sup>155</sup> <https://www.nottinghamshire.pcc.police.uk/Document-Library/Public-Information/Meetings/Strategic-Resources-and-Performance/March-2020/15-Chief-Constables-Update-Report.pdf> 'accessed on 1 January 2022



warnings here and there. The victims on the other hand will find courage to report abuse now that their cases are taken seriously and that abuse is not tolerated. The introduction of domestic abuse specialist courts also helps in giving specialist remedies and the correct protection measures to victims.<sup>156</sup>

I believe that if adequate attention is given towards domestic abuse cases and proper measures that guarantee the protection of victims, a lot of victims might begin to trust the justice system and be more vocal in reporting and giving account of the violence they have experienced. The available measures implemented have been successful to a greater extent in helping a number of victims as well as raising awareness of how much an assault at home is of no difference to a street assault.

In conclusion, the law will definitely not put an end to domestic violence at once or protect every victim. It will take time, some reforms, amendments and more resources for the law to have an impact on huge amounts of victims. Currently, the UK law has been trying to reach out to victims and to present the best solutions it can at the moment although there is room for improvement. Comparing UK to other jurisdictions it is evident that the responses are a step ahead mainly because UK begun to recognize domestic violence in the earlier years and working towards the responses.

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<sup>156</sup> <https://newint.org/features/2021/08/09/debate-criminalization-right-response-domestic-violence-no-leigh-goodmark-yes> accessed on 6 January 2022

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