

'Together with the police and the army the family is considered as one of the most violent social organizations in society' Does the Law do Enough to Tackle Domestic Abuse in England and Wales?

****Please note this where supervision log should be inserted. It has been removed to anonymise dissertation****

Abstract

This dissertation will examine the current landscape of domestic abuse in England and Wales through critiquing the legal response to the phenomenon and discussing attitudes towards it, predominantly through a feminist lens. In doing so, this essay aims to challenge current attitudes towards domestic abuse and suggest ways in which the government can implement reform initiatives which would aid in confronting such a monumental issue. Through evaluating disclosure schemes and the efficacy of a register scheme, the importance of an offender-based approach to domestic abuse is outlined, with the essay arguing that this is crucial to subverting victim-blaming attitudes towards victims and instead targeting the root of the issue. Through highlighting the deeply entrenched attitudes towards women and institutional sexism, this essay identified a pronounced prejudice against women which has a significant effect on the way in which domestic abuse is responded to, legislated against, and viewed by the public. This has been highlighted through examining pertinent literature and statistics, establishing that there exists a reluctance to recognise the severity of domestic abuse, despite the threat it poses to women in modern society. Essentially, it can be ascertained that the failure to recognise the reality of domestic abuse as an extremely serious and damaging crime has resulted in a failure to protect women from this type of gendered violence. Through acknowledging this and implementing effective offender-based schemes to tackle the roots of domestic abuse the government would be taking steps to help reduce such crimes and prevent further victimisation.

Table of Contents

Abstract.....3
Table of Cases.....5
Table of Legislation.....6
Introduction.....7
Chapter One.....9
Chapter Two.....17
Chapter Three.....27
Conclusion.....34
Bibliography.....36

Table of Cases

Osman v United Kingdom App no 23452/94 (ECtHR 28 October 1998)

Opuz v Turkey App no 33401/02 (ECtHR 9 June 2009)

Horgan v Horgan [2002] EWCA Civ 1371

R v R [1991] 3 WLR 767 (HL)

Table of Legislation

Domestic Abuse Act 2021

Data Protection Act 2018, sch 2 pt 1

Serious Crime Act 2015, s 76

Introduction

Domestic Abuse (DA) is the most common crime committed against women worldwide and sees millions of women across the globe fall victim to violence and abuse from their current or former partner, with the UN estimating that around 30% of women aged fifteen or older have been victimised¹. DA has profound and lasting psychological, physical and emotional impacts on victims, and for many women the abuse can end fatally; In England and Wales alone, two women are murdered by their current or former partner each week². With no indication that rates of DA are lowering, it is easy to ask why there seems to be a lack of action taken by the government to tackle such a prevalent crime which affects such a significant proportion of the population.

DA is a relatively rare phenomenon in that it has only become the crime we know today in the last 30 years. In the past, violence between partners was seen as a private family matter and not as important as other public forms of violence. Now 'a punch in the bedroom is just as bad as a punch in the pub'³, with some scholars, like Herring, arguing that it should be seen as even worse⁴. The idea that an ordinary, unsuspecting man who would never consider using violence in public is capable of going home and beating his wife is a frightening yet all too common occurrence and lends itself to the idea that DA is a deeply complex and hidden crime making it difficult to identify, define, and legislate against.

The widening of the crime from 'violence' to 'abuse' is extremely important to DA discourse as it helps to eradicate the idea that abuse has to be physical in order for it to be significant. This change can most easily be explained by the shift in society's attitudes towards mental health and the gradual acknowledgement and acceptance of mental disorders such as depression and anxiety. Through understanding that non-violent behaviour can have an equal impact on victims helps to erase the 'narrow construction of harm'⁵ and sees the recognition of a much broader range of victims. It also helps to identify abuse as not limited to separate, distinguished acts but rather prolonged campaigns or 'programmes' of control and manipulation which may have a

¹ World Health Organisation, *Violence Against Women Prevalence Estimates* (World Health Organisation 2021)

² The Facts (Refuge) <<https://refuge.org.uk/what-is-domestic-abuse/the-facts>> accessed 18 March 2024

³ Jonathan Herring, 'The Severity of Domestic Abuse' (2018) 30 *National Law School of India Review* 37

⁴ *Ibid*

⁵ *Ibid* 40

more gradual, yet equally as harmful effect on victims. However, this makes it difficult to recognise and therefore legislate against, with the current legislation having little effect on DA rates in this country.

In light of this, this essay will aim to examine the current landscape of DA and its place within the law and will seek to argue that current legislation and policy in England and Wales does not place sufficient emphasis on the management and prevention of a crime which affects or will affect a significant proportion of the female population. This will be done through analysing the current state of the law and introducing reform proposals, as well as assessing current or former initiatives which aimed to better protect women from DA. The first chapter seeks to outline DA in greater detail through analysing the definition of DA and examining the current laws governing it. It then goes on to explore historical perspectives of the crime and how it has developed alongside changing attitudes to women and private life, adopting a feminist perspective and emphasising how feminist theories are crucial to legislating against a gendered crime like DA. It will seek to challenge opposing theories and criticisms of this approach. Lastly it will outline the role of the law and whether reform is the most effective way to tackle such a monumental threat to female safety.

Chapter two introduces Clare's Law, a significant policy for DA victims which, in practice, is largely ineffective in reducing cases of DA due to the heavy reliance on the police as well as problems of institutional sexism. Next, it examines the use of registers in dealing with crime and explores the practicality of introducing a register for DA perpetrators and the possible implications of this approach, whilst simultaneously discussing the wider issues surrounding legislating against such a complex crime. The third and final chapter seeks to introduce human rights issues which arise when discussing DA and prevention efforts, predominantly the criticisms of Clare's Law and possible wider implications it may have. Next it argues in favour of reform and in particular prevention through methods such as risk-assessment and offender-focused systems, targeting the perpetrator as opposed to the victim and prioritising responsabilisation in order to ensure the safety of women in England and Wales.

Chapter One - (Rule of Thumb) The Problem of Domestic Abuse and Why the Law Needs to be Reformed

Defining Domestic Abuse

In England and Wales DA is defined under the recent Domestic Abuse Act of 2021. Under the Act, abusive behaviour can only occur if 'A and B are each aged 16 or over and are personally connected to each other'. Behaviour is abusive if it involves 'physical or sexual abuse; violent or threatening behaviour; controlling or coercive behaviour; economic abuse, psychological, emotional or other abuse'. The act does not require the behaviour to be a course of conduct, recognising a 'single incident' as DA. Prior to the 2021 Act, England and Wales saw no codified definition of DA, the importance of which cannot be understated. Not only do definitions provide a useful description of the phenomenon but they are also crucial to enforcing legislation and informing organisations and charities in order to better help victims and perpetrators⁶. Despite the existence of a consolidated definition of DA, studies have found that the general public and some practitioners are unsure as to what constitutes DA⁷, resulting in a misjudgement of the crime and encouraging social silence.⁸

In order to maintain a non-gendered and non-discriminatory view of DA victims and perpetrators, the definition needs to be 'holistic' as well as 'unambiguous and applicable' across every 'gender, sexuality, ability, ethnicity, culture, religion and socioeconomic status'⁹. The statutory definition makes no mention of any of these characteristics, emphasising the non-discriminatory nature of the crime and how it can affect anyone, regardless of their circumstance. Whilst this is progressive and aims to deconstruct the archetypal image of DA as a husband beating his wife, certain characteristics can play a large role in some instances of DA and lead to further victimisation and different types of abuse. For example, in same-sex couples one partner may threaten to 'out' their partner as a form of control, or when the individuals

⁶ Julie Walker and Helen Gavin, 'Interpretations of domestic violence: defining intimate partner abuse' [2011] The 12th Conference of the International Academy of Investigative Psychology. Crime, Criminalistics & Criminal Psychology: New Directions in Investigative Behavioural Science 14

⁷ Russel P. Dobash and R. Emerson Dobash, 'Women's Violence to Men in Intimate Relationships' (2004) 44 British Journal of Criminology 324

⁸ Deisy Carrillo, 'Police Culture and Gender: An Evaluation of Police Officers' Practices and Responses to Domestic Abuse' (2021) 8 Security, Legitimacy and Crisis in the Aftermath of Colonialism and in the Midst of a Pandemic: The Role of State Organs 69, 71

⁹ Ibid 18

are religious one partner may justify abuse by claiming they are being punished for their sins¹⁰. Every victim of abuse should be given the ability to seek help and support, and the law should remain sensitive to these issues and recognise that race, religion, sexuality, etc. may play a significant part in why and how DA is committed. Additionally, the adoption of a gender-neutral view of DA has been a more recent development in DA discourse, with a push for men to be recognised as victims alongside women. However, feminist theorists would argue that women still remain disproportionate victims, especially when considering physical violence, arguing that women should still remain at the forefront of services and responses to DA. This will be discussed further later in chapter one.

Additional characteristics, for example the age of the individuals involved need to be considered when defining DA. Despite the age of individuals who can be considered victims of DA being lowered from 18 to 16 in 2012¹¹, some theorists still believe that this definition fails to recognise the existence of DA in teenage relationships, including those under the age of 16. CSEW statistics for the year ending March 2023 found that a significantly higher proportion of 16–19-year-olds were victims of DA when compared to older age groups. Cases of abuse concerning individuals under 16 would be treated as instances of child abuse, with the law not wanting to ‘risk blurring the lines’¹² between different forms of abuse. However, in research consisting of interviews and surveys with 13–16-year-olds regarding experiences of DA it was concluded that it is a ‘significant concern’ for the wellbeing of young people¹³ with a significant number of young people experiencing some form of violence at the hands of their partner before reaching adulthood¹⁴.

Due to the complex nature of DA, it is extremely difficult to establish a definition which encapsulates the true nature of the crime and also incorporates all possible manifestations of the abuse. Through adding Controlling or Coercive Behaviour to the list of offences under the Serious Crime Act 2015¹⁵ the law made significant progress

¹⁰ Ibid 15

¹¹ Home Office, *Cross-Government Definition of Domestic Violence – A Consultation* (Home Office, September 2012)

¹² Home Office, *Statutory Definition of Domestic Abuse Factsheet* (January 2024)

¹³ Christine Barter and other, ‘Partner exploitation and violence in teenage intimate relationships’ [2009] NSPCC Commissioned Report, University of Bristol 178

¹⁴ Ibid

¹⁵ Serious Crime Act 2015, s 76

in recognising the seriousness of non-violent forms of abuse and also ensured that it was keeping up with the changing methods of control used by abusers, for example the use of phones and social media. This is an extremely important change in the legislation governing DA as it validates the experiences of victims who may have previously failed to recognise DA for what it was. Often, violence is a mere part of the abuse, the pattern of isolation, manipulation and control having the most detrimental effect on the victim, eventually wearing them down.

Historical Developments

Perhaps the most important development in attitudes towards DA is the transition from 'violence' to 'abuse' and the broadening of what is considered 'unacceptable' behaviour in a relationship. In England and Wales violence against women was scarcely legislated against until the twentieth century. Prior to this was laws which attempted to control the extent to which women were abused by their husbands, for example the 1782 'Rule of thumb' which supposedly allowed for a man to beat his wife provided that he uses 'a rod not thicker than his thumb'¹⁶, or the 1895 curfew which prohibited men from beating their wives between the hours of 10pm and 7am as the noise kept neighbours awake¹⁷. Both examples show the acceptance of wife-beating as common-place, with no attempt to prevent such violence from taking place. The introduction of the Domestic Violence and Matrimonial Proceedings Act of 1976 after extensive campaigning from Women's Rights movements was the first piece of legislation that addressed domestic violence and offered victims civil protection orders. The act specified that injunctions could be granted to prevent a husband from molesting the applicant or their child, as well as permitting them from entering the family home. If the injunction was breached and violence was used against the applicant a power of arrest could be attached to the injunction.

Notably, at this point in time outwardly violent acts were recognised by the state, however it appeared as though nothing was done to prevent such instances from occurring. This can largely be explained by the idea of a 'private' life and that the business of a married couple should remain between a husband and a wife. This

¹⁶ Centre for Women's Justice, 'Timeline of Key Legal Developments' (2016) <www.centreforwomensjustice.org.uk/timeline>

¹⁷ Ibid

attitude is what created the foundations of the reluctance of the state and the police to become involved with situations involving domestic disputes. The labelling of a crime as 'domestic' instantly carries a certain stigma, lowering the priority of the crime and diminishing the likelihood of a fast and effective response¹⁸. Additionally domestic crimes are often considered mundane with ordinary perpetrators, failing to capture the attention of the public and therefore minimising its appearance¹⁹.

Helena Kennedy explains the failure of the law to protect women from abuse through the public/private dichotomy. She highlights how the law's reluctance to encroach on individual freedom within private life works against women, who's main 'sphere of activity is in the private domain'²⁰. This also accounts for the historical difficulties in prosecuting instances of child abuse and rape. It wasn't until the case of *R v R*²¹ in the 1990s that rape could exist within a marriage, with the prior belief that a woman gave irrevocable consent as part of the marriage agreement. Kennedy argues that there should be no issues with 'policing the bedroom'²² when the wellbeing and safety of a victim are in jeopardy, however it is still seen as a 'no-go' area for law enforcement, who become suddenly sensitive to the rights of the man in cases of DA²³. It is these deeply rooted beliefs 'combined with a lack of juridical tools' which have created a 'culture of impunity for men who [use] violence against women'²⁴. With the law taking so long to recognise such blatant crimes it is difficult to argue that there does not exist a reluctance to act in instances where women are victimised, especially in 'private' and domestic contexts and even more when the perpetrator is a man.

Additionally, through these omissions, the state risks breaching European Human Rights Law, notably Article 2 which sees a breach when the government fails to protect a victim of abuse despite knowledge that the perpetrator posed a threat to their life²⁵, for example when the police fail to effectively intervene despite numerous reports being made²⁶. Despite this, countless failures have been made to help women who have previously reported abuse to the police. When looking at cases of domestic

¹⁸ Helena Kennedy, *Eve Was Framed* (Vintage 2005) 91

¹⁹ *Ibid* 90

²⁰ *Ibid* 88

²¹ [1991] 3 WLR 767 (HL)

²² Kennedy (n 18) 89

²³ *Ibid*

²⁴ Rebecca Jane Hall, 'Feminist Strategies to End Violence Against Women' [2015] *The Oxford Handbook of Transnational Feminist Movements* 7

²⁵ *Osman v United Kingdom* App no 23452/94 (ECtHR 28 October 1998)

²⁶ *Opuz v Turkey* App no 33401/02 (ECtHR 9 June 2009)

homicide, the victim is likely to have voiced their concerns regarding their safety to the police, yet their case is rarely believed to be serious enough to warrant further action. The campaigner Karen Ingala Smith started the 'Counting Dead Women'²⁷ project and found that in the UK a man kills a woman every three days²⁸, meaning in the last thirty years more women have lost their lives at the hands of men than those who have died as a result of terrorism²⁹. Despite this the government still invests billions into preventing terrorism yet little is done to prevent the 'intimate terrorism'³⁰ of DA. This is also seen within the police who would have no qualms about entering premises believed to hold explosive substances yet are reluctant to invade the privacy of a couple by entering a house where a domestic crime has been reported³¹.

A Feminist Perspective

The leading feminist theory of DA comes from Dobash & Dobash³² who explain intimate partner violence as being a result of male oppression of women under a patriarchal system, with women as the primary victims and men as the primary perpetrators³³. Not only does misogyny and sexism explain the existence of DA but it also serves as a way to excuse the behaviour of men and aid in the creation of barriers which prevent female victims and survivors from being believed³⁴ and taken seriously. Perhaps the most pertinent facet of feminist theory is the belief that DA is a gendered crime and is a problem which affects women at a near-epidemic level. While DA is a crime which can affect anybody, regardless of gender and sexuality, feminist theorists argue that heterosexual women are victimised at a much greater level than any other demographic and that the gendering of violence is central to the field of DA³⁵. This is not to discount the experience of male victims or to claim that men do not experience

²⁷ Karen Ingala Smith, 'Counting Dead Women' <<https://kareningalasmith.com/counting-dead-women/>> accessed 1 April 2024
²⁸ Femicide Census, 'Femicide Report 2020' (February 2022) <<https://www.femicidecensus.org/reports/>> accessed 1 April 2024

²⁹ The Observer, 'The Observer View on the Police's Failure to Prioritise Violence Against Women' *The Guardian* (20 November 2022) <<https://www.theguardian.com/commentisfree/2022/nov/20/the-observer-view-on-police-failure-to-prioritise-violence-against-women>> accessed 1 April 2024

³⁰ Michael Johnson, 'Apples and oranges in Child Custody Disputes: Intimate Terrorism vs. Situational Couple Violence' (2006) 2 *Journal of Child Custody* 43

³¹ Kennedy (n 18) 89

³² Russell P. Dobash and R. Emerson Dobash, *Violence Against Wives: A Case Against the Patriarchy* (New York Free Press 1979)

³³ Ibid

³⁴ Women's Aid and others, 'Gendered Experiences of Justice and Domestic Abuse: Evidence for Policy and Practice' [2021] Women's Aid, University of Bristol

³⁵ Sylvia Walby, Jude Towers and Brian Francis, 'Mainstreaming Domestic and Gender-Based Violence into Sociology and the Criminology of Violence' (2014) 62 *The Sociological Review* 187, 210

harrowing abuse, but the fallacy that there are an equal number of male victims who suffer in silence as women once did is a dangerous belief system, and to claim it is an 'equivalent problem' is a 'denial of the underlying issues'³⁶ of misogyny and female oppression.

While such theories may appear hostile towards perpetrators, antagonising men and even appearing to minimise their experiences, it can be said that through adopting feminist theories the state would be gaining a more universal view of DA, attempting to understand motives behind it and placing emphasis on helping men to understand why they turn to violence. Acknowledging the true nature of DA and understanding it as a problem 'rooted in sexual imbalance'³⁷ is crucial to legislating and policing the phenomenon and the adoption of feminist theories of the crime is extremely useful in order to aid in its prevention. The ethos of the feminist movement is to make the personal political, as well as to make the private public³⁸, both statements lending themselves well to the issue of DA.

Until the state recognises DA as a gendered crime, there will not be enough momentum or backing to start tackling the crime. The United Nations recognises that 'strong and autonomous' feminist movements are one of strongest factors in driving change to policy and legislation regarding women's rights³⁹, this includes DA. With opponents to the feminist theory rallying for gender-neutral, universal services and support networks for victims, this sees money being diverted away from women's organisations, defunding and silencing such important voices in the fight for women's rights.

Is Reform an option?

Whilst this essay argues that state intervention and reform are key to driving change in the landscape of DA and violence against women, it is important to address the arguments against this. This mainly comes in the form of a suggested overreliance on

³⁶ Kennedy (n 18) 105

³⁷ Ibid 106

³⁸ Hall (n 24) 5

³⁹ UN Women, 'Push Forward: 10 Ways to End Violence Against Women' (*UN Women*, 18th November 2022)

www.unwomen.org/en/news-stories/feature-story/2022/11/push-forward-10-ways-to-end-violence-against-women accessed 3 April 2024

the criminal justice system. Most notably, scholars question the efficacy of criminal law in tackling the issue of DA, with features such as mandatory arrests having undesired effects as well as undermining the victim's autonomy⁴⁰. Additionally, the creation of new offences and the toughening of sentences for crimes involving DA has a limited effect on the prevalence of the crime and instead sees increased custodial sentences. Not only is custodial sentencing proven to be unlikely to change the offending behaviour of perpetrators⁴¹ but it also increases the burden on an already struggling prison system in England and Wales. Moreover, the toughening of laws aimed to govern the behaviour of men often end up affecting women as the use of such laws becomes generalised⁴². For example, Harriet Harman worked to turn convictions of manslaughter for men who murdered their wives to convictions of homicide, seeing the toughening up of sentencing in this area, however, this had the unintentional impact of handing out harsher sentences to women who had previously seen compassionate, lenient treatment for killing their partners after enduring years of abuse⁴³.

This idea that the law can be a double-edged sword persists for women campaigning for recognition and 'positive action' from the state. Women may feel unable to leave their abuse due to the likelihood that their partner or husband will be more likely to retain property and finances; childcare is often a large factor in abusive relationships with the uncertainty of whether a mother will be able to remain with her children upon leaving an abusive household; A victim with insecure immigration status may remain in an abusive relationship out of fear of being deported. Helena Kennedy mentions instances where women seeking custody of their children were penalised for walking out of the family home, even if to escape abuse⁴⁴. Moreover, if a woman attempts to stand against her partner they face reliving the abuse in court, facing their abuser in the stand and being cross examined, all of which act as valid reasons as to why a victim may chose not to press charges. All of these examples show how although the law can act as a body for change it also often sees the 'hijacking of women's

⁴⁰ Teresa Manning, 'Minding the Gap in Domestic Violence Legislation: Should States Adopt Course of Conduct Laws?' (2021) 111 *Journal of Criminal Law and Criminology* 773, 801

⁴¹ Francis T. Cullen, Cheryl Lero Jonson and Daniel S. Nagin, 'Prisons Do Not Reduce Recidivism: The High Cost of Ignoring Silence' (2011) 91 *The Prison Journal* 48

⁴² Kennedy (n 18) 8

⁴³ *Ibid*

⁴⁴ *Ibid* 28

movement campaigns' for further attacks on civil liberties⁴⁵ as well as long-standing structures which still act to prohibit women from having equal access to justice and create barriers for victims of DA attempting to seek help.

Whilst there exists structural hurdles to enforcing change in the landscape of DA, progress has still been made to better the support offered to victims and attempts have been made to prevent abuse in the first instance. The adaption of a three-step plan briefly introduced by Garcia-Moreno and Amin⁴⁶ can be used as a guide to how state-intervention can be effectively harnessed into tackling violence against women, specifically DA. Firstly, more needs to be invested into women's movements and organisations, showing recognition for the importance of seeing DA as a gendered issue and funding the true drivers of change who represent women in England and Wales. Secondly, education on DA, specifically for first responders, including how abuse has adapted to the technological age as well as post-pandemic changes. This would ensure that there is a common understanding of what abuse looks like and would push for continuity in responses to the phenomenon. Finally, invest resources into the implementation of laws, policies, and action plans that support prevention and response intervention. This would help to subvert behavioural norms relating to masculinity and the oppression of women, which is arguably the driving force behind why DA remains such a prevalent crime.

Essentially, DA is an intrinsically complex crime, influenced by countless factors, with every case being of abuse being unique and manifesting itself in completely different ways each time. This makes it an extremely difficult crime to legislate against, especially when considering changing social structures and attitudes. However, through adopting feminist perspectives of the phenomenon, and recognising the gendered nature of the crime, the state would be in a much better position to implement effective and proactive policies to better protect women, and through embracing feminist ideologies surrounding the reasons behind why DA is committed, would aid in tackling the poisonous attitudes towards women which permeate through the current justice system.

⁴⁵ Ibid 8

⁴⁶ Claudia Garcia-Moreno and Avni Amin, 'Violence Against Women: Where Are We 25 Years After ICPD and Where Do We Need to Go?' (2019) 27 *Sexual and Reproductive Health Matters* 346, 348

Chapter 2: The possible introduction of a register and how this would work

This chapter is concerned with examining the current disclosure scheme and why the implementation of a modern, more specialised system would hugely help to offer women and girls a higher degree of protection under the law. It will start by analysing ‘Clare’s Law’ and the flaws and shortcomings of this type of disclosure scheme. In doing so, this chapter will aim to pin-point the areas in which so many victims fall through the cracks of the system and will introduce the idea of a DA register to help guard victims from abusers and ultimately reduce the numbers of foreseeable and preventable homicides from occurring in England and Wales. The examination of disclosure schemes and registers currently in use as well as approaches from other jurisdictions will aid in determining whether such a tool would be beneficial if introduced in the UK.

The Efficacy of Clare’s Law

The Domestic Violence Disclosure Scheme, also known as ‘Clare’s Law’, is a police policy which was passed in 2014 in England and Wales. The scheme was campaigned for by Michael Brown, the father of Clare Wood, who was killed by her abusive ex-boyfriend, George Appleton in 2009. Clare was unaware of her murderer’s violent past and was killed after having split from Appleton due to his controlling behaviour, after having made police statements and obtaining a restraining order. Greater Manchester Police were aware of Appleton’s history of abuse and violence towards women as well as his record of having served two prison sentences. Clare’s father maintains that had they been aware of Appleton’s past, Clare would still be alive today. This called into question the safeguards implemented in order to protect women from abusive and dangerous men, leading to the introduction of ‘Clare’s Law’.

The scheme gained statutory footing under the Domestic Abuse Act 2021 and allows individuals to make applications to the police requesting information about current or former partners. It also allows individuals to request information about the partner of a close friend, neighbour, or family member⁴⁷. Additionally, it gives the police the ability

⁴⁷ ‘Why is it called Clare’s Law?’ (Clare’s Law) <<https://clares-law.com/why-is-it-called-clares-law/>> accessed 26 November 2023

to proactively share information with an individual who they deem to be at 'future risk'. The Police have full discretion as to whether they believe it is appropriate to disclose the confidential records of the partner and have to collectively agree on what to disclose.

The many flaws of disclosure schemes, in this case 'Clare's Law', have arguably failed to help protect women from DA, more specifically instances of homicide as a result of DA. The main criticism of 'Clare's Law' stems from the idea of 'responsibilisation'⁴⁸. This refers to the idea that the victims themselves are individually responsible for accessing information and therefore protecting themselves. This has long been a theme within policy and legislation concerning violence against women and has led to the gradual adaptation of daily life in order to prevent random acts of violence from unknown men⁴⁹, with anyone who fails to follow these unspoken rules being ultimately blamed due to their failure to protect themselves and a lack of 'common sense'.

Whilst some argue that a Domestic Violence Disclosure Scheme (DVDS) 'empowers' women by allowing them to 'make informed choices' about their life and relationship⁵⁰, 'Clare's Law' continues this narrative of women being responsible for their own misfortunes as in order for it to work effectively women need to act once they have identified a 'red flag' in their partner's behaviour but before they have begun to accept and justify the abuse and invest in the relationship⁵¹. This window of time is small and places emphasis on victims actively recognising warning signs and having the ability and desire to act upon them. Women who fail to recognise the 'signs' early enough blame themselves for not being able to see something considered obvious. This can also be said for third parties, for example the families and friends of the victims, predominantly women, who are also placed under pressure to act on behalf of someone they believe to be in danger. There exists the assumption that knowledge leads to a victim leaving a relationship, however this is a common misunderstanding; information about a partner's history may not mean a victim leaves a relationship but

⁴⁸ Nicole Renehan, Charlotte Barlow and Sandra Walklate, 'Self-blame and (becoming) the crazy ex: Domestic abuse, information sharing and responsibilisation' (2023) 0 *Criminology and Criminal Justice*

⁴⁹ Elizabeth Stanko, 'Women, Crime, and Fear' (1995) 539 *The ANNALS of the American Academy of Political and Social Science* 46

⁵⁰ Claire Bessant, 'Protecting Victims of Domestic Violence – Have We Got the Balance Right?' (2015) 79 *The Journal of Criminal Law* 73

⁵¹ Renehan, Barlow and Walklate (n 48)

instead may compound fears, forcing the victim into a state where they feel less able to leave for fear of what their partner might do⁵². The DVDS has 'created a new avenue of blame within this politics' as the 'right to know' strand of the scheme is described as a way for the police to allow victims to make 'better informed choices' about their relationship. This wording is problematic as it places emphasis on the victim's ability to leave a relationship but also appears to criticise their past choices and blame their judgement⁵³.

This idea of responsabilisation is arguably the greatest downfall of the DVDS⁵⁴. Through placing the responsibility on the victim to act after being informed, this diminishes and reduces the responsibility of the state to act, whilst simultaneously lowering their accountability⁵⁵. The outcome of this is victim blaming. Those outside of the relationship question why victims stay with an abuser but fail to recognise the countless reasons why leaving is a more daunting option; these include financial stability, societal and cultural norms, as well as the added pressures of children and accommodation. Some scholars explain the victim blaming of DA survivors through various ideologies, most notably the Belief in a Just World⁵⁶, which is the ideology that all individuals get what they deserve. In the context of violence against women, individuals who strongly hold this ideology are more likely to attribute blame to victims in cases of DA⁵⁷. Sexist ideologies also fuel victim blaming in cases of violence against women. Research suggests that women who seem to challenge traditional gender roles in a relationship are more likely to be blamed for the violence committed against them⁵⁸. This is seen in many different ways, with some perpetrators resenting their partner's lack of maternal or domestic behaviours, whilst other resent their partner's success and independence. In both of these cases the violence these women face is more likely to be justified by individuals outside of the relationship.

52 Marian Duggan, 'Using Victims' Voices to Prevent Violence Against Women: A Critique' (2012) 10 *British Journal of Community Justice* 25

53 Jamie Grace, 'Clare's Law, or the national Domestic Violence Disclosure Scheme: the contested legalities of information sharing' (2015) 79(1) *The Journal of Criminal Law* 36, 45

54 Renehan, Barlow and Walklate (n 48)

55 Nicole Renehan 'Is Clare's Law Working?' (*Clare's Law Experiences Projects*, 23 November 2023) <www.clarelawexperiencesproject.com> accessed 27 November 2023

56 Melvin J. Lerner, *The Belief in a Just World: A Fundamental Delusion* (1st edn Springer 1980)

57 Regina A. Schuller, Vicki L. Smith, and James M. Olson, 'Jurors' decisions in trials of battered women who kill: The role of prior beliefs and expert testimony' (1994) 24 *Journal of Applied Social Psychology* 316, 333

58 Inmaculada Valor-Segura, Francisca Expósito and Miguel Moya, 'Victim Blaming and Exoneration of the Perpetrator in Domestic Violence: The Role of Beliefs in a Just World and Ambivalent Sexism' (2011) 14 *The Spanish Journal of Psychology* 195, 198

Additionally, systematic problems such as the practicality and effectiveness of the DVDS arise when reviewing the success of the scheme. The high level of discretion awarded to the police when deciding whether to disclose information has seen varying levels of disclosure throughout police departments in the UK, with the Norfolk constabulary disclosing 61% of the total requests it received but the Essex police disclosing only 7%⁵⁹. This concerning low figure, coupled with the disparity between the two areas leads critics to question whether the scheme is utilised consistently and adequately across the country. In order to safeguard against this, the police are required to satisfy several tests before they decide to disclose information under the law, these being that there is a 'necessary' and 'pressing' need for the information to be released, weighing the 'interference' with the perpetrator's rights against the protection of the victim. Not only do these tests appear to be overly subjective and open to interpretation by different police forces but they also seem to aid in exonerating the perpetrator by discouraging the police from disclosing information unless there seems to be imminent danger. This appears to contradict the aim of the scheme which is to allow victims to make informed and rational decisions about their relationship. Additionally, after the scheme had been rolled out, it was criticised for being overly bureaucratic by the police. Practitioners also believed that there was little public awareness of the scheme. The information disclosed often lacked continuity as did the follow-up support offered in instances when information was not disclosed by police.⁶⁰

Furthering this, Nicole Jacobs emphasises the potential implications with the practical application of Clare's Law, arguing that women can be lured into a 'false sense of security' by failed or poorly conducted applications⁶¹. Some scholars call into question the scheme as a whole, with Duggan⁶² arguing that the 'increased likelihood of criminalization and further legislation'⁶³ does not provide safety for the victim and instead puts them at a higher risk of danger at the hands of their partner. Additionally, the IPCC review into Clare Woods' death emphasised the importance of support for women having left an abusive relationship and improved frontline police responses with Fitz-Gibbon and Walklate arguing that Clare's Law diverts police resources away

⁵⁹ Yohannes Lowe, 'Women at risk' as police in England and Wales miss Clare's Law deadlines' *The Guardian* (9 May 2021)

⁶⁰ Jamie Grace, 'Disclosing Domestic Violence' (2014) 97(1) *Criminal Justice Matters* 18

⁶¹ Shanti Das, 'Revealed: police refusing requests for background checks on violent partners' *The Guardian* (6 January 2024)

⁶² Duggan (n 52)

⁶³ Kate Fitz-Gibbon and Sandra Walklate, 'The efficacy of Clare's Law in domestic violence law reform in England and Wales' (2017) 17 *Criminology and Criminal Justice* 284, 287

from these pressing issues⁶⁴. These scholars would argue that in order to effectively protect women from DA, funding should be directed towards shelters and resources for victims instead of pumped into a scheme which has arguably had limited success in reducing levels of DA and domestic homicide in England and Wales, as per recorded crime statistics over the last few years⁶⁵.

Should a Register be Implemented?

Most policy and legislative strategies focus on crisis intervention, but this fails to address the 'complex dynamics'⁶⁶ of DA. With the need for a more rigorous and effective system governing the safety of women against violent men, one can look at the use of registers as a likely alternative. In the UK, the Sex Offenders' Register was introduced in 1997 and is a database used to monitor and keep track of convicted sex offenders. Contrary to popular belief, not all offenders remain on the system for life and the database cannot be accessed by the public. Under the Child Sex Offender Disclosure Scheme ('Sarah's Law'), launched in 2010 after the murder of 8-year-old Sarah Payne ten years earlier, parents, guardians, and carers of children are allowed to request information regarding someone whom they believe could pose a threat to their child's safety. Whilst the success of such a scheme is difficult to measure, it succeeds in providing parents with comfort in knowing that they are able to protect their children from predators. However, the same problems with 'Clare's Law' arise, with disclosure schemes being focused predominantly on the individual in order to prevent a crime. With the Sex Offenders' Register, however, the responsibility is taken off the victim and placed onto the perpetrator, who is required to give authorities regular updates to enable police to keep track of their movements and actions. Not only does this help to dismantle victim blaming through focusing on the offender as opposed to the victim, but it also means that the police can monitor and prohibit offenders from committing further crimes before they have established a new victim.

⁶⁴ Ibid 291

⁶⁵ Office for National Statistics (ONS), 'Domestic Abuse Prevalence and Trends, England and Wales: Year Ending March 2023' (ONS, November 2023)

⁶⁶ David A. Wolfe and Peter G. Jaffe, 'Emerging Strategies in the Prevention of Domestic Violence' (1999) 9 *The Future of Children* 133, 134 <<https://doi.org/10.2307/1602787>> accessed 1 December 2023

DA is a crime which disproportionately affects women from all areas of society and poses a very real threat to the safety and lives of so many individuals. This begs the question: 'why isn't more done to protect against this type of crime?'. The implementation of a register solely dedicated to violence against women seems like an effective way to monitor perpetrators and manage the scale of the problem. DA has the highest rate of repeat victimisation and accounts for around 76% of all repeat incidents⁶⁷ and perpetrators are unlikely to commit this type of crime in isolation, with one study finding that 83% of male perpetrators had at least two repeat incidents over a six-year period⁶⁸. These unusually high rates of reoffending should, in theory, make predicting and preventing this type of behaviour easier, as an individual who is abusive within a relationship is unlikely to enter into another relationship where abuse does not occur, with Robinson and Clancy⁶⁹ highlighting how individuals who commit severe violence are 'unlikely to naturally desist'⁷⁰ from offending over long periods of time.

The nature of a crime like DA, however, may make it somewhat difficult to apply to systems such as the Sex Offenders' Register. There are many reasons for this, perhaps the most notable being the largely unreported nature of the phenomenon; the crime is often described as 'hidden', and its prevalence is likely hugely underestimated⁷¹. This is due to the minimisation of crimes against women, including DA, and the normalisation of certain behaviours, meaning many women fail to see their experience as abusive or believe that their abuse is unimportant or unserious. This is perhaps especially notable within marriages where, for centuries, women have been viewed as inferior to their husbands and, in the context of DA, violence and controlling and coercive behaviour are common and regarded as a private family matter. This attitude can be argued to be the leading reason as to why DA remains hugely unreported, with countless women believing that their experience is 'normal' or 'not serious enough' to warrant involving authorities. DA has a higher number of repeat victims than any other crime in the UK, with victims experiencing on average 35

⁶⁷ Kevin Smith and Others, 'Homicides, firearms offenses and intimate violence 2008/ 09' Home Office Statistical Bulletin, (2010) London Home Office

⁶⁸ Marianne Hester, 'Who does what to whom? Gender and domestic violence perpetrators in English police records' (2013) 10 European Journal of Criminology 623

⁶⁹ Amanda L. Robinson and Anna Clancy, 'Systematically identifying and prioritising domestic abuse perpetrators for targeted intervention' (2020) 21(5) Criminology & Criminal Justice 687

⁷⁰ Ibid 689

⁷¹ Enrique Garcia, 'Unreported cases of domestic violence against women: towards an epidemiology of social science, tolerance and inhibition' (2004) 58 Journal of Epidemiology & Community Health 536

assaults before they call the police⁷². This helps to highlight the high level of abuse that victims endure before they feel it is appropriate or necessary to ask for help. Statistics reinforce this, with Refuge estimating that less than 24% of DA is reported to the police⁷³. The police cannot act upon crimes that they are unaware of, meaning that if a register were to be introduced it would only be able to monitor a small proportion of the true number of perpetrators of DA.

Police Response

Like in every other area of crime, police recorded statistics remain inaccurate and offer a limited view of the true landscape of offending in the UK. This is especially true for instances of DA, where inherent biases against women within the police remain rife, with some police officers unwilling to look for evidence once an assault has been labelled 'domestic'⁷⁴. This poses a huge problem when considering prevention methods such as registers and disclosure schemes where police response and cooperation remain at the centre. If the police fail to accurately record crime, then this has an overwhelming knock-on effect for the way in which such crime is treated and responded to by authorities.

This idea of an inherent bias against women by the police plays a monumental role in the response to DA in England and Wales. The 'masculine ethos' within police forces means that crime is often viewed through the male perspective, meaning DA incidents can often be seen as low priority, with other forms of violent crime being seen as more urgent or serious⁷⁵. This can be explained through the idea that 'strength, aggression and dominance are endorsed and prized'⁷⁶ by the police, creating a toxic masculine culture which often aids in overlooking the serious nature of a crime like DA through being able to sympathise with the perpetrator more than they are able to understand the experience of the victim. Evidence also suggests that officers responding to claims of violence are often seen downgrading or 'cuffing' these incidents in order to minimise

⁷² Kennedy (n 18) 92

⁷³ Refuge (n 2)

⁷⁴ Kennedy (n 18) 91

⁷⁵ Andy Myhill and Kelly Johnson, 'Police use of discretion in response to domestic violence' (2016) 16 *Criminology & Criminal Justice* 3

⁷⁶ Carrillo (n 8) 71

the procedural requirements involved (filling out forms or enquiry logs)⁷⁷. This is not to suggest that officers maliciously downplay and shutdown instances of DA but instead shows their unwillingness to follow-up on crimes that they deem to be unserious or low priority. This essentially allows for police officers to have full discretion over the classification and recording of DA incidents, with frontline workers in particular being able to 'influence what domestic violence is'⁷⁸.

Additionally, due to the nature of the victims of DA, women are likely to refuse to cooperate with authorities or withdraw their statements out of fear of potential repercussions and further violence. The 'working rule' within the police force in these cases is that this 'marked the end of the case', resulting in no further action being taken by the police⁷⁹. Research has also shown that officers who take this 'conditional law enforcement' approach 'expressed more sexist views, perceived partner violence incidents as less serious and felt less responsible'⁸⁰. Ultimately, the police have the power to act or fail to act in cases of DA. This level of discretion, due to inherent biases against women, often works against victims of abuse and sadly often results in cases of DA being given a lower priority status to other forms of violent crime.

Risk-Management Model

Some scholars, such as Amy Baron-Evans, have called into question whether the implementation of a risk-management model would be more effective than using registers to monitor offenders in the community⁸¹. Baron-Evans describes registers as a 'misguided, one-size-fits-all' approach to monitoring criminals. She argues that registration of offenders has little to no success in preventing abuse or reducing recidivism and instead imposes unnecessary harm on offenders who should instead be receiving appropriate treatment and rehabilitation for their crimes⁸². The implementation of a risk-assessment model sees offenders being classified based off

⁷⁷ Ibid 11

⁷⁸ Ibid 14

⁷⁹ Carolyn Hoyle and Andrew Sanders, 'Police Response to Domestic Violence' (2000) 40 *The British Journal of Criminology* 14, 17

⁸⁰ Enrique Gracia, Fernando García and Marisol Lila, 'Police Attitudes Toward Policing Partner Violence Against Women: Do They Correspond to Different Psychosocial Profiles?' (2011) 26 *Journal of Interpersonal Violence* 189, 202

⁸¹ Amy Baron-Evans, 'Rethink Misguided Sex Offender Registration and Notification Act' (2008) 20 *Federal Sentencing Reporter* 357 <<https://doi.org/10.1525/fsr.2008.20.5.357>> accessed 1 December 2023

⁸² Ibid

the level of threat they pose due to the likelihood of them reoffending and the public being notified accordingly and appropriately following this classification. Baron-Evans argues that, in the context of sexual offences, this method is most appropriate as the reoffending rates of sex offenders is lower than that of other criminals and reoffending of these types of offenders can be accurately predicted⁸³.

This could be an applicable method for registering and monitoring perpetrators of DA, specifically for preventing instances of intimate partner homicide. Firstly, while it is difficult to accurately predict human behaviour, especially when individuals are acting irrationally and erratically, one should be able to act upon blatant warning signs that a victim may be in danger. An example of this would be if the police have been notified on multiple occasions about threats made by an abusive (ex)partner. In these scenarios the police should act accordingly and urgently to ensure that such threats do not materialise. Unfortunately, there have been many cases where the police have failed to act in instances where the victim was in obvious and imminent danger. The case of Julia Pemberton saw a woman who had suffered years of abuse at the hands of her husband being murdered, along with her teenage son, after having ended the marriage. Julia had taken out an injunction against him and even handed various guns he owned into the police. Another case saw the death of Vicky Horgan and her sister, after her estranged husband shot her at a family barbeque. Stuart Horgan had previously been committed to jail on multiple occasions after breaching injunctions against him⁸⁴.

Both cases provide examples of instances where the warning signs were unmissable, and the police's lack of response resulted in the fatalities of multiple women. While it is arguable that many acts of abuse are difficult to predict and protect against, it cannot be said that the police take the experiences and abuse of victims seriously in cases of DA, a systematic failure which sees countless women let down by authorities. Through adopting a system which looks at individual cases and assesses the risk that each offender poses, authorities are able to act accordingly in order to effectively police dangerous perpetrators who are likely to reoffend and allow for the rehabilitation of those who pose little threat to victims.

⁸³ Ibid

⁸⁴ *Horgan v Horgan* [2002] EWCA Civ 1371

Ultimately, in order to effectively protect victims of DA, it is crucial to adopt an offender-based system. Not only does this minimise victim blaming attitudes through shifting the focus off the victim and onto the perpetrator, but it also allows for authorities to prevent offenders from targeting new women and creating further victims of DA. A DA register would allow for this, however due to the complexity of the phenomenon and its largely hidden nature, this method would likely only monitor a small proportion of offenders as the majority commit DA in the private sphere, out of sight of the public or the police. If this model were to be adopted, however, implementing a risk-based approach would ensure that the most high-risk individuals are effectively monitored and unable to commit further crimes against women, as these individuals are unlikely to desist from offending without further intervention⁸⁵. This will be discussed further in chapter 3.

⁸⁵ Robinson and Clancy (n 69) 690

Chapter 3 – The Issues with a Register Scheme and Other Methods of Reform

This chapter will discuss the implications involved in the implementation of DA prevention initiatives, specifically register and disclosure schemes. These include limitations relating to Human Rights and Data Protection and how this may affect the use and effectiveness of the scheme, particularly when considering the rights of the perpetrator involved in potential disclosure. It will then move on to discuss reform proposals, specifically the importance of introducing a perpetrator-focused approach. This includes a DA register as well as Offender Focused Domestic Violence Initiatives like the Priority Perpetrator Identification Tool. Law reform is crucial to reducing DA and protecting women from victimisation as the current law fails to adequately provide safety or relief for those most at risk.

Human Rights and Data Protection Issues

One of the biggest critiques faced by disclosure schemes is the argument that the information shared with the victim regarding any previous incidents that may be a cause for concern infringes upon the human rights of the perpetrator. Firstly, the Domestic Abuse Disclosure Scheme clearly recognises and acknowledges the potential human rights issues as the official guidance sets out that any disclosure must 'be made in accordance with relevant overarching legislation', referring to the Human Rights Act 1998 and the Data Protection Act [1998]⁸⁶. In the context of DA, Schedule 2 of the Data Protection Act 2018 (which superseded the 1998 Act) provides an exemption from the General Data Protection Regulation (GDPR) where the data is being processed for the purpose of 'the prevention or detection of crime'⁸⁷. This allows for the use and release of data in order to safeguard individuals from potential crimes. Importantly, under the DVDS it is crucial that the data shared is done so without consent from the data subject if doing so is necessary to prevent a crime⁸⁸. This exemption means that perpetrators or 'data subjects' under the DVDS are not provided with much protection.

⁸⁶ 'Domestic Violence Disclosure Scheme (DVDS) Statutory Guidance' Home Office, April 2023 4

⁸⁷ Data Protection Act 2018, sch 2 pt 1

⁸⁸ Home Office (n 1) 47

In his article, Jamie Grace discusses why the disclosure of not just convictions, but also any past allegations, charges, arrests and failed prosecutions is problematic⁸⁹. He discusses how there must be a balance between a risk of harm and the disclosure of information which has decreased in relevance over time. Generally, the release of such sensitive personal information is 'highly stigmatising'⁹⁰ and can have substantial negative effects on the career and livelihood of the individual involved, this being particularly unfair when past allegations, not convictions, are raised. In the context of DA, however, the question of time or the nature of the allegation can be argued to be irrelevant as the victim's 'right to know' should not be restricted or limited if it is decided that a potentially crucial piece of information is considered irrelevant in a modern context. When considering allegations and occasions where the individual was acquitted or not brought to court, one could argue that these instances are especially pertinent to cases of DA and violence against women: cases of rape are less likely to result in a charge, and conviction rates for other crimes against women, including DA, remain low⁹¹. This could suggest that individuals who have committed acts of violence against women are less likely to have past convictions or charges than those who have committed non-gendered crime, making full disclosure under the DVDS, regardless of the nature and/or date of the incident, crucial to the safety of women and other victims.

This argument, however, is largely unsubstantiated and can be refuted by research suggesting that individuals who commit DA are 'often recidivist offenders who rotate through the criminal justice system frequently for both domestic violence and other types of nondomestic offences'⁹². While the majority of DA remains hidden, with perpetrators flying under the radar of the law and assumed to be good boyfriends/husbands, there exists some perpetrators whose past offences can be flagged and used by authorities to predict future offending behaviour. It is these individuals who present the most danger to women and who the law should be concentrating on in order to prevent further victimisation. This idea of an offender-centred approach is discussed later in this chapter.

⁸⁹ Grace (n 53) 37

⁹⁰ Jamie Grace, 'Too Well-Travelled, Not Well-Formed? The Reform of 'Criminality Information Sharing' in the UK' (2013) 86(1) *The Police Journal* 29, 32

⁹¹ Crown Prosecution Service, 'CPS data summary Quarter 2 2023-2024: Domestic abuse' January 2024

⁹² Stacy M. Sechrist and John D. Weil, 'Assessing the Impact of a Focused Deterrence Strategy to Combat Intimate Partner Domestic Violence' (2017) 24(3) *Violence Against Women* 243, 243

When discussing the human rights issues associated with the DVDS, Grace continues by arguing that some of the offences that are allowed to be disclosed under the Scheme have no link to violent or sexual crimes, for example theft or criminal damage⁹³. However, with context these crimes may show worrying behaviour which could escalate to violence, for example damage to an (ex)partner's property. In this case this information could still be relevant when considering the safety of a potential victim, even if just to allow them to make an informed decision about their relationship. It is arguable, however, that without further context being allowed to be disclosed, the individual is unable to judge whether or not the past incident could be worrying or pose as a concern for future violent behaviour, if unaware of the context behind the situation. This context would consist of whether the crime was committed against a woman, most likely a previous partner of the offender, as this would indicate the crime being of a domestic or gendered nature.

Another criticism Grace makes is concerning the notification of the disclosure to the alleged offender⁹⁴. Through expressing his worry that none of the 111 individuals in the pilot scheme of Clare's Law were notified or 'consulted about their concerns'⁹⁵ prior to their information being disclosed, Grace emphasises the 'scant regard for the requirements of the common law'⁹⁶. This belief is perhaps relevant when considering schemes such as the Child Sex Offender Disclosure Scheme as often the individual concerned does not have direct contact with the child and is not statistically as likely to reoffend, meaning that through consulting and notifying the individual nobody is placed in a more vulnerable position. This is not the case for DA scenarios. Perpetrators of abuse often co-habit with or have direct access to their (ex)partners, meaning that notifying them that their information has been disclosed, regardless of whether any more information is provided, could easily be traced back to their partner, putting them in an incomparably vulnerable position. Furthermore, if there existed an obligation to notify the perpetrator then this would most likely dissuade victims from making a disclosure request under the scheme in fear of facing further violence from their partner or perhaps even being put in a life-threatening position. Overall, the

⁹³ Grace (n 60) 19

⁹⁴ Ibid

⁹⁵ Ibid

⁹⁶ Ibid

sharing of personal information should always be carried out with the potential safety of an at-risk individual taking priority over the potential breach of the perpetrator's rights, with a requirement for the perpetrator to be notified or consulted completely contradicting the point of the scheme and placing victims in further danger.

Reform

Whilst the law in England and Wales is progressive in that it simply recognises DA as a chargeable offence, it still falls short when it comes to the prevention of violence against women at the hands of men. This is supported by statistics which show so many women still being failed by the system, calling for the urgent need for reform of the country's policies surrounding DA.

In order to help reduce the creation of new victims by perpetrators of DA, offenders should be added to a register which sees them being obliged to notify and update the authorities about their personal circumstances, including their address, job, and crucially, new relationships they may enter into. Through gaining this information, authorities would be able to monitor the individual and provide sufficient warning to new partners of the offender's past offences or instances of abuse. Not only would this take the responsibility off the victims to seek information instead of being actively informed, but it would also act as a deterrence for the perpetrator, knowing that their behaviour is under constant monitoring, limiting their ability to commit abuse.

Whilst it is important to recognise and protect victims of DA directly, a perpetrator-centred approach would likely work better to ensure victim safety. It is crucial therefore to consider the work of Robinson and Clancy⁹⁷ when considering reform proposals around DA. This work saw a review of the implementation of three pilot schemes testing a targeted-intervention approach on perpetrators of DA. Through using a Priority Perpetrator Identification Tool (PPIT), risk assessments were conducted on individuals who had past criminal offences and all individuals were then placed into categories, with those showing the highest risk of offending being flagged as priority perpetrators receiving 'enhanced intervention' and 'prioritised for a targeted multi-

⁹⁷ Robinson and Clancy (n 69)

agency response⁹⁸. It is important to note that these programmes targeted high-risk perpetrators as well as serial perpetrators, emphasising the danger these individuals posed due to the likelihood of them establishing new victims.

Once the perpetrator has been identified and categorised as high risk, they are subjected to targeted management and monitoring by a 'wide range of statutory and non-statutory agencies'⁹⁹, working directly with the individual to confront their reasons for abusive behaviour and offer them support with factors which may influence behaviour, for example substance abuse, mental health, etc¹⁰⁰. Alongside intervention techniques, priority perpetrators are also subjected to increased enforcement and monitoring, combining perpetrator-led intervention with increased victim safety and support. Furthermore, perpetrators who fell short of the 'high priority' category were still subject to monitoring and intervention as all perpetrators had a 'level of analysis and focus'¹⁰¹ that would likely otherwise not have occurred, meaning that action is not solely reserved for high-risk cases but is available for everyone ensuring that violence does not escalate. Notably, individuals who failed or refused to engage with the intervention were still 'subject to increased police enforcement tactics to manage risk'¹⁰², ensuring that non-cooperating perpetrators were still on the radar of authorities and subjected to increased management depending on their risk.

The use of offender-based systems (PPIT and Registers) work effectively to ensure the safety of potential future victims of DA through establishing and monitoring those most likely to commit such offences. By moving focus away from the victim, authorities shift from a 'waiting for something to happen' approach to a preventative and proactive approach. The efficacy of PPIT was tested in a North Carolina initiative,¹⁰³ showing a significantly reduced arrest and injury rate in cases of domestic violence¹⁰⁴, proving to be effective in its overall ability to stage successful interventions in order to prevent individuals from committing domestic violence. Additionally, unlike with a Register scheme, the programme ensures that work is done to actively prevent DA from

⁹⁸ Ibid 691

⁹⁹ Ibid 693

¹⁰⁰ Ibid

¹⁰¹ Ibid 700

¹⁰² Ibid 694

¹⁰³ Sechrist and Weil (n 92)

¹⁰⁴ Ibid 260

occurring by focusing on the ‘perpetrator’s own risks and criminogenic needs’¹⁰⁵ as opposed to using reactive measures. The review established a view that the scheme was able to target perpetrators who have been ‘under the radar’ and able to commit serial offences on multiple victims. This shows that PPIT is able to go further than typical police responses as the scheme tailors in-depth analyses and risk assessments to the context of DA. Not only does the scheme improve the lives and safety of those involved but also increases the ‘effectiveness of the organisations and systems’ used to deal with victims and perpetrators and victims of DA.

The efficacy of the scheme in England and Wales, however, is difficult to judge due to the lack of this type of approach elsewhere in policy and legislation. Introducing a DA register appears more feasible and realistic due to the pre-existence of such a system and its relative success and wide use. The integration of a register with a PPIT approach would be an ideal and effective method of monitoring and preventing DA through focus on the perpetrator. This is crucial to understanding appropriate responses to DA and would help to eradicate victim-blaming cultures which appear especially prevalent in attitudes towards DA and general crimes against women. The register sees responsabilisation of the perpetrator, ensuring they remain under the eye of the authorities and deterring them from breaking restrictions imposed on them whilst simultaneously offering the public an element of safety and awareness. Coupled with a focus on prevention and a proactive approach which sees the problem lying with the perpetrator allows for a well-rounded system which effectively protects old and new victims through intervention.

Some critics believe that efforts and expenses put into the potential reform of the law surrounding DA should instead be diverted towards women’s resources. Despite the gradually shifting attitudes towards male violence and DA, it is unlikely that we will see a significant reduction in such crimes in the near future. This is due to inherently sexist and misogynistic belief systems which perpetuate within every aspect of society, and manifest into the way in which women are treated by authorities and the criminal justice system. Ultimately, male violence will always be present and through attempting to eradicate or manage it, funds and efforts are being wasted when they

¹⁰⁵ Robinson and Clancy (n 69) 696

could be pumped into organisations which aim to support and protect women from abuse. Though this approach may fail to address the causes of abuse and prevent it from occurring in the first place, it helps to prioritise the victims and ensure their safety following such incidents, instead of attempting to change ‘deeply dysfunctional systems whose staffs reflect not only vested interests but prevailing gender biases’¹⁰⁶.

Whilst the introduction of the Domestic Abuse Act 2021 was a crucial and progressive piece of legislation, it still acts as a reactive measure and does little to prevent such instances from occurring. Through reforming the law and introducing an approach which targets and responsabilises the behaviour of offenders, the government would be taking a huge step to shift the view of DA as a private, female problem towards a focus on examining the causes of such behaviour and taking steps to prevent it from escalating.

Conclusion

¹⁰⁶ Lori L. Heise, *What works to prevent partner violence: An evidence overview* (STRIVE Research Consortium 2011)

This dissertation has sought to examine the current state and extent of DA in England and Wales. In doing so it found that DA is a crime which has profound and lasting impacts on victims, can often be violent and threaten the safety and wellbeing of those involved and is extremely common in modern society. Despite all of this, efforts made by the government to tackle this problem have been largely ineffective in reducing crimes of this nature. Through addressing the rampant inequalities that still persist between men and women, this essay was able to establish this as the driving force behind DA behaviours and also use this as an explanation as to why little action has been taken by the government to effectively legislate against DA.

In chapter one, DA as a concept was analysed through examining the statutory definition and attempting to establish the reasons why it persists. It argued that attitudes towards DA are largely rooted in longstanding and deeply entrenched views about women, men, the family and the notion of a private sphere in which patterns of abusive, controlling and violent behaviour are overlooked and often understated. Through examining the way in which the government has responded to violence against women and DA over time, it was highlighted how the law has been relatively slow in its response to the crime and efforts made to tackle it have often lacked backing and support. This is mostly because as a crime, DA is considered mundane, and happens to ordinary people from all corners of society. For politicians, other issues take precedent, for example youth crime and trans rights, simply as they are more emotive and controversial, therefore more likely to hook the public and gain votes. Violence against women has always been and present and occasionally crops up in mainstream media, for example Sarah Everard's murder, but it is increasingly regarded as a crime embedded in society's structure and unlikely to change.

Chapter two looked to discuss the possibility of implementing a register as an effective prevention method of DA and an analysis of Clare's Law. The importance of this policy to DA discourse cannot be understated, however in practice the scheme has had little effect due to the way it relies upon the police and bolsters victim blaming mentalities. Additionally, it found that while registers can have success in their ability to prevent further crime, applying such a scheme to DA is unlikely to have the same success. This is due to the nature and complexity of DA and how it is largely hidden and

therefore extremely difficult to establish the true extent of the crime. The final chapter looked at the implications of register schemes in the context of DA and the human rights and data protection issues involved. This mainly incorporated the work of Jamie Grace who argues that the digging-up of previous incidents, regardless of the nature, date and seriousness of the incident is a breach of the perpetrators' rights, having wider implications for the perpetrators. The essay disputes this, believing that all past incidents are relevant, and individuals have the right to know if they request a disclosure. The safety and potential danger of a victim should always be prioritised over a potential data breach of the perpetrator. Finally, it introduced offender-centred approaches as the most effective way to tackle DA, suggesting a combination of PPIT and a register scheme as the most likely solution to such a significant problem.

Fundamentally, while it will always be a monumental challenge to aid in reversing the effects of centuries of chastisement, oppression and subordination of women, tackling the largest crime against them would significantly help to bring gender-based crime to the forefront of political and criminal justice discourse. Through scrutinising the behaviour of male offenders and focusing on rehabilitative methods by introducing a scheme which combines a register method with a PPIT approach, the government would not only help to protect the further victimisation of women but would also aid in tackling the root of the problem, challenging misogynistic behaviour which perpetuates in England and Wales today.

Bibliography

Baron-Evans A, 'Rethink Misguided Sex Offender Registration and Notification Act' (2008) 20 Federal Sentencing Reporter 357 <<https://doi.org/10.1525/fsr.2008.20.5.357>> accessed 1 December 2023

Barter C and others, 'Partner exploitation and violence in teenage intimate relationships' [2009] NSPCC Commissioned Report, University of Bristol 178

Bessant C, 'Protecting Victims of Domestic Violence – Have We Got the Balance Right?' (2015) 79 The Journal of Criminal Law 73

Carrillo D, 'Police Culture and Gender: An Evaluation of Police Officers' Practices and Responses to Domestic Abuse' (2021) 8 Security, Legitimacy and Crisis in the Aftermath of Colonialism and in the Midst of a Pandemic: The Role of State Organs 69

Centre for Women's Justice, 'Timeline of Key Legal Developments' (2016) <www.centreforwomensjustice.org.uk/timeline>

Crown Prosecution Service, 'CPS data summary Quarter 2 2023-2024: Domestic abuse' January 2024

Cullen F T, Jonson C L and Nagin D S, 'Prisons Do Not Reduce Recidivism: The High Cost of Ignoring Silence' (2011) 91 The Prison Journal 48

Das S, 'Revealed: police refusing requests for background checks on violent partners' *The Guardian* (6 January 2024)

Dobash R P and Dobash R E, *Violence Against Wives: A Case Against the Patriarchy* (New York Free Press 1979)

-- 'Women's Violence to Men in Intimate Relationships' (2004) 44 British Journal of Criminology 324

Duggan M, 'Using Victims' Voices to Prevent Violence Against Women: A Critique' (2012) 10 British Journal of Community Justice 25

Femicide Census, 'Femicide Report 2020' (February 2022) <<https://www.femicidecensus.org/reports/>> accessed 1 April 2024

Fitz-Gibbon K, and Walklate S, 'The efficacy of Clare's Law in domestic violence law reform in England and Wales' (2017) 17 Criminology and Criminal Justice 284

Garcia-Moreno C and Amin A, 'Violence Against Women: Where Are We 25 Years After ICPD and Where Do We Need to Go?' (2019) 27 Sexual and Reproductive Health Matters 346

Grace J, 'Too Well-Travelled, Not Well-Formed? The Reform of 'Criminality Information Sharing' in the UK' (2013) 86(1) The Police Journal 29

--'Disclosing Domestic Violence' (2014) 97(1) Criminal Justice Matters 18

--'Clare's Law, or the national Domestic Violence Disclosure Scheme: the contested legalities of information sharing' (2015) 79(1) The Journal of Criminal Law 36

Gracia E, 'Unreported cases of domestic violence against women: towards an epidemiology of social science, tolerance and inhibition' (2004) 58 Journal of Epidemiology & Community Health 536

- Gracia E, García F, and Lila M, 'Police Attitudes Toward Policing Partner Violence Against Women: Do They Correspond to Different Psychosocial Profiles?' (2011) 26 *Journal of Interpersonal Violence* 189
- Hall R J, 'Feminist Strategies to End Violence Against Women' [2015] *The Oxford Handbook of Transnational Feminist Movements* 7
- Heise L L, *What works to prevent partner violence: An evidence overview* (STRIVE Research Consortium 2011)
- Herring J, 'The Severity of Domestic Abuse' (2018) 30 *National Law School of India Review* 37
- Hester M, 'Who does what to whom? Gender and domestic violence perpetrators in English police records' (2013) 10 *European Journal of Criminology* 623
- Home Office, *Cross-Government Definition of Domestic Violence – A Consultation* (Home Office, September 2012)
- Statutory Definition of Domestic Abuse Factsheet* (January 2024)
- Domestic Violence Disclosure Scheme (DVDS) Statutory Guidance' Home Office, April 2023 4
- Hoyle C, and Sanders A, 'Police Response to Domestic Violence' (2000) 40 *The British Journal of Criminology* 14
- Johnson M, 'Apples and oranges in Child Custody Disputes: Intimate Terrorism vs. Situational Couple Violence' (2006) 2 *Journal of Child Custody* 43
- Kennedy H, *Eve Was Framed* (Vintage 2005)
- Lerner M J, *The Belief in a Just World: A Fundamental Delusion* (1st edn Springer 1980)
- Liem M and Koenraadt F, *Domestic Homicide: Patterns and Dynamics* (1st edn, Routledge 2018)
- Lowe Y, 'Women at risk' as police in England and Wales miss Clare's Law deadlines' *The Guardian* (9 May 2021)
- Manring T, 'Minding the Gap in Domestic Violence Legislation: Should States Adopt Course of Conduct Laws?' (2021) 111 *Journal of Criminal Law and Criminology* 773
- Myhill A, and Johnson K, 'Police use of discretion in response to domestic violence' (2016) 16 *Criminology & Criminal Justice* 3
- Office for National Statistics (ONS), 'Domestic Abuse Prevalence and Trends, England and Wales: Year Ending March 2023' (ONS, November 2023)
- Refuge, The Facts <<https://refuge.org.uk/what-is-domestic-abuse/the-facts>> accessed 18 March 2024
- Renehan N, Barlow C and Walklate S, 'Self-blame and (becoming) the crazy ex: Domestic abuse, information sharing and responsabilisation' (2023) 0 *Criminology and Criminal Justice*
- Renehan N, 'Is Clare's Law Working?' (*Clare's Law Experiences Projects*, 23 November 2023) <www.clareslawexperiencesproject.com> accessed 27 November 2023
- Robinson A L, and Clancy A, 'Systematically identifying and prioritising domestic abuse perpetrators for targeted intervention' (2020) 21(5) *Criminology & Criminal Justice* 687

Schuller R A, Smith V L, and Olson J M, 'Jurors' decisions in trials of battered women who kill: The role of prior beliefs and expert testimony' (1994) 24 *Journal of Applied Social Psychology* 316

Sechrist S M, and Weil J D, 'Assessing the Impact of a Focused Deterrence Strategy to Combat Intimate Partner Domestic Violence' (2017) 24(3) *Violence Against Women* 243

Smith K I, 'Counting Dead Women' <<https://kareningalasmith.com/counting-dead-women/>> accessed 1 April 2024

Smith K, and Others, 'Homicides, firearms offenses and intimate violence 2008/ 09' Home Office Statistical Bulletin, (2010) London Home Office

Stanko E, 'Women, Crime, and Fear' (1995) 539 *The ANNALS of the American Academy of Political and Social Science* 46

The Observer, 'The Observer View on the Police's Failure to Prioritise Violence Against Women' *The Guardian* (20 November 2022) <<https://www.theguardian.com/commentisfree/2022/nov/20/the-observer-view-on-police-failure-to-prioritise-violence-against-women>> accessed 1 April 2024

UN Women, 'Push Forward: 10 Ways to End Violence Against Women' (*UN Women*, 18th November 2022) <www.unwomen.org/en/news-stories/feature-story/2022/11/push-forward-10-ways-to-end-violence-against-women> accessed 3 April 2024

Valor-Segura I, Expósito F, and Moya M, 'Victim Blaming and Exoneration of the Perpetrator in Domestic Violence: The Role of Beliefs in a Just World and Ambivalent Sexism' (2011) 14 *The Spanish Journal of Psychology* 195

Walby S, Towers J and Francis B, 'Mainstreaming Domestic and Gender-Based Violence into Sociology and the Criminology of Violence' (2014) 62 *The Sociological Review* 187

Walker J and Gavin H, 'Interpretations of domestic violence: defining intimate partner abuse' [2011] *The 12th Conference of the International Academy of Investigative Psychology. Crime, Criminalistics & Criminal Psychology: New Directions in Investigative Behavioural Science* 14

Why is it called Clare's Law?' (Clare's Law) <<https://clares-law.com/why-is-it-called-clares-law/>> accessed 26 November 2023

Wolfe D A, and Jaffe P G, 'Emerging Strategies in the Prevention of Domestic Violence' (1999) 9 *The Future of Children* 133 <<https://doi.org/10.2307/1602787>> accessed 1 December 2023

Women's Aid and others, 'Gendered Experiences of Justice and Domestic Abuse: Evidence for Policy and Practice' [2021] Women's Aid, University of Bristol

World Health Organisation, *Violence Against Women Prevalence Estimates* (World Health Organisation 2021)