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**United Nations Office on Drugs and Crime  
United Nations Division for the Advancement of Women**

**Expert Group Meeting on good practices in legislation on violence against  
women**

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

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

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

### **Legislative approach of the State to tackling violence against women**

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

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

#### **Article 2**

This Article is concerned with the right to life

#### **Article 3**

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

#### **Article 8**

The right to privacy and family life

#### **Article 14**

This Article confirms that rights are protected without discrimination

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

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

### **Domestic legislation**

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

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

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

### **Criminal legislation**

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

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

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

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

### **Civil Partnership Act 2004**

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

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

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

### **Forced Marriage (Civil Protection) Act 2007**

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

### **Immigration Rules- DV concession 1999**

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

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



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

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

## **Conclusion**

Legislation is commonly used to send a message that certain types of behaviour are disapproved of and will be sanctioned by the State. It can also act as a deterrent and offer protection to women experiencing /MCID 63 Tc 0.0025 Tw.DI be s

## References

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