

THE UNIVERSITY OF HULL  
DEPARTMENT OF CRIMINOLOGY AND SOCIOLOGY



# Does the British Criminal Justice System respond adequately to the problems of Domestic Violence?

Being a dissertation submitted in partial fulfilment of the requirements  
for the degree of BA (Hons) Criminology and Sociology.

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Jeana Gurnell

**“WE ACCEPT THE LOVE WE THINK WE DESERVE”**  
(Chbosky, 2013:24)

## ***Abstract***

*Domestic violence has now been acknowledged in the criminological discipline for half a century, introduced by feminists in attempts to tackle the problem of the feeble understanding of female victims of crime within criminology. The introduction of domestic violence into the public sphere has meant that social institutions and society itself have developed a plethora of relative literature regarding its importance in society. The use of theoretical perspective, criminal justice publications and statistics will allow for an investigative understanding of the problems and consequences which have resulted in an inadequate response to domestic violence in the United Kingdom. With one of the most pressing problems when dealing with any criminal behaviour being the adequacy of different criminal justice agencies in protecting, prohibiting, preventing and condemning such behaviours. This article as a result of this will take into consideration the response of the criminal justice agencies including; the police; crown prosecution service; and the courts in identifying victims, prosecuting offenders and providing possible rehabilitative and preventative solutions for the problems of domestic violence. Taking into consideration the effect of societal structures, of which lead to the problems of domestic violence and their impacts on the response by criminal justice agencies, considerations of the role and adequacy of the criminal justice system will be of main focus throughout. It will identify that enough is not being done in regard to the criminal justice systems response and protection, but it is important to understand and identify what is preventing the effective and adequate response that is needed, in order to establish an informed review of what needs to be done to perform an adequate response to the victims of domestic violence.*

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# **Introduction**

The problems of domestic violence and abuse have always played a substantial role in the private sphere and among families, yet the study of domestic violence is a relatively new subject within criminology. Coming to light over the last 50 years since the advancements of the women's movement combined with the feminist movements of the 1970s (Lockton, 2016; Rowbotham, 1996). In retrospect, the context of domestic violence implies a greater level of seriousness than that of crimes which are increasingly present in the public spheres of society, due to its implications on the security and safety which should be implied by the institution of family (Sentencing Council, 2018). Domestic violence destroys lives every day, affecting 7 million female and males between the ages 16-59, yet the problems of domestic violence are still being transformed as real issues which need to be dealt with by the criminal justice system (Office for National Statistics, 2018). Many agencies including the police still do not associate domestic violence as real work and suggest that families should be concerned with their own 'private' issues and should resolve them out of the public eye (Newburn & Reiner, 2007). This research intends to identify where the concerns lie within society which are inadvertently causing the problems of domestic violence, as well as take into consideration the roles of some of the agencies which make up the criminal justice system including that of the police and courts.

The structure of society poses a threat to many women, the patriarchal nature of it constitutes to much of the abuse that they face throughout their lives, however, domestic violence does not discriminate, it can and does happen to people from all

backgrounds (Robinson, 2010). This study, therefore, aims to look at the structural complications involved with domestic violence and how these can and do prohibit the effectiveness and adequacy of the criminal justice response to victims of crime. It is important to divide it into agencies and assess the usefulness of procedures, policy, initiatives, legislation and rehabilitation which are used to attempt an effective response to victims of domestic violence.

The research intends to identify the main structural problems that society provides as an impetus for domestic violence. It will outline, what domestic violence is and who is affected by domestic violence. Providing important considerations into the effects of feminism for the acknowledgement of victims of domestic violence, an area of study that before the 1970s was hardly considered a legitimate topic of public interest and criminology highlighting the main issues of patriarchy within society and its institutions. The first consideration of the response to domestic violence will highlight the role of the police in tackling, identifying and resolving the problems of domestic violence, with reference to initiatives that have been implemented to aid their response. With intentions to identify the attitudes which have previously been held by agencies such as the police in responding to the problems of domestic violence and will assess the reasons why response rates and attitudes held by victims are suggestively negative. Then continuing to develop the knowledge and understanding associated with the criminal justice response assessing post identification processes including prosecution and court processes. It will identify problems associated with criminal procedures and the impacts of these on the victims of domestic violence. However, it will look importantly into the problems of victim blaming used by society and the criminal justice system to justify domestic violence. Consideration of legislation which

has been implemented to help resolve the problems of domestic violence will be analysed to recognise the implications of these on human rights of both the victim and the offender. Finally, this research will assess and analyse the post-sentencing procedures which are carried out by the criminal justice agencies. Identifying the adequacy of resolving the final problems, rehabilitating the offender and providing justice for the victim. It will analyse the most relevant use of post-sentencing incentives, including custodial sentencing, fines and restorative justice as a means of correcting the wrongs and bringing justice for the victims of domestic violence.

## **Methodology**

This project will be developed around a range of secondary data analysis of both qualitative literature and quantitative methods. As with any research, it will provide a basis for developing and analysing the important questions of domestic violence using grounds which have been identified for relevant literature prior to this research. A literature review provides a factual basis for any research, it sets out the foundations for advancing knowledge around a subject area and highlighting where current literature fails to identify important and relevant information which aids to develop the arguments (Cook & Leviton, 1980; Webster & Watson, 2002). As this project is entirely literature-based, the research will be carried out using methods of, secondary-data analysis and historical comparisons, with the use of documentary and text sources and quantitative data provided by government organisations and national statistics.

### **Strengths**

The use of secondary data-analysis provides this research with the ability to use resources which have already carried out research regarding similar topics to domestic violence, therefore, this method of research collection allows for larger scale data which could not have been gathered or replicated by hand with the time scale taken in to account. Large scale research, in this case, provides researchers with more rigorous data comparisons, making it easier to present correlations between existing theories and data (Smith, 2006).

In terms of qualitative data, the research will incorporate different textual and documentary resources which might include books regarding relevant theory and newspapers which will identify the most up to date information regarding the response to domestic violence. The use of documentary resources will allow for the research to build and develop a framework of theory regarding domestic violence, mainly that of the feminist perspective. Therefore, this use of data is the most effective due to information of this classification is marginally accessible through empirical fieldwork, it can be developed but not physically gained, allowing access to areas of information which would otherwise be difficult to provide (David & Sutton, 2011).

For the use of quantitative data, the research will use statistics which have been provided by government agencies and criminal justice agencies. Statistics have the ability to provide the bigger picture in research, answering questions such as who is affected by domestic violence (Fulcher & Scott, 2003)? The Office for National Statistics provides the UK with evidence-based statistics regarding the economic and social structure allowing for a geographical breakdown of events including areas which are more affected by domestic violence, this then allows researchers to identify where the problem areas are located in society (Corbetta, 2003).

### Limitations

Even though this research will be based on secondary data collected from articles and persons who have performed their own empirical research, the use of this kind of data proposes potential limitations. In the original creation of data when a researcher decides on a topic they often use a topic of interest which can inadvertently result in

bias or subjective outcome of the results, this is due to the idea that secondary data is actually socially constructed (Smith, 2006). Subjectivity is therefore common with theory-based research. Newspapers and articles can result in the distortion of results that have been provided often reflecting individual perceptions (Fulcher & Scott, 2003). The use of statistics in data collection and research also experience limitations in regard to social constructs. When deciding on the topic of the statistics a definition will be assigned to decide what is being analysed. However, in domestic violence, there are many problems which can be identified from a lack of understanding of what is actually meant by domestic violence, which can impact what is reported and recorded in official statistics (Fulcher & Scott, 2003). The shortage of understanding of concepts in statistics has resulted in an often 'dubious value' in actually identifying the levels of crime in a society which has become known as the dark figure of crime, where only police recorded crimes are taken in to account (Fulcher & Scott, 2003; Giddens, 2006). The introduction of victim surveys has been introduced to try to combat this by measuring the rate of victimisation rather than crime itself, it remains critical to understand that these limitations continuously apply to research (Fulcher & Scott, 2003; Williams, 2012).

# **Chapter 1:**

## **Domestic Violence**

To begin discussing the adequacy of the British criminal justice system in response to the problems of domestic violence we have to first understand the concept of domestic violence and abuse. This first chapter will take into consideration the various definitions which have been given by different groups and organisations, it will also identify the key areas of society that are affected and will finish on the origins of the response to domestic violence demonstrated in feminist literature, developed during the feminist movement from the 1970s.

### **An Understanding of Domestic Violence**

Domestic violence has become a relatively new area of study amongst criminologists and also a fairly new criminal act within the British criminal justice system. Prior to the 1970s, the problems of domestic abuse were somewhat an uncommon topic of which the criminal justice system had concerned itself with. Problems of domestic matter were considered a means of private issue and that only couples and the family should be concerned with resolving their conflicts. The law would only intervene as a matter of temporarily maintaining order between the family, criminality was not imposed among the offender and justice was not provided for the victim (Hoyle, 1998). Whilst the aim of this project is to look at the effectiveness of the British criminal justice system's response to domestic violence, it is not a crime that only affects a single part of the world, it is universal, in many cultures domestic violence is commonplace, and the family is filled with oppression usually inflicted by the male family members on to

the female ones (Dobash & Dobash, 1992). Substantial amounts of feminist literature have focussed on domestic violence referring to it as 'wife battering' or 'wife abuse' essentially this is on the grounds that it is considered male violence against their female partners. The violence often includes 'pushing, kicking, slapping, throwing objects, burning, dragging, stabbing or shooting' but such male aggression and female subordination was traditionally considered to be normal roles within the family (Stanko, 1985:51).

However, many problems have been acknowledged with the definitions of domestic violence, including whether people who are cohabiting should be included as victims of domestic violence or whether those who are separated are still victims of domestic violence. Essentially violence is given different meanings and each individual has their own conception of whether they are or are not a victim, so understanding at what point a person becomes a victim of domestic violence can be quite challenging (Mirrlees-Black, 1999). The definition has recently come under scrutiny by Her Majesty's government implying that it should be changed to include more specific types of abuse experienced by particular communities, that it should recognise victims are predominantly female and encompass a wider range of behaviours that can recognise the impact it may have on children within a family setting (Her Majesty's Government, 2019). Nevertheless, to simplify what is meant by domestic violence throughout this essay I will be using the government's definition which will identify the main features.

"Any incident or pattern of incidents of controlling, coercive, threatening behaviour, violence or abuse between those aged 16 or over who are, or have been, intimate partners or family members regardless of gender or

sexuality. It can encompass, but is not limited to, the following types of abuse: psychological, physical, sexual, financial, emotional.”

(Office for National Statistics, 2017).

### Domestic Violence by Social Stratification

Since the current definition states that domestic violence can occur regardless of social status, it is important to now assess who is affected by domestic violence in the UK as this can considerably change the approaches and support by the criminal justice system. Therefore, while anybody can be subjected to it there are areas of which are substantially more impacted by domestic violence. The current statistics separate communities by sex, age, sexuality and relationship status, class and ethnicity.

According to national statistics over 20% of people in England and Wales will experience domestic abuse at least once throughout their life from turning 16 years old (Office for National Statistics, 2018). In the year 2012/2013, there were over one million phone calls to the police regarding domestic abuse related incidents nearly 270,000 of these were domestic abuse related crimes and 6400 were sexual assault or rape cases (Her Majesty's Inspectorate of Constabulary, 2014). In 2016 the number of domestic abuse related crimes experienced a dramatic incline at 434,905 and sexual assaults more than doubled from these previous figures to 13,515 domestic assault related sexual offences (Her Majesty's Inspectorate of Constabulary, Fire and Rescue Services, 2017). These figures can provide us with two considerations in relation to the criminal justice response, the first suggesting that the police and criminal justice system are ineffective in resolving and identifying the problems which lead to domestic abuse and thus the figures have risen, or secondly that victims have gained

a considerable amount of confidence as to which they now feel comfortable to share their victimisation.

National statistics along with most research done in relation to domestic abuse recognise it as a gendered crime, where a male is the perpetrator and the female is the victim. Most criminal or deviant acts can be given masculine or feminine associations due to the likelihoods of a particular sex committing it, so feminine crimes might include shoplifting whereas masculine crimes include domestic violence (Smart, 1976). Women are in fact, more likely than men to be subjected to domestic violence. In the UK 28.9% of women compared to 13.2% of men will have experienced domestic abuse from the age of 16 meaning that 4.8 million women and 2.2 million men aged 16-59 have experienced domestic abuse at some point in their lives (Office for National Statistics, 2018). There is currently minimal research being carried out regarding male victims of domestic abuse as well as domestic abuse in homosexual relationships this is largely to do with the vast majority of domestic abuse victims being female. So, while hegemonic masculinity can be used to explain male violence towards women and men there are limited reviews attempting to explain female violence against men in the domestic sphere (Hester, 2012). The importance of sex, in relation to domestic violence, will be explored throughout the remainder of this review.

Social stratification does not only relate to sex so, it is pivotal to take into consideration other socio-economic factors of which play a part in the understanding of domestic abuse. Women aged 20-24 and men aged 55-59 are the most common age groups experiencing and suffering domestic abuse, older generations frequently feel more trapped in their relationships due to previous societal norms and even find it more

difficult to leave their relationships, while younger people are also victims, older generations suffer longer and more frequent acts of domestic abuse (Hoyle, 2007; Office for National Statistics, 2018).

Similarly, those in lower socio-economic groups can find it difficult to leave their partners due to poor economic status, there are monumental class differences when looking at domestic violence and often a victim's status exacerbates their victimisation (Hoyle, 2007; Levi., et al, 2007). Different ethnicities, religions and culture have different conceptions of what domestic violence is, many countries such as Canada, Israel and South America find that most the murder statistics of female victims are that of domestic violence. Female Genital Mutilation, honour killings, and Shari'a Law are all cultural beliefs which entitle men to prove their dominance over their female family members, often those in ethnic minority groups find it more difficult to leave their abusers due to religious and cultural sentiment (Dobash & Dobash, 1992; Hoyle, 2007).

The final social group to take into consideration are those in same-sex relationships. Like domestic violence against men, there is little research on the domestic violence within homosexual relationships and so the causes can be quite difficult to identify. However, homosexual males experience domestic violence in a very similar way to heterosexual females in the sense that it is frequently motivated by their partners need to dominate or control them, 15% of men report violence by male live in partners and 11% of women in same-sex relationships are raped, assaulted, or stalked by their partners, this is the only social group where men are more likely than females to be victims at current (Her Majesty's Inspectorate of Constabulary, 2014; Hoyle, 2007).

Groups as listed all find it difficult to report their problems to the police and criminal justice system, whether this is because of their feelings of isolation caused by their low socio-economic status or if the acceptance of the abuse mostly in same-sex relationships will possibly out who they are to their families causing further pressures from their family.

### Feminism and Victimology

The study of victims of domestic violence came to light in the 1970s with thanks to the women's movement and became a key focus within feminist literature when a huge focus was placed on domestic violence and sexual assault. Women had previously been underrepresented by criminology due to the nature of the family, women are hidden in the private sphere, and little scrutiny was aimed at male behaviour within the private sphere (Downes & Rock, 2007 & Newburn, 2017). The first criminal victimisation survey was conducted in the United States in 1967 it was designed to gather a further understanding of the dark figures of crime and to this date, victim surveys are still used to understand the difference between recorded crimes and victims of crime (Walklate, 2008). Feminist victimology looks at the problems of domestic violence in regard to patriarchy and male dominance over women, when the male in a relationship struggles to enforce their dominance they in turn beat the women in to submission to reassert their power and influence, often leaving the female victims emotionally and even physically scarred by their abuse (Dobash & Dobash, 1979; Schechter, 1982). Feminist writers often criticise the neutralisation of domestic violence and thus imply that it is instead 'wife battering' this neutralisation, further emphasises the oppression of which women have faced by presuming that each party in a relationship are equally as likely to abuse and be abused (Dobash & Dobash,

1979). Intimate partner violence is not a one-time offence, more often than not those who fall victim to domestic abuse do so a few times, this can be caused by fear of the abuser which can prevent the victim from leaving the hostile situation, and even if a victim is to leave their partner, they cannot be guaranteed safety, thus in many of these situations the violence can in fact increase and make it more difficult for the victim to achieve justice (Ditcher & Gelles, 2012). Repeat perpetrators are also more likely to be males using threats or physical violence to intimidate their victims usually caused by feelings of weak masculinity and loss of power within the relationship, compared to women who maybe commit domestic abuse as a loss of self-control and feelings of failure (Levi, Maguire & Brookman, 2007).

However, one of the key problems with feminist victimology is their overemphasis on female victims. Suggestions that it is a gendered crime neglects the possibility that different social groups are affected including those in a homosexual relationship and even male victims of crime. Victimisation in this sense is therefore denied by suggesting it is only relevant to particular groups in society where the male is the perpetrator and the female is the victim (Bograd, 1999). Examples of this concept can be seen from Women's Aid (2015b), though it is understood that this is a site designed for women to gain assistance and that it is focussed to ensure their support and understanding, it further victimises alternate groups by stating that 'domestic violence is a gendered crime which is deeply rooted in the social inequality between men and women'. These views on domestic violence can make it difficult when trying to identify victims, it could potentially hinder the support in which they are given by suggesting they are not capable of being victims of this crime and that one group of victims are more important than the other. Some crimes at the time of the feminist agenda were,

in fact, gender specific such as infanticide which could only be committed by a mother and the previous definitions of rape which included penetration of which women could not fulfil (Heidensohn, 1996). Still, domestic violence is not only happening to women as a result of male violence, posing questions on whether this is really a gendered crime and so creates problems in the identifying and responses which can be given by the criminal justice system if one group feel as though they are not adequate victims.

Here the question arises as to whether the societal problems and cultural violence which are implied by the structure of the lived society, is overly concerning for establishing solutions and resolving the problems of domestic violence, and whether these limit the usability of criminal justice agencies to effectively combat such criminal behaviour. Social-structural violence is indirect violence which aims at using power and existing social structure to dominate and marginalise sections of society, and domestic violence is highly rooted in the economic and gender structures of society (Sullivan & Tifft, 2001; Tifft & Markham, 1991). If domestic violence is to be studied to develop a means of ending it, the questions need to be changed, society should concern itself less with why the victim makes the decision to stay and concern itself more with what is wrong with the society that prohibits them from leaving (Tifft & Markham, 1991). This concept of 'peace-making' establishes that the problems of domestic violence are so deeply rooted in the structure of society itself, economically and by the marginalisation of women, that it is possible the criminal justice system cannot resolve it alone, but society must change to end suffering and to encourage individual transformation to impact change on a wider scale (Quinney, 1991).

It has now been considered that there are many issues of which the criminal justice system face when dealing with domestic violence cases, whether this is the lack of understanding of key definitions or the vast social inequalities which inhibit a person's ability to leave a perpetrator. Nevertheless, the difficulties faced should not limit the effectiveness of the response to incidents of domestic violence, yet in many aspects it does. The following chapters will, therefore, continue to explore these cultural disadvantages as a means of prohibiting an effective response by criminal justice agencies.

## **Chapter 2:**

# **The Police and Policing of Domestic Violence**

As has now been discussed domestic violence is an incredibly pressing problem for many different persons and groups within Britain. Subsequently it can affect anybody and as a result, it is important that the criminal justice system is able to adequately identify victims of domestic violence and to ensure that once they do victims are protected justice prevails. This next chapter will identify the role of the police as the gatekeepers to the criminal justice system in dealing with domestic violence while looking at the attitudes of the police and the attitudes of victims in domestic violence cases. It will then go on to look at what powers, tools and projects are available by the police to allow them to provide effective service.

### **Identification, Response and Attitudes of Victims of Domestic Violence**

The police have always played a part in taking care of domestic violence situations and it has always been represented in the police workload, however, the roles which used to be performed by the police have been changing, essentially, in theory, this is for the better yet in practicality it is not yet living up to the expectations of the public, victims and even the criminal justice system at current (Newburn & Reiner, 2007). The police play a vital role within the criminal justice system due to the ease of accessibility they are available 24 hours 7 days a week via the phone, they have the power to tackle any first instances of violence, to protect the vulnerable person and to redirect them within the criminal justice system and provide the best support and justice outcome, but still they are often a person's last resort when coming to terms as a victim much of

this is down to a negative perception of the police in dealing with domestic violence (Walker & McNicol, 1994).

Police attitudes towards domestic violence have been highly critiqued by many sociologists, criminologists and even Her Majesty's Inspectorate of Constabulary and Her Majesty's Inspectorate of Constabulary and Fire Rescue Services, though the attitudes posed by the police have dramatically changed over the last 50 years there are still areas which require drastic improvement (Newburn & Reiner, 2007). Domestic Violence has often been perceived as a family's own problem, that it should be contained within the private sphere and that it is not worth police time, so should only be dealt with by the family themselves or the civil courts with intentions of keeping the family intact (Morris, 1987). Some of these views, unfortunately, have not changed, with many police officers and the wider public seeing domestic violence as less serious than street violence (Williams, 2012). Only 27% of women and 10% of men claimed that they would report domestic abuse to a police officer, however, 76% of women and 61% of men claimed that they would tell somebody they knew more personally if they were experiencing domestic violence (Her Majesty's Inspectorate of Constabulary, 2014).

Potential explanations as to why people are less likely to report experiences of domestic abuse to the police than a family member include; poor attitudes shown by the police; the violence is considered too trivial by the victim; fears of increasing the danger; and concerns that the police could not help to resolve the situation. With 31% of victims have suggested that the way in which the police have treated them was unsympathetic of their situation suggesting that some of the questions and the ways

in which the questions had been asked were phrased as if to make them believe they were the problem and 24.2% of victims suggested that the police were not helpful at all (Her Majesty's Inspectorate of Constabulary, 2014; Office for National Statistics, 2018). While these figures are considerably low there is still evidence that many of the problems in the failure to report to the police are concerns with how they will be treated. Her Majesty's Inspectorate of Constabulary (HMIC) and Her Majesty's Inspectorate of Constabulary, Fire and Rescue Services (HMICFRS) have both suggested that the ways in which the police treat victims is beginning to improve with training and education on the subject and that the lack of sympathy when turning up to a case could be caused as a result of the officers reason to believe that the victim may withdraw from police investigation (HMIC, 2014; HMICFRS, 2017). However, an important factor which could perform a vital role as to why the police force is unsympathetic may be the composition of the police force (Carrabine., et al., 2004; Williams, 2012). As we discussed in the first chapter domestic violence is primarily affecting females, yet only 29.1% of the police force are female, showing that 2/3 are in fact male, while the number of female officers did increase from 28.2% in 2015, the proportion of male to female officers still highlights the social inequalities and pressures which could be a significant factor in the attitudes given to support domestic violence. (Home Office, 2015; Home Office, 2017).

In 2018, only 17.3% of victims reported partner abuse to the police, 45.5 % of the people who did not, claimed that the incidents were too trivial to need to involve the police, 39.5% suggested it was a private family matter and 34.2% did not think that the police could help resolve the situation so did not report it, there was also evidence which suggested that 26.6% of victims felt less safe once they reported the violence

(Office for National Statistics, 2018). The low expectations experienced by victims of domestic abuse, that there will be a helpful response from the police, greatly jeopardises the response rates due to its lasting feelings of loss of security should they report it (Homer., et al, 1984). After reporting incidents of violence 35% of cases had no further action taken once it had been assessed by the police and 43% were given a warning, this could further the worries of victims to suggest that there is a third of a chance that their case may be dismissed with no justice brought to them (Office for National Statistics, 2018).

### Initiatives and Powers Available to the Police

In the final decade of the 20<sup>th</sup> century, the importance for improved police powers in regard to domestic violence came to the attention of the public domain, with an emphasis on the need to develop legal powers available to the police (Walklate, 2008). As a result, a few initiatives and police powers were introduced to combat the demand, these include the use of the THRIVE model for identification (Threat, Harm, Risk, Investigation opportunities, Vulnerability, and Engagement); extension of police power; Domestic violence protection orders (DVPOs); and the use of body worn cameras, but how effective have these initiatives been?

The police force has proven to find difficulties in identifying repeat victims of domestic violence. Essentially this has been put down to a poor understanding of knowledge by call handlers on the definitions of repeat victims, but also due to the failure of certain computer systems to pick up on important features such as names which may indicate the caller is a repeat victim (HMIC, 2014). As a result, most of the forces in England and Wales have introduced the 'Threat, Harm, Risk, Investigation, Vulnerability and

Engagement', this was introduced by the police as a method of identifying the initial risk that is posed to the victim when they first make contact. However, concerns have been risen by Her Majesty's Inspectorate of Constabulary, Fire and Rescue Services (HMICFRS) to suggest that forces are using it to suppress demand due to the lengthy process which may be required by an officer and of fears that there will be too much presence from the perpetrator (HMICFRS, 2017). The police on occasion have been known to fear their own safety when dealing with domestic violence cases and so prioritise themselves over victims, the inspection of this model has further proven that the police are concerned with confrontation of the perpetrator when dealing with domestic violence and so are not adequately dealing with it in response to this (Morris, 1987).

In relation to legislation, the Domestic Violence and Victims Act (2004) has become one of the most important pieces of legislation in regard to police powers. Along with setting out guidelines on non-molestation orders, domestic violence in relation to cohabitation and same-sex couples, it also introduced police powers enabling officers to arrest for common assault which prior to the act they had not been able to do. This has been one of the most successful changes to the police force due to the nature of the act, stipulating that officers should be prepared to arrest where the power of arrest exists (Newburn, 2017). As with any arrest, there must be grounds to arrest under the Police and Criminal Evidence Act (1984 S24(5)), this may include to prevent an offender causing physical injury to themselves or another person, to protect a child or another vulnerable person within the home (HMIC, 2014). The power of arrest in the cases of domestic assault has proven to be rather popular among victims but is still not being used to the extent which would provide an adequate response. There are

16 forces of 43 in England and Wales that make less than 50 arrests per 100 domestic-abuse related offences, and every force makes less than 85 arrests per 100 domestic-abuse related offences, this number of arrests has declined since 2012/13 when there were only 5 forces making less than 50 arrests (HMICFRS, 2017). Since the power of arrest has proven to be favoured by victims and enhances their feelings of safety with 72% saying they felt safer after an arrest was made, the force still continues to use this power rather scarcely, it is therefore concerning when assessing whether their response is adequate as one can only assume from this that the needs of victims are once again being overlooked (HMICFRS, 2017).

Similarly, to the inadequate results of the power of arrest, the number of Domestic Violence Protection Orders (DVPO's) and body-worn cameras among forces are proving insufficient. DVPO's were designed to protect victims in the immediate aftermath once a report had been with regard to domestic abuse offences, it should prevent an offender from being able to contact the victim up to 28 days after the report has been made (HMIC, 2014). Of 43 forces only 35 of them could provide evidence of the use of DVPO's and 21 of the forces which did provide the evidence showed a decrease in the use of them. Body-worn cameras have been a relatively new incentive introduced to provide photographic evidence at the first instance of an act. They can be used to increase the outcomes of a case as it provides recordings of the initial acts of violence when they first arrive at the scene. 26 forces are using these permanently, but 10 forces still do not use them at all (HMICFRS, 2017). These are both reasonably simple tools which can, in turn, provide effective protection of a victim and can enhance the prosecution process, yet some forces do not have evidence to suggest they are using them at all. Here there is a failure from the police to protect the victim

in the immediate aftermath, a time when they are most vulnerable, these tools could allow the police to gain better response rates from victims and further increase success in the prosecution processes.

### Domestic Violence Disclosure Scheme (DVDS/Clare's Law).

The Domestic Violence Disclosure Scheme (DVDS) is one of the latest initiatives introduced by the police to help tackle domestic violence, the scheme came in to effect in all forces in 2014 as a result of the case of Clare Wood in 2009. Though this is not entirely reliant on the police to enforce it, there are a few key areas in which can be improved by the police in regard to making this initiative more effective. Clare Wood was murdered by her ex-partner George Appleton in 2009 as a result of repeat violence, when she tried to leave him the violence progressively got worse resulting in her death (Duggan, 2018). However, her death has been linked to partial failures within the police force including, failure to acknowledge the seriousness of the case, failure to make call outs and severe delays on 26 occasions and failures to safeguard her from her partner when he made calls regarding her complaints (Independent Police Complaints Commission, 2010). The scheme enables members of the public to make an application to the police if they are concerned about their partner or another person's partner in which the police agree to disclose information on a person's previous criminal background. However, once again the police are failing to provide effective use of an initiative which can provide a victim with a rational incentive of which to leave their partner, it provides them with evidence which might, in turn, save their lives. With 8,490 requests put in place only 3,612 requests were granted, elements are being underused including right to know where the police can warn potential victims without being asked to do so, still evidence suggests that the police

forces are ignoring this duty and are not providing the adequate protection that they are entitled to (BBC News, 2018b).

The police response to domestic violence is quite bluntly, inadequate. The identification of repeat victims and the initial response is coherently ineffective, many forces are failing to provide evidence on their response to domestic violence, and those that can are showing very limited effective outcomes. Many forces are not even using the powers they possess to effectively respond to cases of domestic violence and are as a result neglecting the victims and jeopardising the victim's safety. Initiatives which provide good incentives for effective police work are not being advertised, and are not possessed among all forces, the police are essentially limiting the potential for justice in the cases of domestic violence and so fail to adequately respond to the problems.

## **Chapter 3:**

# **The Crown Prosecution Service, The Courts and Pre-Sentencing**

While the police, as has already been discussed, are in fact the gatekeepers to the criminal justice system the response to domestic violence does not end once it has been identified, there are further steps which are involved in allowing for an adequate response to victims of domestic violence. Working alongside the police in the criminal justice system are judges, crown prosecutors, prison officers, probation officers and an array of other organisations which help to bring justice in criminal proceedings (Gibson & Cavadino, 2008). This chapter will aim to assess the usefulness and effectiveness of, the Crown Prosecution Service in bringing offences to court and the court processes as carried out by judges.

### **Prosecuting Domestic Violence**

The prosecution of domestic abuse is not carried out by the police but instead by the Crown Prosecution Service, following considerations on whether the evidence given, and the witness participation will be enough to provide a full prosecution (Crown Prosecution Service, 2017). In 2017 there were 93,590 prosecutions in relation to domestic abuse offences, this number equated to 16% of all prosecutions in England and Wales (Office for National Statistics, 2017). The context of domestic abuse is considered a priority by the Crown Prosecution Service when trying to secure prosecution, aiming to protect women in the private sphere and celebrating successful improvements on domestic abuse conviction rates, in many cases of assault ones

which happen in the domestic sphere are more likely to be prosecuted than those of non-domestic assaults (Lockton & Ward, 2016; Porter, 2018). Three quarters of prosecutions in England and Wales were successful at securing a conviction, but around 22,737 prosecutions were unsuccessful, 2% of these failed due to failure to provide sufficient evidence in court and 82% of unsuccessful convictions were due to the victims' unwillingness to participate in court and retract from the proceedings all together (Office for National Statistics, 2017).

Victim withdrawals in cases of domestic violence can be some of the more pressing problems faced by the Crown Prosecution Service. Often a withdrawal from proceedings is due to the relationship held by the victim and the perpetrator, but the Crown Prosecution Service has made it very clear that victim retraction from the case does not necessarily mean the prosecution will not continue. In many cases this is due to concerns of whether the victim has been forced to withdraw their statement and so the prosecution is not necessarily terminated if it is in the best interest of the victim's safety and the public, so the victim's interest in proceeding with the case is an important factor but it is not an overriding one (Crown Prosecution Service, 2017; Lockton & Ward, 2016). This response by the prosecution to continue with criminal proceedings, even if a victim withdraws, allows for a societal condemnation of the behaviour, suggesting that it will not be okay under any circumstances (even if a victim is willing to stand the abuse for the sake of their familial values) for abusers to take advantage and domestically violate others in the safety of societies values (Wills, 1997). The prosecution will take place to reflect the greater interest of society, bringing justice when it is most needed to benefit the many.

## A Right to Privacy?

However, prosecuting against a victim's will could essentially be a breach of their right to privacy. The Human Rights Act (1998: s1) Article 8 stipulates that every individual has the "right to respect for private and family life" and that "there shall be no interference by a public authority". So, to what extent should the protection of privacy be implied in cases of domestic violence? Does it give the perpetrator the right to batter their partner if they are in the private sphere of the home? Despite the victims of whom seek help by the criminal justice system and its partners to aid in resolving domestic disputes, many victims of domestic violence have suggested that they do not wish to have their domestic violence case interfered with and that they wish to be left alone, in this case, it could be suggested that the criminal justice system should help to retain a victim's dignity by not-interfering in their private family life (Bailey, 2012).

However, a victim's right to privacy and a victim's "rights to life" and "prohibition of torture or to inhuman or degrading treatment" simultaneously outweigh this matter. In cases of domestic violence if the law is not to intervene it is to condone such behaviour it is to suggest that you can commit violent acts of behaviour provided they are within your own home, a step of which feminists and women's organisations have fought so hard over the last 50 years to condemn (Horley, 2013). So, while law intervention in domestic violence proceedings may, in fact, prohibit one's right to privacy it is suggestively more important to protect the safety and ensure the condemnation of violent behaviour within society. The criminal justice system and the state have an obligation to protect victims and the public from violence and this obligation should be fulfilled even within the private spheres of life (Choudhry & Herring, 2006).

## The Courts and Pre-Sentencing of Domestic Violence

Despite some victims concerns with the privacy of their situation some cases regarding the law often go to court once a prosecution decision has been made by the Crown Prosecution Service, the courts then make decisions based on evidence provided by victims and agencies working in the criminal justice system on the sentencing that will be sufficient for the level of criminal behaviour that has taken place (Courts and Tribunals Judiciary, 2019). However, proving domestic violence in court can be challenging for prosecutors as the victim is regularly the only witness to a case, except in rare circumstances for example where body-worn cameras may have recorded part of the abuse on police arrival at the scene (Aiken & Murphy, 2000). As has already been discussed within this chapter, the response from victims in proceeding with criminal charges can often be jeopardised by their unwillingness to participate and provide evidence against their partners, similar concepts apply in the courts and tribunal proceedings which follow prosecution. Building a case that is substantial to enter court relies on sufficient evidence, and often when women do testify they are not believed. This could be due to their illogical survival strategies, with questions posed on why they remained with their partners that were abusing them for so long, so the inclusion of evidence from previous cases can be incredibly relevant and helpful once court proceedings take place (Aiken & Murphy, 2000).

However, the UK introduced Specialist Domestic Violence Courts as a method of responding to domestic violence in the criminal justice system, which can help to resolve the reluctance of many victims in corresponding with legal proceedings in regard to their abuse. Specialist courts allow the violence to be tackled through a multi-

agency framework, they ensure that a victim is to be fully supported throughout the process with progress reports, information given to the courts on behalf of the victim and coordination of information. While withdrawal continues to be a problem it has become much less common with the introduction of these specialised courts (Cook., et al, 2004). Unfortunately, the effects of Specialist Domestic Violence Courts on reducing recidivism have not yet been overly successful in the United States. While it did reduce recidivist offending by 5.6%, the recidivism rate was actually only 2.77% lower than cases that were not taken through the specialist courts (Gutierrez., et al, 2016). If this is associated with the time scale and resources required, it seems almost as though these courts are not practical in solving the problems of domestic violence.

Sentencing provided by the courts often reflects the crime in correspondence with its place in the law, so while there are no specific criminal offences regarding domestic abuse it is covered under other relative legislation and assessed on the level of seriousness of the offence, by the judges in court (Sentencing Council, 2018). However, legislation specific to injunctions which can be ordered by the courts do exist for domestic violence, usually to protect the victim temporarily from the offender during court proceedings (Homer., et al, 1984). The Domestic Violence and Matrimonial Proceedings Act (1976) allows the courts to implement an injunction on an offender to restrain them from molesting the applicant, molesting a child, excluding them from the home and permitting the other party to live in the home if the injunction is breached an arrest can be made. Application for injunctions are generally self-made and often take place when criminal proceedings have been taken and so carry heavier penalties provided they are breached (Women's Aid, 2015a). In 2017 91% of domestic violence orders were non-molestation orders and 9% were occupation orders (Ministry of

Justice, 2017a). Non-molestation orders are put in to place by the courts under the Family Law Act (1996: s42) to protect victims from threat or harm and prohibiting them from molesting the victims (GOV.UK, n.d.). However, the effectiveness of the use of non-molestation and further injunctions are still considerably low, 15% of women found that court injunctions were actually useful (Homer., et al, 1984). Once again, patriarchy proves to be an issue when tackling domestic violence. Laws are made by men for the benefit of men, only 28% of judges in the British Criminal justice system are female with many women claiming of how judges can be unsympathetic of their needs when going through criminal proceedings, which in turn results in low reporting rates (Ministry of Justice, 2017b; Newburn, 2017). Women's reluctance to report the behaviour of men in the home is exacerbated by the composition of the judiciary, and other social institutions being male focussed resulting in further victimisation of women when trying to resolve the problems of domestic violence (Dobash & Dobash, 1992).

### Secondary Victimization and Victim Blaming

When domestic violence cases go to court, the prospects of standing and giving evidence can be a very daunting process for many victims, this intimidation within the court proceedings, has been known as secondary victimisation, where the process of entering the court is equally as frightening as the crime committed against them in the first instance (Sanders & Jones, 2007). During the healthy coping process of victims as they develop through the finalising stages of domestic violence proceedings many of them begin to blame themselves for failing to keep the tranquillity of the private space, introducing potential solutions they could have done to prevent the violence (Schechter, 1982). Women who come before the courts often feel victimised by it. In relation to the concept of double jeopardy where women in court as offenders are

treated more harshly because they have broken both societal norms and legal requirements, a similar effect is posed on female victims of crime in the same way, they are victimised firstly by the offender and then secondly by the patriarchy that gives an offender an advantage in a male-dominated legal proceeding (Heidensohn & Gelsthorpe, 2007).

Women have often been portrayed in society and by the courts as masochistic consumers of sexual activity, suggesting that they take pleasure from their abuse and excuses of contributory negligence have included; women play hard to get so the male makes sexual passes to show her she is attractive, and 'she was asking for it' one that continues to be a problem even in contemporary society (Morris, 1987). A case in Ireland recently showed the negativity imposed on victims in court, though it was rape and not domestic violence it highlights the use of contributory negligence and victim blaming as a prime example of the harsh environment it provides for those who need it most. The rape claim was dismissed after a lawyer held a lace thong in the courtroom and suggested that the young girl was asking to be raped because of what she was wearing (BBC News, 2018a). The police have also recently issued statements which were open to criticism when they suggested that women should not 'walk alone, wear headphones, or walk dark streets to prevent being sexually attacked, yet headphones don't rape women and dark streets don't rape women, secondary victimisation results in loss of a victims' freedoms (BBC News, 2018c; Newburn, 2017).

Unlike that of the police response, the pre-sentencing response imposed by the crown prosecution service and courts does show potential for creating an adequate response to domestic violence. This stage holds much more importance on the justice for the

victim, while there are considerations for victim blaming still present in the courts today, the introduction of specialist domestic violence courts provides a much more beneficial way to deal with problems of domestic violence. While they are not entirely more effective at preventing recidivism, they do provide a much warmer approach for victims during the difficult times of criminal proceedings. It is therefore important to acknowledge that while there are some structural issues at this stage, the response for victims is much more adequate than that currently shown by the police.

## **Chapter 4:**

### **Post-Sentencing**

There are many debates on the most effective way to keep victims of domestic violence safe once their perpetrator has been sentenced by the criminal justice system. As a result, this final chapter will look at rehabilitation and the restorative justice of an offender in comparison to the incarceration of them, and it will dwell on an argument which was posed earlier in this work that looked at the problems of power in dealing with crime. It intends to assess the final steps taken by the criminal justice system to acknowledge whether or not it is capable of adequately resolving the problems of domestic violence.

#### **Sentencing and Punishment**

The sentencing of domestic violence perpetrators more often than not takes the route of fines and monetary penalties, with the introduction of community sentences appearing in some cases, though sentencing has recently become much more creative in the magistrate's courts it often remains external to incarceration (Cook., et al, 2004). In relation to this, custodial sentences are used for the punishment, but they are less likely in relationships where the victim decides to continue the relationship with the offender once the complaint has been finalised, equally so they are less common in cases where the parties involved are married (Dinovitzer & Dawson, 2007). For 'coercive and controlling behaviour' there were 223 offenders sentenced for the offence, 97% of which were male, but only 125 of these offenders were in fact given an immediate custodial sentence, with an average custodial sentence of 17 months,

the remainder few of those sentenced received, suspended sentences, community sentences and two were given conditional discharge (Office for National Statistics, 2018). Under guidelines for sentencing, the emotional impact and the abandonment of trust involved when dealing with domestic abuse cases is deserving of more severe punishment, with many suggestions that the new guidelines given could correspond to greater use of incarceration in cases of domestic violence (Bowcott, 2018; Sentencing Council, 2018). The prisons, after all, were established to punish and rehabilitate the offender while indigenously protecting victims and the wider public (Gauke, 2018). But is punishment in the form of incarceration the most effective response to dealing with offenders of domestic violence and liberating the victims?

Often the victims do not actually want their partners to be prosecuted and incarcerated as it is not in the name of family and they regularly wish that their relationships will continue once the violence comes under control due to a high place of importance on the role of their family, whether it be for the benefit of their child or themselves (Cooke., et al, 2004). The courts and sentencing also take into consideration the likelihood of keeping the families together as those that are married have received lesser sentences in reluctance to breaking the family up (Dinovitzer & Dawson, 2007). The role of the prisons and custodial sentencing in crime are subject to criticism, the criminal justice system imposes power and sentences those who have committed crimes including that of domestic violence because it gives the effect of a productive outcome and response to criminal behaviour. However, the deception of productivity is a result of powerful institutions hiding bigger problems, to make society believe that something is to be done about crime when really it is a diversion from the real problems of the structural violence and control imposed in society (Scraton, 2002). The problem

here is if incarceration is not necessarily the answer to successfully resolving the problems of domestic violence how else could this happen?

### Restorative Justice

The criminal justice system as it is known focusses heavily on bringing an offender to justice through the use of incarceration and community punishments. Therefore, the infliction of power deceives society that the problems of crime are being resolved yet continues to neglect the needs of victims of crime. When the equilibrium between a victim and a perpetrator is broken down alternative methods of healing and treatment should be introduced (Frederick & Lizdas, 2010). The ineffectiveness of the criminal justice system to then respond to victims of crime has resulted in the new forms of academic thinking into the justice process including the use of specialist domestic violence courts as has already been discussed and restorative justice (Hoyle & Zedner, 2007). Restorative justice also associated as new justice concerns itself with the healing of victims and society in the cases of individual offences (Hudson, 2007:169).

In restorative justice the traditional approach of punitive methods of punishment allows the criminal justice system to impose power on the offender to hold them accountable for their actions through punishment, but the aims of restorative justice are to make the offender accountable through a means of reparation, responsibility and making amends with their victim (Frederick & Lizdas, 2010; Burkemper & Balsam, 2007). Restorative justice in its aims to hold the offender accountable should, therefore, aid to return things between the victim and the offender back to the way they were before, allowing the criminal justice system to be one that 'does things with victims rather than

to victims' (Restorative Justice Council, 2012). The use of restorative justice also invites the communities and family members of victims that may have been affected as a result of the crimes to take part in the healing process and have their say on what happened (Newburn, 2017). The inclusion of the community in this new form of rehabilitating offenders has had many positive implications on communities and offenders. Victims that have come from minority ethnic communities feel that working with their communities to restore justice rather than the cold processes of dealing with the courts are generally more helpful and provide hope that something will be done about their situation and helps to condemn the behaviour that happened to them (Hudson, 2007). Restorative justice is also, in a sense, beneficial to an offender. The process of working with the community prevents the offender from being treated as an isolated object and to aid in their re-integration back into society, and with their transformation into law abiding citizens (Frederick & Lizdas, 2010). The representation of the community in the restorative justice process allows offenders to come to terms with the wrongs of their offence and feelings of community can provide offenders with the social cohesion needed to a make positive change to maintain a crime resistant lifestyle and prevent repeat offending (Davis., et al, 2012).

However, while the use of restorative justice does undoubtedly have beneficial impacts on communities and offenders there have been a few concerns raised in regard to safeguarding victims of domestic violence. With importance on safeguarding victims in the informal process of the situation that allows an offender to manipulate it, the nature of domestic violence is due to an offender's ability to manipulate a victim, so there is a likelihood that the offender will have bargaining power when dealing with restorative justice processes (Miller & Lovanni, 2013; Newburn, 2017). In the

understanding of restorative justice, the aim must essentially be to liberate the victim from the coercion which may take place within the relationship by providing resources which will aid to undermine the social exclusion which may have been inflicted on the victim by the offender (Coker, 2006). Her Majesty's Inspectorate of Constabulary (2014) recommended that the use of restorative justice practice in dealing with intimate partner forms of domestic violence is inappropriate, as an officer engaging with the victim and offender is never fully aware of the coercive power that the offender has against the victim. The criminal justice system in a sense uses restorative justice as a cheap form of overcoming a problem, overemphasising the value of an apology, and in some cases forcing participation on the victim, something considered as 'bad practice' (Nancarrow, 2010; Restorative Justice Council, 2012). As well as examples of poor practice on behalf of the criminal justice system, communities are not necessarily equipped to deal with restorative justice and some cases may result in reinforcing male dominance and victim blaming rather than the condemnation of the behaviour which is expected as a result of the process (Miller & Lovanni, 2013; Newburn, 2017).

This final chapter has now established two of the methods used by the criminal justice system to finalise the problems of domestic violence. While custodial sentences do seem almost inappropriate in a sense that it is generally not in the will of the victim, it seems more appropriate than the use of restorative justice under the contexts applied in cases of domestic violence. However, it is important to note here that the total adequacy of response cannot be implied when the structure of society currently entitles patriarchy, the criminal justice system cannot be wholly responsible for resolving the problems of domestic violence.

## **Conclusion**

Overall, this study has looked at the criminal justice response to dealing with the problems with domestic violence, and in retrospect, the response is currently inadequate across the board. It is clear that something needs to be done to overcome the problems of domestic violence, but the criminal justice system finds it difficult to deal with the situation, it is possible that we expect too much to be done by the law alone (Choudhry and Herring, 2006). Some agencies are respectively providing better response for victims of domestic violence mainly that of the courts with initiatives introduced to make victims feel more comfortable with reporting domestic violence problems. However, most of the agencies are struggling to accept domestic violence as an actual problem, failure to effectively identify victims and enforce the law that is provided neglects the importance of providing a supportive outcome for victims by the police. The introduction of body-worn cameras and the change in arrests are incredible law enforcement techniques which have been introduced to benefit the forces in dealing with crimes such as domestic violence yet still they enhance their own problems by not using available mechanisms and thus make it more difficult to provide an adequate response to domestic violence.

The attitudes towards domestic violence require a lot of change in all aspects of the criminal justice system. Recognising domestic violence as a 'real' crime and creating a definition that is universal across forces will help to provide a more desirable initial response. Most of the agencies are demonstrating ignorance towards the problems of

domestic violence and rendering it invisible, including the courts and legal professionals who should be ashamed to suggest a victim's abuse is their own problem. To establish a successful identification of domestic violence as a crime and acknowledging a definition for victims of domestic abuse could be the first positive step to overcoming the problems of domestic violence, it could provide them with a reliable basis as to respond adequately.

However, it is possible that we do expect too much of the law. The context of domestic abuse relies on failures in the socio-cultural context of crime. The roots of domestic violence are invested deep into the culture of the society we live in. The patriarchy that is exacerbated by the institutions provides a greater problem than that of one the criminal justice system can resolve alone. To prosper with the response to domestic violence, drastic change is needed in society, the power of one inflicted over another only condones violence. Culture defines patriarchy and patriarchy is currently the most common cause of domestic violence (Robinson, 2010). For there to be any chance of an effective response and the potential end to domestic violence, society requires a makeover, the questions need to be redirected to reflect the problems with society not the problems with an individual (Tifft & Markham, 1991).

Therefore, even though the total abolishment of domestic violence is not as of yet a possibility due to the social complications, the considerations of criminal justice response concludes that the agencies involved are not doing enough to prevent and establish an effective groundwork as of which they can tackle the problems of domestic violence efficiently, and much of this is due to significant arrogance in to respecting domestic violence as a serious crime, so with changes to the attitudes to

domestic violence and cultural changes there stands a possibility that there may be an adequate response to domestic violence in the next 50 years, unfortunately just not in the last 50 years.

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