



UMEÅ UNIVERSITY

DOMESTIC VIOLENCE FROM A SOCIO-LEGAL PERSPECTIVE

A critical analysis of the criminal justice response to
domestic violence

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Abstract

Theoretically, domestic violence raises questions about its impact on victims' life. During the last decades, an increasing interest is shown by international organisations and governments to address the different types of domestic violence, such as intimate partner violence, for empowering women's human rights protection. This paper initially surveys through the literature and reports what domestic violence is. The paper proceeds with the exploration of the sociolegal aspects of domestic violence (the existing laws and theories), identifying causes and effects accruing from the persistence of gender stereotypes. For this purpose, the paper draws on recent theoretical researches to evaluate these causes and effects. Analysis shows that the English legislation and criminal justice could go further to support women to deal with domestic abuse.

Key words: domestic violence, legislative framework, legal system, criminal justice

Table of Contents

Acknowledges	3
Abstract.....	4
Table of Contents.....	5
Abbreviations.....	7
Prologue	8
Introduction.....	9
Background of the problem.....	9
Objective of the study.....	10
Research questions	10
Methodology and Theory.....	10
Disposition	11
Literature Review.....	12
Chapter 1. A Sociological Perspective	13
1.1. The modern family.....	13
1.2. Violence in the family.....	14
1.2.1. The problem of definition	15
1.2.2. Characteristics of domestic abuse.....	16
1.2.3. Causes of domestic abuse.....	17
1.2.4. Forms of domestic abuse.....	18
1.2.5. Prevention of abuse.....	19
1.3. Types of domestic violence	20
1.3.1. Intimate partner violence: Causes, Forms of abuse and Effects.....	20
1.3.1.1. Characteristics of intimate partner violence perpetrator.....	22
1.3.1.2. Characteristics of intimate partner violence victim.....	23
1.3.2. Elder/child abuse in the domestic setting.....	25
Chapter 2. A Legal Perspective.....	27
2.1. International Legal Framework	27
2.2. Regional Legal Framework.....	29
2.2.1. Council of Europe.....	29
2.2.2. European Union.....	31
2.3. National Legal Framework.....	32

2.3.1. Civil Law.....	32
2.3.2. Criminal Law.....	34
Chapter 3. Critical analysis.....	36
Conclusions.....	40
Bibliography	42
Legislation.....	42
Public Materials.....	42
Cases and Awards.....	43
Literature.....	44
Other Sources.....	47

Abbreviations

CEDAW	The Convention on the Elimination of all Forms of Discrimination Against Women
CoE	Council of Europe
DVCVA	Domestic Violence, Crime and Victims Act
e.g	exempli gratia
Etc	Et cetera
EU	European Union
i.e	id est
IPV	Intimate Partner Violence
NGO	Non-Governmental Organization
UK	United Kingdom
UN	United Nations

Prologue

“{...} Pavel remembered that in his father's lifetime she had remained unnoticed in the house. She had been silent and had always lived in anxious expectation of blows...Think what kind of a life you are leading. You are forty years old, and have you lived? Father beat you. I understand now that he avenged his wretchedness on your body, the wretchedness of his life. It pressed upon him, and he did not know whence it came... Mothers are not pitied. {...}”

Maxim Gorky
“Mother”

Introduction

Background of the problem

Domestic violence is a complex phenomenon and is as old as the human society itself, affecting all social and economic strata. Mythology, history, literature, and arts confirm the existence of abuses and homicides within families. For example, Greek mythology begins with Uranus throwing his children to Tartarus until one of his sons, Cronus, ousted him after castrating him¹. Saturn, in order not to have the same fate as his father, devoured his children. But he was overthrown by his own son Zeus and imprisoned in Tartarus². Agamemnon killed his daughter, Iphigenia, as a human sacrifice to placate the goddess Artemis, who was preventing the Greek troops from reaching Troy³. King Laius, wished to thwart the prophecy of being killed by his own child, left his son Oedipus to die on a mountainside. Medea sought revenge on her husband by murdering her children, because Jason abandoned her for another woman.⁴ The founding of the city of Rome was sealed with the killing of Remus by his brother Romulus.

Domestic violence problem (including IPV, child abuse and elder abuse) has moved on and unfortunately continues to move between silence, tolerance, and concealment. As a result, addressing violence in domestic settings has emerged as a priority in legislation and policy debate in recent years.

Because there has been an increase in the rates of domestic abuse and there is still considerable scope and interest as domestic violence is emerged as a crucial problem across the world amid the lockdown due to coronavirus outbreak, it is important to ascertain its causes and consequences.

In this day and age, the justice system plays an important role in combatting domestic violence. Even though, legal system holds the key to the effective response to domestic violence, it fails to adequately provide sufficient protection to victims of domestic abuse. In addition to the common view of domestic violence as not being criminal in nature, the failure of legal system to encompass the belief that domestic violence is a social problem impedes the advent of legislation and past legal practices from fading away quickly.

¹ C. Stavrianos, I. Stavrianou and P. Kafas, 'Child Abuse in Greek Mythology: A Review', *The Internet Journal of Forensic Science*, vol. 3, no.1, 2007, sec.3, <http://ispub.com/IJFS/3/1/9665>, (accessed 4 January 2020).

² *ibid.*

³ *ibid.*, sec.4.

⁴ *ibid.*, sec.5.

Objective of the study

This paper's aim is threefold: first to assess what domestic violence is, identifying the fundamental causes, second to review the legislative framework that is applied by authorities and other stakeholders to fight domestic violence and third to consider how and why the legal system response to domestic violence is inefficient.

Research questions

The questions of the study are:

1. What are the types of domestic violence perpetrated against women?
2. What are the roots causes of domestic violence?
3. What are the misconceptions behind the failure of the criminal legal system to address domestic violence efficiently?
4. Is the legal system gendered?

Methodology and Theory

In carrying out the study, a socio-legal research primarily on a theoretical level was considered essential to achieve the objectives of this research. The first two questions are answered by examining similar socio-legal researches on violence in a domestic context. The theoretical part of the research will present the ideological framework in which the violence against women in the family is manifested. It has to be underlined that this study was conducted taking into account that family itself is an extremely complex concept, so the term of domestic violence could not be limited to violence exclusively occurring in the context of a typical family. However, time constraints, since this research was carried out in four (4) months, made the author narrow down the definition of family, to heterosexual partners involved in an intimate relationship. Recognising also that women are more likely to experience abuse in the domestic setting, the study was focused on men as perpetrators and women as victims.

A critical analysis, which is written from the perspective of the legal system in England, follows to provide an answer to the third and fourth research questions. Although, the need of adopting a multidisciplinary model for the causes of domestic violence is stressed throughout this thesis, the critique is built on the theory of gender inequality stemming from patriarchy and

the presumptions that domestic violence, as one of the most powerful societal mechanisms to subordinate women, is a social issue. The bibliography collection began in January 2020 and was completed at the end of April 2020, using the Umeå University library's electronic resources. Regarding the last visit to the electronic sources, it is placed on 23.05.2020.

Disposition

To address the objectives of this study, the dissertation has been structured in the following way: in chapter 1, the domestic violence as a whole will be reviewed, along with a holistic overview of its causes and effects. Chapter 2 then begins with a detailed examination of the international, regional (EU) and national (England) legal frameworks on domestic violence. In chapter 3, a critical analysis is presented assessing whether legal system addresses the needs of women experiencing domestic violence, primarily through the examination of DVCV Act (2004). In the final chapter of the dissertation, concluding remarks from author's analysis are drawn and needs for future researches are identified.

Literature Review

For many years, the phenomenon of domestic violence has been in the limelight of the literature on socio-legal studies. Consequently, a great deal of research has focused on this area of study, attempting to address whether the concerns raised regarding this issue are real. The Dobashes were the first who emphasised on the concept of patriarchy to explain a form of domestic violence: wife abuse.

Given the great impact of domestic violence on society, it is important also to establish whether or not the current law and legal system adequately response to victims of domestic abuse. Criminal justice, like other institutions, are patriarchally structured services and therefore this makes difficult, if not impossible, for it to consider women's unique experiences.

The present dissertation examines the reasons behind the inefficiency of the criminal justice to address properly violence against women in the domestic setting. This area has been surprisingly neglected until recently, as the majority of the literature on domestic violence and the legal systems has focussed on identifying merely the limitations of the legal system.

Traditionally, misconceptions and myths about domestic violence are considered a major obstacle for researchers to address the social and legal dimension of the problem. This may also give some explanation for the limited number of studies dealing with this field.

Both Bishop and Ferraro, in their researches, recognise that the problem of legal system lies on its failure to comprehend the social structural forces that perpetuate violence in the family. Focusing on physical abuse will not allow us to considerate how oppressions can impact the woman. Many scholars argue that we need to move away from Walker's battered women syndrome approach, which prevents the legal community from combatting domestic violence and instead adopt an intersectional approach.

Debates on previous literatures give knowledge that the domestic violence is a multifaceted phenomenon, as even the laws applicable to situations of domestic violence can sometimes be perceived as complex and contradictory. Therefore, this topic remains important and debatable.

Chapter 1. A Sociological Perspective

1.1. The modern family

The family, as an institution intimately tied to the existence of human societies, carries out a variety of essential functions summarised in ensuring the biological, social and cultural continuity of society⁵. Although different definitions of the family abound in the international bibliography, there is no consensus among sociologists and legal professionals⁶ and this is owing to the fact that the organisation and structures of family differ largely from time to time and from culture to culture. In this sense, hence, Farley⁷ defines the family as “a social group of people related by ancestry, marriage or other committed sexual relationship, or adoption, who live together, form an economic unit, and rear their children if they have any”.

Noteworthy is the fact that in the Recommendation of the committee of ministers to member states on violence in the family, an even broader definition of family had been adopted. Some years later, a further step was taken and as a result the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) does not contain a definition of family, in an attempt the promotion of a particular type of family to be avoided.

The modern "middle" or dominant statistical family is an independent marital family consisting of spouses and their children and lives independently of other related marital families. The above conventional type of family structure coexists with non-conventional family patterns, such as single parent, same-sex, voluntary childless or non-conjugal families. Some characteristics of the modern family are⁸:

1. The diversity in terms of roles within family.
2. Changes in gender roles can undoubtedly be put down to the fact that the percentage of women participating in the labour market is increasing, but also because of the existence of alternative family forms (for example, the majority of single-parent families are run by one woman).
3. The increasing probability of experience a change in family patterns (related to the rise in divorces.)

⁵ J. Bernardes, 'Family Ideology: Identification and Exploration', *The Sociological Review*, vol. 33, no. 2, 1985, p. 276.

⁶ For instance, in the UK no legal definition of 'family' exists.

⁷ J. Farley and M. Flota, *Sociology*, 7th edn., New York, Routledge, 2007, p.454.

⁸ G. O'Donnell, *Mastering Sociology*, 3rd edn., London, Palgrave, 1994, pp.38,45,173.

4. The rapid development of new technologies and their consequent impact on family roles and relationships. There is little doubt that technology has changed not only the face of the economy but also the familial bonds. Specifically, the influence of technology on family dynamics is controversial, as it can create a perpetual ability to connect with others or a family divide.
5. The constant progress of medical science and biotechnology led to revolutionary developments in the field of reproduction, introduced fundamental alterations in the social notion of parenthood but also grave concerns in the field of legal science.

The aforementioned changes are not the only ones that have affected the modern family. Changes are observed in family relationships with its social environment and in the attitudes and expectations of its members. The nuclear family is constantly becoming independent and isolated from its wider family circle and social environment⁹. This isolation of the modern family, the degree of cohesion and mutual support among family members and the existence of a social support network that families can turn to in times of need (emotional support or practical help, etc.), play an important role in cases of family crisis or dysfunction.

1.2. Violence in the family

The phenomenon of domestic abuse is evident in all social strata, despite the fact that low-income families are more vulnerable to violent behaviour. In the last 50 years, the phenomenon of domestic violence has become part of the social and scientific awareness, thanks to Kempe et al's article¹⁰, contributing significantly to the emergence and recognition of domestic violence as a social problem by breaking the barrier of privacy and the myth that the family is always a peaceful and protective environment for its members. Official statistics confirm the view that family members are much more likely to be killed and/or abused in the home by partners or relatives than by a stranger¹¹. The inclusion of certain family members' behaviour patterns in the concept of domestic violence depends on the prevailing perceptions in society in which the

⁹ K. Franklin, 'A Family Like Any Other Family: Alternative Methods of Defining Family', *Review of Law & Social Change*, vol. 18, no. 4, 1991, p.1036, https://digitalcommons.nyls.edu/cgi/viewcontent.cgi?article=1956&context=fac_articles_chapters, (accessed 5 January 2020).

¹⁰ C. Kempe et al., 'The Battered child syndrome', *Journal of the American Medical Association*, vol.181, no.1, 1962, p.20.

¹¹ Women's Aid, The Femicide Census Report[website], <https://www.womensaid.org.uk/femicide-census-published/> (accessed 12 January 2020).

family belongs, a fact which, as will be mentioned below, creates problems in defining it. Domestic violence as a socially objectionable or punishable behaviour by law is not a universal concept but instead corresponds to and depends on each particular society's cultural achievements. Thus, in societies, there is a degree of tolerance towards some types of domestic abuse, whether physical, psychological, or sexual (forced sex by an intimate partner), that is considered acceptable behaviour as opposed to more serious injuries such as vicious beating and homicide attempt which are addressed as unacceptable violent behaviours. In the context of gender inequality and power imbalances between sexes, the concept of violence is based on the idea of the inferiority or superiority of either of the sexes and on practices based on concepts of inferiority or subordination. This distinction applies to all forms of victimization and is more difficult to be identified.

1.2.1. The problem of definition

Serious disagreements have arisen over the definition of abuse within the family, given that it is a concept with various meanings, each of which lead research to any significantly different conclusion. A common misconception arises from the assumption that violence only associates with harsh/severe physical abuse. However, violent acts differ in severity and can vary dramatically. Therefore, the term "domestic violence" is a source of significant confusion, because it includes many types of abuse without being limited to physical violence but also because there is no awareness of the seriousness of the crime of abuse when an act is identified as such.

Even when it is precisely defined which acts are violent, the same act can be judged differently dependant on who penetrates it and who is the victim and on the circumstances under which such a crime carried out. For example, the severity of smacking is different from brutal beating of a child by the parent in the name of discipline. The emergence of all aspects of the problem is of particular importance for deciding whether an act is violent or not, such as the severity of the attack and injuries, motivation, the legality of acts, as well as the effects of violence on the family structure. The laxity of the term "abuse" is such that makes it possible for a researcher to undermine or exaggerate the significance of the abuse simply by adopting a narrow or broad definition of the concept¹². The effort to compare research findings at national

¹² M.Straus and R.Gelles, 'Societal Change and Change in Family Violence from 1975 to 1985 as Revealed by Two National Surveys', *Journal of Marriage and Family*, vol. 48, no. 3, 1986, p.469.

and global level had been fruitless due to the lack of a standard definition and stressful. Studies on domestic abuse suffer from a variety of methodological problems such as insufficient functionality and unrepresentative samples. Despite the fact that it has even been proposed to defuse the terms "abuse" and "violence" due to interpretive problems, misunderstandings and ambiguities that may cause, however these terms have prevailed internationally both at theoretical and research level.

Considering the concerns raised, domestic can be described as the power misused by the most powerful emotionally and physically family member in a relationship to control the weakest members of the family. Women and children are usually perceived as weak and vulnerable and men as strong and authoritative. According to the definition adopted by the Council of Europe, domestic violence is “All acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit, irrespective of biological or legal family ties, or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence as the victim”¹³.

1.2.2. Characteristics of domestic abuse

On several occasions, the use of force by family members against other members involves the likelihood of recurrence. Domestic violence is rarely a single isolated act. The first domestic abuse related incident is usually the initial point of crisis, which can either lead to the family breakup or the endurance of this painful situation. Domestic violence is a largely a hidden crime, occurring behind closed doors. Despite a recent rise in offences recorded by police, it is still underreported, as victims often hesitate to report or disclose domestic abuse to the police.

Children exposed to domestic violence are more likely to reproduce stereotypes and repeat negative patterns in adult relationships. The cultural acceptance (or support in cases of children discipline) of violence fuels the domestic violence, rewarding such behaviour.

Besides, the insufficient social control, due to the privacy of family life and the reluctance of the social institutions to intervene, reduces the cost of abuse (exchange and social control theory). Furthermore, unstable family environments contribute to the increased likelihood of abuse related incidents. For example, many social indicators have been associated

¹³ Council of Europe, Convention on Preventing and Combating Violence against Women and Domestic Violence. Council of Europe Treaty Series, no. 210,2011.

with abuse¹⁴. Unemployment, underemployment, poverty, the low level of education, poor living conditions, social isolation, inadequate welfare infrastructure, the lack of family planning services are factors that reinforce the fostering of violent attitudes within the family but without excluding corresponding behaviour in families that do not face these problems.

1.2.3. Causes of domestic abuse

Various theories have been developed that reflect the complexity of the problem and which, insofar as they adopt single-factor models, enrich the problem and do not highlight the real scale of this phenomenon.

Domestic violence was approached by three different levels of analysis: a) The psychiatric model, b) the socio-psychological level of analysis, c) the socio-cultural level of analysis. The psychiatric model focuses on the perpetrator's personality traits considering them as the key identifying cause of the abuse perpetrated against family members. The psychiatric model includes personality disorders, mental illnesses, the effects of alcohol and drugs, etc. It is noteworthy that till today this explanation resonates strongly with the public perception on causes of domestic violence¹⁵.

According to the socio-psychological model, violence and abuse can be better understood by carefully examining the environmental external factors that affect the family structure and organisation, as well everyday family interactions as precursors to violence.

The socio-cultural model performs macroscopic analysis. Violence is examined under the influence of socially structured parameters such as inequality, patriarchy, cultural norms and attitudes towards violence and family relationships. Specifically, the search of cultural factors refers to the exposure of society members to models of aggressive behaviour as well as to the acceptance of aggression as a means of communication and a form of emotional expression between family members¹⁶. This is supported by the fact that boys and girls are treated differently and most gender expression differences are attributed to differences in socialisation during childhood. Hence, women from childhood are taught that must be expressive of emotions, obedient, and seek support from the other sex (father, brother, husband,

¹⁴ M. Straus and R. Gelles, 1986, p.471.

¹⁵ P. Nicolson and R. Wilson, 'Is domestic violence a gender issue? views from a British city', *Journal of Applied social psychology*, vol.14, no.4, 2004, p.276.

¹⁶ M. Hyde-Nolan and T. Juliaio, 'Theoretical Basis for Family Violence', in R. S. Fife and S. Scharger (Eds.), *Family Violence: What Health Care Providers Need to Know*, Jones & Bartlett Learning, Ontario, 2012, pp. 11-12.

lover, etc.) while men are taught the opposite: to be aggressive, active and to dominate the opposite sex. As a result, men associate violence with masculinity.

The patriarchal structure of society and consequently of the family raises the social position and role of the man and shapes his social perceptions and behaviour¹⁷. The unequal distribution of power, the power relations that develop within the family, the low social status of women and children offer the enabling environment for the creation of conditions that inevitably lead to conflicts. The male-dominated political system, the structure of the welfare state, where the key positions are held by men, the non-participation or under-representation of women in decision-making positions, foster the domination over women and discrimination against women by men.

The social factors that strengthen the root of violence behaviour are overcrowding, unemployment, social exclusion, childhood exposure to violence. The psychological factors of domestic violence focus on the perpetrator's personality traits (psychological problems, feelings of inferiority, low self-esteem and insecurity, etc.) as well as alcohol and / or drug use. The troubled interpersonal relations, the inability to deal with financial problems, the lack of protective mechanisms can lead to recurring violent incidents that, in the absence of intervention agencies, disturb the family life. Finally, the exo-system factors are the straw that breaks the camel's back and regularly drive the family into crisis¹⁸. The sickness or the death of a family member, the job loss, the imprisonment of a family member are some indicative situational factors.

Sociological analysis of the phenomenon thus indicates that the adoption of individual causal factors should be avoided. The usefulness of a multidisciplinary model for the causes of domestic violence is deemed as necessary, according to which cultural, sociological, psychological and exo-system factors interact to fuel violent behaviour in the family.

1.2.4. Forms of domestic abuse

Domestic violence is divided into active and passive. Active violence acts refer to physical, emotional and sexual abuse, while passive violence includes neglect, which can cause damage to victims' physical and mental health. Domestic violence includes intimate partner abuse, child abuse and elder abuse. It is interesting to note that these types of domestic abuse have been

¹⁷ E. Buzawa and C. Buzawa, *Domestic violence: The criminal justice response*. Newbury Park, CA: Sage, 1990, p.66.

¹⁸ M. Hyde-Nolan and T. Julia, 2012, pp.10-11.

investigated separately probably because they have been identified as individual social problems in different timeframes.

However, all forms are interrelated and affect the family as a whole. In particular, physical abuse covers a range of violent behaviours: bruises, broken or fractured bones, pushes, burns or scalds and can have long-term consequences as a result of simple injuries. Malnutrition, dehydration, poor personal hygiene and living conditions are examples of physical neglect.

Although psychological abuse is described as more painful than physical abuse, it can be much more difficult to be addressed. Insults, character assassination, yelling are some examples of psychological abuse¹⁹. On the contrary, emotional neglect refers to the passive attitude of indifference to emotional needs (especially of children), the lack of supervision and protection. Sexual abuse is any form of forced or unwanted sexual activity (attempted rape, sexual assault etc.)²⁰. A final form of abuse is the financial abuse, when an adult (intimate partner, elder) has control over the other partner's access to economic resource with the aim to restrict the victims' freedom²¹.

1.2.5. Prevention of abuse

The prevention of domestic violence is particularly difficult to be implemented because the factors are related to social structures and family's cultural background and exposure to violence during the childhood.

Prevention is organised on three levels²²:

1. Primary prevention refers to actions aimed at avoiding the manifestation of violent behaviour before it ever occurs. This is done by imposing structural, social, legal, educational and cultural changes (e.g. cultivating new perceptions of the women's, children's and elders' role in society or methods of disciplining and socialising children, eliminating institutions that legitimise and reward violence within society and consequently in the family such as the systematic promotion of violence by the media,

¹⁹ Refuge, Forms of domestic violence [website], <https://www.refuge.org.uk/our-work/forms-of-violence-and-abuse/domestic-violence/forms-of-domestic-abuse/>, (accessed 2 January 2020).

²⁰ *ibid.*

²¹ *ibid.*

²² VetoViolence, The levels of prevention [website], <https://vetoviolence.cdc.gov/levels-prevention>, (accessed 2 January 2020).

- as well as addressing main factors behind domestic violence such as inequality, unemployment, poverty and so on).
2. Secondary prevention aims to reduce the impact of domestic violence incident that has already occurred. Thus, it deals with early detection and treatment of high risk domestic abuse groups (this comprises health services for detection and treatment of victims who have experienced domestic abuse).
 3. Tertiary prevention focuses on the treatment of the problem, softening its impact that has lasting effects. Since there is no advantage of early detection and prevention of abuse in this stage of prevention, the goal is to protect the domestic abuse victims and improve the quality of family life by arresting the perpetrator and/or providing counseling support in order to reconcile the family members. Consequently, tertiary prevention refers to the creation of shelters for the abused woman or elderly people, the state intervention in order to avoid further deterioration of the child's condition who is at risk and the removal of perpetrators from the family home.

1.3. Types of domestic violence

1.3.1. Intimate partner violence: Causes, Forms of abuse and Effects

Intimate partner violence is a global hotly contested topic and its roots reach back into antiquity. It is an expression of power relations between the sexes, making no distinction on grounds of social class, race, religion or culture. Almost in all human societies, women were under the patriarchal yoke. The institution of marriage provided 'legitimacy' for violence against wife under certain circumstances²³. The husband's right to hit his wife was enshrined in various religions and cultures and has been sanctioned under the notion of entitlement and ownership of women²⁴.

The archetype of the "ideal" family has contributed to the late recognition of the existence of the phenomenon of domestic violence and in particular IPV. The survival behaviours of abused women have long been misdiagnosed of 'being crazy'. However, in the last decades, the development and evolution of the women's movement have put this issue in

²³ E. Dobash and R. Dobash, *Violence against wives: a case against the patriarchy*, The Free Press, 1983, p.60.

²⁴ R. Gelles, and C. Cornell, *Intimate violence in families*. Sage Publications, Beverly Hills, Calif, 1990, p.39.

the public domain and brought it to light, demonstrating that it could no longer be limited / exiled to the abyss of family privacy.

IPV is in large measure a consequence of the unequal power relations between men and women and the establishment of a domination/subordination relationship, since power and control are common features of domestic violence and of particular importance in the case of IPV²⁵. For this reason, in spite of the fact that intimate partnership abuse can be found in all relationships, both same-sex and heterosexual and cases of men abused by women in intimate relationships have been reported and are subject of research, IPV mainly concerns the abuse of women by their partners, as in terms of intensity and frequency, women are more likely to experience repeated and severe forms of abuse than men²⁶. Personality traits and social factors (stress, anxiety, marginalisation, social isolation, unemployment, poverty, alcohol use, etc.) are associated with the violence against women²⁷. Common physical injuries resulting from IPV include bruises and welts, soft tissue injuries, fractures and broken bones and sometimes IPV also extends beyond physical injury and results in death.

IPV should not be narrowly defined (e.g., only physical acts). Psychological/ emotional violence is a less talked-about form of IPV that does not affect the victim's physical integrity. Psychological intimate partner violence creates a climate of unrelenting feeling of insecurity, making women to feel being in danger constantly. Emotional abuse in intimate relationships includes indifference, threats of harm, insults, constant humiliation, violation of personal space, intimidation (e.g. destroying things), threats to take away children, financial deprivation, the alienation from both relatives and wider social environment²⁸. Sexual abuse is an additional type of behaviour of IPV and refers to force a partner to take part in a sex act when the partner does not or cannot consent²⁹.

IPV is one of the most common forms of domestic violence and in contrast to other forms of violent victimisation, experiencing IPV is rarely one-off incident but has a serial and repetitive nature. Most victims do not report IPV the first time it happens, which can be justified by women's hope that their partners would change their behaviour. Therefore, by the time they report, there have usually been multiple incidents, often with escalating violence.

²⁵ B. Hayes, 'Women's Resistance Strategies in Abusive Relationships: An Alternative Framework', *SAGEopen*, 2013, p.1, <https://journals.sagepub.com/doi/pdf/10.1177/2158244013501154>, (accessed 4 January 2020).

²⁶ Women's Aid, Domestic abuse is a gendered crime[website], <https://www.womensaid.org.uk/information-support/what-is-domestic-abuse/domestic-abuse-is-a-gendered-crime/>, (accessed 19 January 2020).

²⁷ R. Gelles, and C. Cornell, 1990, p.77.

²⁸ P. Ali, K. Dhingra and J.McGarry, 'A literature review of intimate partner violence and its classifications', *Aggression and Violent Behavior*, vol. 31, 2016, pp. 7-8. <https://core.ac.uk/download/pdf/42626433.pdf>, (accessed 11 January 2020)

²⁹ *ibid.*

The actual number of women victims of IPV may be greater than police statistics suggest due to the number of women, who do not report their abuse. The above discrepancy between official and actual cases is related to on the one hand, the private nature of *IPV*, which provides particular challenges in collecting data as most of the IPV incidents take place at home, while, on the other hand the incorrect or insufficient registration of the reported cases, a fact which creates insurmountable difficulties in the use of data regarding the qualitative and quantitative assessment, the nature and the consequences of the phenomenon. The correlation of IPV with the low socioeconomic status of households is due to the inaccessibility of accurate information given that incident-reporting systems are not representative. In any case, it must be borne in mind that statistics on IPV abuse among middle and upper class families are more difficult to obtain, because these families are more hesitant to report such an incident in the fear of culture and social stigma³⁰.

IPV leads to a host of negative effects on the victims' physical and mental health. Physical abuse often starts gradually, such as with a push or a slap, and then escalates into severe physical damage and sometimes to tragic death³¹. The psychological consequences of IPV may include: confusion, anger, frustration, irritability, sleep disturbances, sudden mood swings, low self-esteem, feelings of guilt and self-blame. The lifetime exposure of victims to IPV tends towards generation of the sense of passivity and helplessness. In addition to well-known health consequences of IPV, negative social consequences are also reported, such as stigma, resulting in barriers for the well-being of the women victims. The societal effects refer either to the societal labels and stigma that victims of IPV often encounter because of their abuse, or to intergenerational transmission of violence as the children that growing up in such a problematic domestic circumstances are also affected and tend to mimic and repeat these patterns of abusive behaviour³².

1.3.1.1. Characteristics of intimate partner violence perpetrator

The study of the perpetrator's profile cannot be achieved without making the link with the relevant form of domestic abuse they commit: situational IPV perpetrator's characteristics differs from perpetrator's characteristics, who deploys coercive controlling violence in an

³⁰ L. Walker, *The battered woman syndrome*, New York, Springer, 1984, p.44.

³¹ *ibid.*, p.99.

³² R. Gelles, and C. Cornell, 1990, p.75.

intimate relationship. In the latter case, one can distinguish between two categories; the perpetrator who is considered generally violent and have antisocial behaviour orientation and the perpetrator who develops a deep emotional dependence on the relationship with his partner. These two types have been identified by Jacobson and Gottman, as "Cobras" and "Pit Bulls" respectively. "Cobras" is the unstable perpetrator, characterised by higher levels of violence severity, lack of empathy and a greater likelihood of violence outside the family. "Pit Bulls" is the family-only perpetrator and the most common type of IPV perpetrator. He is emotionally dependent on his partner and out of fear of abandoning him, oppress and control his partner, but is also less likely to have substance use or other mental health disorders than the other type³³.

Taking into account the peculiarities of each of the types of IPV, one can summarise some characteristics that make up the perpetrator's personality. The IPV perpetrator, therefore, comes from all walks of life and economic backgrounds, regardless of nationality, religion or cultural background. The perpetrator has low self-esteem and high levels of stress, as he feels that he does not control his life and he does not meet the social expectations. The perpetrator often expresses insecurity, pathological jealousy over his partner's autonomy. Furthermore, it is likely that abuser endorses traditional gender and role-based perception³⁴. Several risk factors, such as mental illness, alcohol consumption, drug use, and exposure to abuse during childhood, have been linked to the perpetrator's profile, though, any correlation of IPV violence with drug and alcohol use need to be made carefully. Indeed, alcohol or drug use can be found in a high percentage of IPV cases, however, they cannot be considered as causes of IPV³⁵. Finally, the factor of childhood abuse has an impact on a perpetrator's future relationships and has been ascertained in a significant percentage of cases.

1.3.1.2. Characteristics of intimate partner violence victim

Widely-believed and deep-rooted misconceptions about the victim's profile have been profoundly damaging to the address of the phenomenon. On the one hand, the prevailing stereotypical belief that the reason an abused woman remains in such a relationship is because she is masochistic, and on the other hand, the notion that "good wives" can avoid assaults, by modifying their behaviour (i.e be less provocative and less aggressive) to please their partners.

³³ P. Ali, K. Dhingra and J. McGarry, 2016, pp. 20-21.

³⁴ L. Walker, 1984, p. 58.

³⁵ R. Gelles, and C. Cornell, 1990, pp. 18, 74.

The characteristics of the IPV victim include the lack of self-esteem, internalisation of traditional gender norms and passivity. It is also a fact that IPV does not only represent a problem of victims holding low status occupations and low education level, even if this factor makes it more difficult for them to break free from their abusive partners. This fact suggests that even an well -educated and dynamic woman may experience IPV, and that observed passivity in her behavior may be the result of abuse and not a component of her personality. Similarly, characteristics such as the undermining of her achievements and self-worth and the constant questioning of her abilities are also prevalent. Additionally, high risk factors, such as economic status, substance abuse, women belonging in ethnic minority groups contribute to likelihood of victimisation. In particular, women, raised in a violent home are more likely to normalise violence and thus have a greater tolerance for IPV³⁶.

Identifying and analysing particularities of IPV abuse can provide answers to the commonly asked question of why does she stay? The specific pattern that most abusive relationships follow can be divided into four stages³⁷. These four phases are evident in the majority of violent intimate partner relationships. In the tension building stage, strain begin to build between a couple, before an abusive act occurs. The victim may not even realise that her partner is being abused³⁸. The next stage of " incident of abuse" is characterised by acts of violence and the perpetrator tries to establish his dominance over his partner³⁹. It is followed by the "honeymoon" stage in which the abuser apologises for his behaviour and is likely to appear remorseful, repentant and sad. If the victim has not yet been persuaded to give a second chance to the relationship, he does his best to persuade her by showering the victim with gifts and making promises⁴⁰. The "calm" phase is considered an extension of the "honeymoon" phase. It is when the relationship seems calm and peaceful like an oasis in the desert, leading the victim to believe that the abuser really has 'changed'and presenting how much he has changed. Sadly, though, new conflicts inevitably arise, making the victim to feel trapped in a vicious circle.

In contrast to the stereotypes, women stay in a violent relationship not only for fear of how the perpetrator will react but also because of the unavailability of resources to help them

³⁶ L.Artz, T. Meer and A. Muller, 'Women's Exponsure to Sexual Violence across the Lifetime: An African Perspective', in S. Choudhury, J. Erasquin and J. Withers (eds.), *Global Perspective on Women's sexual and reproductive health across the life course*, Switzerland, Springer,2018,p.283.

³⁷ L. Walker,1984, p. 77.

³⁸ *ibid.*, pp.78-79.

³⁹ *ibid.*, p.80.

⁴⁰ *ibid.*, pp.81-82.

when they seek help⁴¹. Thus, women are active survivors, who try to escape but are limited by the social structure⁴².

1.3.2. Elder/child abuse in the domestic setting

Beyond the violence between intimate partners, both children and elderly family members often become victims of domestic violence. As regards the child maltreatment, it can take any form of physical, verbal, psychological, sexual abuse and neglect (e.g malnutrition, untreated medical problems, poor hygiene)⁴³. Specifically, the type of psychological abuse is harder to be recognised, as consists a pattern of intentional verbal or behavioural actions or lack of actions (rejection, isolation, the absence of emotional response). Witnessing abuse is also considered an indirect form of violence against children. The so-called "bystander effect" has been associated to several negative effects on the health, psychology, and development of minors⁴⁴.

Coexistence of IPV, elder abuse and child abuse under the same roof is a common phenomenon on both the perpetrator and the victim side. For example, it is possible an partner-perpetrator to be abusive towards his or her children, especially in the case of coercive control violence⁴⁵, while the partner-victim may also show abusive behaviour towards his/her children because of the oppression she experiences⁴⁶.

The erroneous application of the notion of the duty to discipline the child carries with it the right to inflict pain, has kept violence against children in the shadows for a long time, but there is no doubt that any form of child abuse is a criminal offense.

The abuse of an elderly family member occurs more frequently in the form of neglect⁴⁷, but there are also cases of physical and psychological violence or economic exploitation.

⁴¹ R. Gelles, and C. Cornell, 1990, p.17.

⁴² B. Hayes, 2013, p.10.

⁴³ M. Doak, *Child abuse and domestic violence*, 1st edn., USA, Thomson Gale, 2007.

⁴⁴ M. Johnson and K. Ferraro, 'Research on Domestic Violence in the 1990s: Making Distinctions', *Journal of Marriage and the Family*, vol. 62, no. 4, 2000, p.957.

⁴⁵ J. Kelly and M. Johnson, 'Differentiation among types of intimate partner violence: Research update and implications for interventions', *Family Court Review*, vol. 46, no.3, 2008, p. 493.

⁴⁶ H. Buckley, S. Holt and S. Whelan, 'Listen to me! Children' s experiences of domestic violence', *Child Abuse Review*, vol. 16, no. 5, 2007, p. 297.

⁴⁷ E. Fattah and V. Sacco, *Crime and Victimization of the Elderly*, 1st edn., New York, Springer-Verlag, 1989, p.170.

According to Fattah, the abuse of the elderly in domestic settings can be explained by the need of the abuser to gain control over the elder, using a pattern of coercive tactics⁴⁸.

The study of the most important forms of domestic violence highlights that abuse occurs because of the victim's dependence on the abuser. Therefore, the emergence of this aspect of the phenomenon, which resembles with a persistent state of torture in which the victim is powerless, vulnerable and, to some degree, dependent on the perpetrator, is vital.

⁴⁸ *ibid.*,p.172.

Chapter 2. A Legal Perspective

Legal frameworks on Domestic Violence

The following outlines the international and European and national actions taken by the United Nations, the Council of Europe, the European Union and the UK to address domestic violence as part of a comprehensive approach to combating violence against women. Specifically, an attempt is undertaken in this chapter to place the more recent conventions and international instruments in context as regards the analysis of domestic violence as a human rights issue.

2.1. International Legal Framework

The advancement of women's human rights, as a central objective, has attracted the United Nations' attention since 1946, when the United Nations Commission on the Status of Women was established with a view to study and observe the status of women and to promote women's rights worldwide⁴⁹. The Commission work led to the adoption of many declarations and conventions, of which the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1979. The implementation of CEDAW is supervised by the Committee on the Elimination of Discrimination against Women. In 1992, the Committee in its General Recommendation No. 19, asserted that violence against women is a form of discrimination. Overall, the said Convention promotes the equality of rights of men and women, guaranteeing women the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men⁵⁰.

Then, in 1993, the United Nations General Assembly adopted the Declaration on the Elimination of Violence against Women which, along with General Recommendation No. 35, provides for the concept of due diligence obligation of States⁵¹. The importance of this principle lies in the fact that the missing link between human rights obligations and acts of private persons is provided. In 1994, the Committee on Human Rights, by Decision 1994/45, resolved to

⁴⁹ United Nations (UN), Convention on the Elimination of All Forms of Discrimination against Women New York [website], 1979, para. 2, <https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx> (accessed 7 February 2020).

⁵⁰ B. Stark, Domestic Violence and International Law: Good-Bye Earl (Hans, Pedro, Gen, Chou, etc.), 47Loy. L. Rev.255,2001, pp. 264 -265, https://scholarlycommons.law.hofstra.edu/faculty_scholarship/372 (accessed 2 February 2020).

⁵¹R., McQuigg, Domestic Violence as a Human Rights Issue: Rumor v. Italy, *European Journal of International Law*, vol. 26, no. 4, sec. 2, <https://doi.org/10.1093/ejil/chv057> (accessed 7 February 2020).

appoint a Special Rapporteur on violence against women¹⁴, entrusted with tasks of investigating and monitoring the causes and consequences of violence against women and also recommending and promoting solutions for its elimination⁵².

In 2011, in her annual report⁵³, Special Rapporteur Rashida Manjoo highlighted the interaction of interpersonal, institutional, and structural violence and argued for the need to take holistic measures to eliminate violence against women¹⁴³. This holistic approach involves the recognition of women's rights as universal, interdependent, and indivisible.

The Beijing Action Platform⁵⁴, adopted in 1995 during the Fourth World Conference of the United Nations, was a landmark institutional text. Based on it, violence against women was defined as "a manifestation of the historically unequal power relations between men and women", which was one of the main obstacles that we faced in achieving the women's full advancement. In 2005, in 2010, in 2015 and in 2020, the CSW carried out reviews of the implementation of the Action Platform, and a series of Resolutions on the spread of HIV to women and girls, on the release of women and children taken hostage, in armed conflicts, the economic empowerment of women, and Decisions on achieving the goals of equality and empowerment of women were adopted⁵⁵.

In 2010, the establishment of the the United Nations Entity for Gender Equality and the Empowerment of Women by the United Nations General Assembly was a milestone on the long road towards women's rights⁵⁶. The responsibility of this entity is to promote the elimination of laws that discriminate against women and/or have a discriminatory impact on them, to support intergovernmental bodies, such as the Commission on the Status of Women in policy making and Member States in implementing the relevant measures and providing technical and financial assistance to the countries in need.

⁵² *ibid.*

⁵³ Human Rights Council, 'Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo', 2011, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/130/22/PDF/G1113022.pdf?OpenElement>, (accessed 14 February 2020).

⁵⁴ United Nations, 'Report of the Fourth World Conference on Women – Beijing, 1995, <http://www.un.org/womenwatch/daw/beijing/pdf/Beijing%20full%20report%20E.pdf>, (accessed 14 February 2020).

⁵⁵ United Nations, Commission on the Status of Women, 'Report on the Fifty-fourth session (13 March and 14 October 2009 and 1-12 March 2010)', 2010, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N10/305/76/PDF/N1030576.pdf?OpenElement> (accessed 12 February 2020).

⁵⁶ United Nations, About UN Women [website], para. 4. <https://www.unwomen.org/en/about-us/about-un-women>, (accessed 14 February 2020).

In 2017, the CEDAW Committee further elaborated international standards on gender-based violence against women in its General Recommendation No. 35. Under this obligation, States have a duty to take positive action to prevent and protect women from violence⁵⁷.

2.2. Regional Legal Framework

2.2.1. Council of Europe

The Council of Europe is playing a leading role in preventing and combating all forms of violence against women through ground-breaking standards. It was until 1979, more than twenty (20) years after its formation, that the Council of Europe took substantive steps in relation to domestic violence by passing the Recommendation No R (79) 17 concerning the protection of children against ill – treatment. This was followed by several other events that led to the adoption of Recommendation (85) 4 on Violence in the Family, the Recommendation No R (90)2 on social measures concerning violence within the family, and the 1993 Declaration during the third European Ministerial Conference on Equality between women and men, focused on “strategies for the elimination of violence against women in society: the media and other means”⁵⁸.

An important initiative was the adoption of Recommendation (2002) 5 on the protection of women against violence in 2002 by the Committee of Ministers. Violence against women was recognised as a key structural and social problem arising from unequal relations between men and women. In the definition of domestic violence was included the physical abuse, psychological abuse, sexual abuse, marital rape, forced marriages, and crimes in the name of honour. weddings. Members have been called upon to introduce and develop national policies against violence, to adjust their criminal and civil law and to classify all forms of violence

⁵⁷ Council of Europe, *UN Committee on the Elimination of Discrimination against Women (CEDAW) adopts a new General Recommendation on gender-based violence against women* [website], <https://www.coe.int/en/web/genderequality/-/un-committee-on-the-elimination-of-discrimination-against-women-cedaw-adopts-a-new-general-recommendation-on-gender-based-violence-against-women>, (accessed 17 February 2020).

⁵⁸ R., McQuigg, *The Istanbul Convention, Domestic Violence and Human Rights*, 2017, ch. 3, [https://books.google.co.uk/books?id=hHo2DwAAQBAJ&pg=PT59&lpg=PT59&dq=Recommendation+\(85\)+4+on+domestic+violence1&source=bl&ots=IHaef_RMKe&sig=ACfU3U3re1_PdEBoz6XWGAw4bepuKL3AYQ&hl=en&sa=X&ved=2ahUKEwje2IP13MDpAhUbiFwKHdeIAcEQ6AEwAHoECAoQAQ#v=onepage&q=Recommendation%20\(85\)%204%20on%20domestic%20violence1&f=false](https://books.google.co.uk/books?id=hHo2DwAAQBAJ&pg=PT59&lpg=PT59&dq=Recommendation+(85)+4+on+domestic+violence1&source=bl&ots=IHaef_RMKe&sig=ACfU3U3re1_PdEBoz6XWGAw4bepuKL3AYQ&hl=en&sa=X&ved=2ahUKEwje2IP13MDpAhUbiFwKHdeIAcEQ6AEwAHoECAoQAQ#v=onepage&q=Recommendation%20(85)%204%20on%20domestic%20violence1&f=false), (accessed 14 February 2020).

within family as criminal offences raising of public awareness and education of children empowerment of support and assistance structures⁵⁹.

In May 2005, task force to combat violence against women including domestic violence was implemented. The aim of which was to set up a pan-European campaign and to evaluate progress at national level for quantifying developments with a view to drawing up proposals for action⁶⁰. According to the Recommendation CM/Rec(2007)17 of the Committee of Ministers to member states on gender equality standards and mechanisms, adopted by the Committee of Ministers on 21 November 2007, violence against women “is one of the most serious violations of human rights and fundamental freedoms of women and an obstacle to the enjoyment of those rights and freedoms”⁶¹. Thus, the elimination of violence is emerging as a significant socio-political issue for achieving equality.

Convention on preventing and combating violence against women and domestic violence (also known as the Istanbul Convention)⁶², which was adopted by the Committee of Ministers of the Council of Europe on 7 April 2011 and entered into force on 1 August 2014, is a milestone achievement in this respect. Contrary to CEDAW, the Istanbul Convention encompasses mention of domestic violence and therefore, the perception of domestic violence as constituting a human rights issue⁶³. The Istanbul Convention understands violence against women as a structural and social, rooted in historically unequal power relations between the two sexes. It also acknowledges that domestic violence affects women disproportionately.

The objectives of the Convention are, among other things, to protect women against all forms of violence, by preventing violence against women, protecting its victims, prosecuting the perpetrators, eliminating all forms of discrimination, promoting equality and international cooperation (Article 1). The definition of violence against women in Article 3 is understood as “a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life”.

⁵⁹ *ibid.*

⁶⁰ *ibid.*

⁶¹ Council of Europe Committee of Ministers, Recommendation Rec(2007)17 of the Committee of Ministers to member states on gender equality standards and mechanisms adopted on 21 November 2007 and explanatory memorandum, 2007, https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805d4aa3, (accessed 14 February 2020).

⁶² Council of Europe, Convention on preventing and combating violence against women and domestic violence, 2011, <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168008482e>, (accessed 18 February 2020).

⁶³ R. McQuigg, 2017, ch. 4.

The Convention places a robust framework for addressing these issues by adopting not only legislative measures (Articles 18 & 29) but also information measures (Articles 12 and 17), awareness-raising measures (Article 13) measures regarding education (Articles 14 and 15) and research (Article 11) with the aim to promote changes in the social and cultural patterns of behaviour of women and men.

In addition, the effective cooperation with non-governmental organisations in combating violence against women (Article 9) as well as the establishment of one or more official bodies responsible for the co-ordination implementation and evaluation of policies and measures (Article 10) are promoted. The need of providing specialist support services, protecting victims, punishing offenders and access to alternative dispute resolution processes voluntarily is also highlighted in Article 23, 46 and 48 respectively of the Convention.

The most recent actions of the Council of Europe in the fields of human rights and gender equality, the adoption of the 2017 Recommendation CM/Rec (2017)9 on gender equality in the audiovisual sector and the 2019 Recommendation CM/Rec (2019)1 to prevent and combat sexism, catch up with the modern age, bringing member states closer to real equality between women and men⁶⁴.

2.2.2. European Union

The Daphne Initiative was launched in May 1997 by European Union in an attempt to establish an European area of freedom, security and justice. It became an important part of the NGO and public authority action in Europe, as the support of cross-border cooperation to protect children and women from violence was the primary aim of the Initiative⁶⁵. That same year, the European Parliament urged the Commission to launch a campaign to declare European Union's zero tolerance for violence against women⁶⁶. In 1999, the Treaty of Amsterdam reaffirmed the European Union's commitment to eliminate gender-based discrimination and to ensure equal opportunities and equal enjoyment of fundamental rights by men and women¹⁵⁷. The Treaty

⁶⁴ Council of Europe, *Standards and Mechanisms* [website], <https://www.coe.int/en/web/genderequality/standards-and-mechanisms>, (accessed 17 February 2020).

⁶⁵ European Commission, *The Daphne Toolkit – An active resource from the Daphne Programme* [website], para. 1. <http://ec.europa.eu/justice/grants/results/daphne-toolkit/>, (accessed 14 February 2020).

⁶⁶ European Union:European Parliament, *Resolution on the need to establish a European Union wide campaign for zero tolerance of violence against women, Official Journal of the European Union C 304*, 1997, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A51997IP0250>, (accessed 17 February 2020).

of Amsterdam⁶⁷ along with the Lisbon Treaty changed the political situation: in the field of gender equality.

During the period 2000-2003, the "DAPHNE Programme" was EU-funded and implemented to complement the activities of Member States, by promoting cross-border projects in the area of education, research and information campaigns to identify best practices to deter violence against women and children⁶⁸. The promotion of gender equality and the elimination of discriminations in all EU policy areas are also codified in the Lisbon Treaty (Article 3)⁶⁹. In the paragraphs on values and objectives of the Treaty, explicit reference is also made to equality between women and men.

2.3. National Legal Framework

Multiple legal solutions have been adopted in England to protect victims in contexts of domestic abuse. In England, both criminal law and civil law deal with domestic abuse cases.

2.3.1. Civil Law

English legislation regarding the protection of women and children who witness domestic violence has been relatively slow to develop. Up until the 1970s, domestic violence was hardly viewed as an issue that ought to be tackled by the legal system. The Domestic Violence and Matrimonial Proceedings Act (1976) and the Domestic Proceedings and Magistrates' Courts Act (1978) consist the first attempts of the UK to emerge civil legislation aimed at providing remedies for domestic violence⁷⁰. These early legislations dealt mainly with aspects of equal protection to victims and included removal and non-molestation orders. However, actors within the criminal justice system continued to display a reluctance to apply

⁶⁷ European Union: European Parliament, Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts, *Official Journal of the European Union C 304*, 1997, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:11997D/TXT&from=EN>, (accessed 16 February 2020).

⁶⁸ European Commission, para.2, <http://ec.europa.eu/justice/grants/results/daphne-toolkit/>, (accessed 14 February 2020).

⁶⁹ European Union: European Parliament, Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, *Official Journal of the European Union*, 2007, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:C:2007:306:TOC>, (accessed 17 February 2020).

⁷⁰ S. Graca, 'Domestic violence policy and legislation in the UK. A discussion of immigrant women's vulnerabilities', *European Journal of Current Legal Issues*, vol.23, no. 1, 2017, sec. 2, <http://webjcli.org/article/view/531/715>, (accessed 13 February 2020).

ouster orders and to provide substantial protection for former cohabitants, reducing the practical value of this mechanism⁷¹. In 1997, the Housing (Homeless Persons) Act was passed, which forced the local authorities to provide victims of domestic abuse with accommodation⁷². Many researches carried out in the UK during the late 1970s reflect the hesitancy of the police to intervene violent incidents resulting from domestic disputes⁷³. This attitude was directly attributed to the notion that violence against women taking place in the home was not criminal in nature.

From the 1990s, a start of a new era for the English legislation began, and which is filled with hopes for addressing the lack of coherence of existing legislation. The introduction of the Part IV of the Family Law Act (1996), Part IV, amended by the Civil Partnership Act 2004 (section 82, Schedule 9), shows that UK had got off to a brisk start, and the steps taken had been on the right track. The legal recognition of the multifaceted nature of violence was set up with the Family Law Act, such as the court's powers to grant non-molestation and occupation orders, which are the two main civil law remedies of addressing domestic violence⁷⁴. However, the Family Law Act 1996 could be characterised as discriminatory legislation, inasmuch it did not apply to co-habited or same sex couples. The following year, another significant piece of legislation was the Protection from Harassment Act (1997), which extends to both civil and criminal law and deals with violence from outside the home⁷⁵. In addition, Crime and Security Act 2010: Domestic Violence Protection Notices (DVPN) and Domestic Violence Protection Orders (DVPO) are two of the most recent acts. Their goal is the speedy police response to victims' immediate needs.

⁷¹ *ibid.*, sec. 2.1.

⁷² A. Matczak, E.Hatzidimitriadou, and J. Lindsay, 'Review of Domestic Violence policies in England and Wales', London, Kingston University, 2011, p.8, <https://eprints.kingston.ac.uk/18868/1/Matczak-A-18868.pdf>, (accessed 13 February 2020).

⁷³ S. Graca, 2017, sec.2.

⁷⁴ A. Musgrove and N. Groves, 'The Domestic Violence, Crime and Victims Act 2004: Relevant or "Removed" Legislation?', *Journal of Social Welfare and Family Law*, vol. 29, no. 3–4, 2008, p. 235.

⁷⁵ *ibid.*, pp.235-336.

2.3.2. Criminal Law

In 2004, the Domestic Violence, Crime and Victims Act was introduced. According to Home Office, DVCVA 2004 is “the biggest piece of legislation on domestic violence in over 30 years”⁷⁶. Indeed, the DVCVA is a landmark legislation, which introduced major changes to the law on domestic violence. Specifically, the legal value of this act lies in the fact that it introduced amendments to existing civil and criminal offences: the situations of the breach of a non-molestation order (section 1) and common assault (section 10) become a criminal matter, providing protection to a wider range of victims of domestic violence⁷⁷. By amending Part 4 Family Law Act (FLA) 1996, DVCVA recognised those experiencing domestic violence are not only heterosexual couples and included parties of same-sex relationships. In addition, it creates the offence of ‘allowing the death of a child or vulnerable (section 5), which has great significance in the English legislation⁷⁸.

In 2014, the national roll-out of the Domestic Violence Disclosure Scheme, also known as Clare’s Law throughout England and Wales, which is a non-statutory scheme, increased the tools available to the police to enhance the protection of domestic violence victims⁷⁹.

These initiatives in the legal framework on domestic violence along with the English legislature” approach towards domestic violence policy as a criminalisation of social issue demonstrate the UK's extensive efforts to address this significant social problem, which has been increasingly recognised by the UK society and government as such. However, current criminal law fails to explicitly criminalise domestic violence and as a result the *cost* of this weakness is borne and shared by society⁸⁰. The study of the English criminal law also highlighted two central problems: firstly, the traditional understanding of criminal law as a tool for social control and punishment of the offenders does not contribute to the adoption of the idea to help the victims in domestic violence cases. Secondly, despite the recent policy

⁷⁶ Home Office, 'The Domestic Violence, Crime and Victims Act 2004' (Home Office Circular 9/2005), p.3 <http://www.homeoffice.gov.uk/about-us/publications/home-office-circulars/circulars-2005/009-2005/> (accessed 13 February 2020).

⁷⁷ S. Edwards, 'More protection for victims of domestic violence (The Domestic Violence, Crime and Victims Act 2004', *The Denning Law Journal*, 2006, p. 243, https://www.researchgate.net/publication/323364447_Vol_18_No_1_2006_MORE_PROTECTION_FOR_VICTIMS_OF_DOMESTIC_VIOLENCE_THE_DOMESTIC_VIOLENCE_CRIME_AND_VICTIMS_ACT_2004, (accessed 15 February 2020).

⁷⁸ A. Matczak, E.Hatzidimitriadou, and J. Lindsay, 2011, p.10.

⁷⁹ S. Graca, 2007, sec. 2.2

⁸⁰ A. Matczak, E.Hatzidimitriadou, and J. Lindsay, 2011, pp.11-12.

developments supporting a pro-arrest approach, the emergence of domestic abuse as a private matter between partners makes still the society be reluctant to become involved in⁸¹.

⁸¹ *ibid.*

Chapter 3. Critical analysis

This chapter contains a critical analysis attempting to establish and forward positions concerning the effective legal treatment of the phenomenon of domestic violence, by determining to what extent English criminal law, focusing primarily on DVCVA, responds to needs of women victims combined with the prior theoretical assumptions.

A legislative approach that simplify and systematically reshape the domestic violence policy is needed from the outset for an issue as complex as domestic violence. Due to the indisputable criminal nature of domestic violence, the preparation of legislative provisions was deemed as a necessary measure to address victims' needs.

Legislative regulation of domestic violence in England did not took place through the drafting of a single dedicated law but instead is spread across various statutes. This legal solution led to all sorts of reactions and comments, both positive and negative. The adoption of a unified legal framework for responding to domestic violence falls within the nature and logic of a better and more consistent way of regulating important matters, as it facilitates the application of its provisions without the need of constant amendments of multiple acts⁸². On the other hand, the non-adoption of a single law relating to the legal treatment of domestic violence has some advantages. It appears from that review that, in objective reality, domestic violence is manifested by different ways that need to be regulated specifically through the standardisation of separate objective cases. Moreover, the practice of indiscriminate treatment of any domestic violence case can be detrimental, while each type of domestic violence requires different legal treatment appropriate to its unique characteristics.

Moreover, the non-existence of a definition of “family” in the English legislation merits consideration. The family is protected as an institution by the law due to its historically deeply rooted social significance. However, the reference to family protection was deemed useless by legislators, as the attempt to tackle the phenomenon of domestic violence on the basis of family protection, had been a way of legislative perception and action in the past, when the family played a different socio-economic role as a productive unit⁸³. Legislature, nowadays, is fully entitled to punish the relevant acts of violence, as they constitute a blatant violation of individual

⁸² COUNSEL, Draft domestic abuse bill [website], <https://www.counselmagazine.co.uk/articles/draft-domestic-abuse-bill-progress-or-pitfall>, (assessed 2 April 2020).

⁸³ H. Ross, and I. Sawhill, ‘The Family as Economic Unit’, *The Wilson Quarterly* (1976-), vol. 1, no. 2, 1977, p. 85, *JSTOR*, www.jstor.org/stable/40255183, (accessed 2 April 2020).

rights. Therefore, a crime, occurring in the context of a family or intimate relationship, does not change the nature of the punishable offence, but on contrary it disdains this unlawful act.

Even though, England has strengthened its criminal weaponry over time to deal with the phenomenon of domestic violence, the roots of which are as ancient as they are deep, its criminal justice still faces a plethora of challenges and limitations⁸⁴. The reason behind it is that it has not been fully adapted to the complexities and dynamics of this phenomenon. The review of DVCVA shows the failure of the criminal justice to grasp the actual dimension of domestic violence, whilst women are affected notably by the lack of efficiency of the measures.

Firstly, criminal justice misses the real scale of the problem by emphasising heavily on the physical abuse and not going beyond it, when in fact a woman is abused not only when she has suffered physical violence⁸⁵. There is a legal focus on physical violence that prevents the criminal justice system from responding effectively to domestic violence⁸⁶.

Moreover, the criminal justice has not always been commensurate with the emotional violence experienced by domestic violence victims, which is perceived to be the least harmful of a range of scenarios⁸⁷. However, fear and control in a relationship can be established through threats, isolation, and psychological abuse, even when no physical injury is involved. Consequently, the inefficiency of criminal justice response to types of domestic violence, which involve a series of incidents with little physical evidence, makes victims to refrain from reporting abuse to the police⁸⁸. In this context, the DVCVA left unaddressed the issue of domestic-violence-related suicide. It is clear that ‘considered’ or ‘attempted’ suicide is associated to domestic violence but simultaneously is uncharted waters and therefore legal steps must be taken by introducing relevant provisions to address this vital issue⁸⁹.

The scope and nature of domestic violence can be illustrated by Stanko’s quotation: “what violence means is and always will be fluid, not fixed; it is mutable”⁹⁰. That short phrase of fourteen words reflects and condenses the difficulties that criminal justice faces regarding conception of violence. Therefore, its unclear boundaries create grey zones in the legal response to domestic violence and the lack of definition of “domestic violence” in DVCVA 2004, which

⁸⁴ S. Edwards, 2006, p. 246.

⁸⁵ C. Bishop, *The limitations of the legal response to domestic violence in England and Wales: a critical analysis*, ProQuest Dissertations Publishing, 2013, p. 168.

⁸⁶ *ibid.*, p. 167.

⁸⁷ *ibid.*, p. 170.

⁸⁸ Her Majesty’s Inspectorate of Constabulary (HMIC), *Increasingly everyone’s business: A progress report on the police response to domestic abuse., 2015* <https://www.justiceinspectors.gov.uk/hmicfrs/wp-content/uploads/increasingly-everyones-business-domestic-abuse-progress-report.pdf>, p. 28

⁸⁹ A. Musgrove and N. Groves, 2008, p.241.

⁹⁰ E. Stanko (ed.), *The Meanings of Violence*, London, Routledge, 2003, p. 3.

instead can be found in the Home Office in Domestic violence: a national report⁹¹, “Any incident of threatening behaviour, violence or abuse (psychological, physical, sexual, financial or emotional) between adults who are or have been intimate partners or family members, regardless of gender or sexuality”, intensifies the problem⁹².

Preserved myths about domestic violence water down the good intentions of the criminal justice and lead to misinformed legal responses. For example, leaving from an abusive relationship is not always a free choice and can be more complicated than it seems⁹³. Reporting an abuse does not automatically mean an effective and quick legal response to the abuse. On the contrary, the persistence of past practices along with the limited capacities of English criminal justice system to process domestic violence tend to stand in the way of its becoming more effective. So, the misconception, that women have some control over the violence and would leave the relationship if they wanted to, does not reflect the reality⁹⁴. Aside from the fear of the abuser, the desire of maintaining the family, the concerns for the children and the financial dependence of women on their abusive partners are some additional reasons for not reporting the violence to police.⁹⁵

Still, the implications of the operation of section 5 of DVCVA for women victims of domestic violence can be devastating. This section introduces a new kind of homicide offence of “causing or allowing the death of a child or vulnerable adult”⁹⁶. The main goal of the legislators was to overcome the difficulty that the vexing question of “who is to blame” poses when domestic violence leads to a child death⁹⁷. However, this section involves the significant risk of convicting abused women that were unable to protect their children⁹⁸. In addition, nevertheless, victims of domestic violence are frequently not aware of the domestic violence

⁹¹ Home Office, Domestic violence: a national report, Home Office, 2005, cited in S. Edwards, ‘More protection for victims of domestic violence (The Domestic Violence, Crime and Victims Act 2004’, The Denning Law Journal, 2006, p. 246, https://www.researchgate.net/publication/323364447_Vol_18_No_1_2006_MORE_PROTECTION_FOR_VICTIMS_OF_DOMESTIC_VIOLENCE_THE_DOMESTIC_VIOLENCE_CRIME_AND_VICTIMS_ACT_2004, (accessed 15 February 2020).

⁹² S. Edwards, 2006, p. 246.

⁹³ C. Humphreys and R. Thiara, ‘Neither Justice nor Protection: Women’s Experiences of Post-Separation Violence, *Journal of Social Welfare and Family Law*’, vol 25, no. 3, 2003, pp. 198-199.

⁹⁴ S. Strega, J. Krane, S. Lapierre, and C. Richardson (eds.), *Failure to protect: Moving beyond Gendered Responses*, Winnipeg, Fernwood Publishing, 2013, p. 53.

⁹⁵ Women’s Aid, Why don’t women leave abusive relationships?[website], <https://www.womensaid.org.uk/information-support/what-is-domestic-abuse/women-leave/>, (accessed 4 April 2020).

⁹⁶ Domestic Violence, Crime and Victims Act 2004 s. 5

⁹⁷ S. Edwards, 2006, p.251.

⁹⁸ The UK case *R v Stephens (Jerry) and Mujuru (2007) EWCA Crim 1249* provides a clear example of the problem.

protection legal framework to react and protect themselves and their children, the courts do not give weight to such a fact⁹⁹.

Criminal justice seems to be losing the battle of promoting gender equality. It fails to identify that domestic violence against women has its roots in the unequal position of women in society and gender role stereotypes. The consequences of doing too little about domestic violence have a detrimental impact on the future wellbeing of women. This poor criminal justice response to domestic violence gives the green light for maintaining patriarchy¹⁰⁰.

To sum up, the credibility and symbolic function of the criminal justice as guarantor of the social order has been damaged by these gendered practices, which favour the occurrence of domestic violence. So, it can be said that criminal justice agencies have been transformed into the main contributors to the problem, perpetuating the gender stereotypes.

⁹⁹ C. Bishop, 2013, p. 162.

¹⁰⁰ *ibid.*, pp. 165-166.

Conclusions

It is by now broadly acknowledged that the domestic violence issue is a chronic and complex issue. It is the result of deep-rooted and structural discrimination. This phenomenon is occurring at breakneck pace, as women suffer high rates of violence in the home, and countries cannot afford to ignore it, so preventing and addressing domestic violence against women is therefore a crucial act. The mobilisation of law and criminal justice interventions are considered necessary in these cases. Legislative measures and reforms, such as the change of the way family courts handle cases involving domestic violence, are undoubtedly important guarantors of the social control of gender stereotypes that condone gender-based violence against women. However, the policy and legal reform to tackle the phenomenon of domestic violence is slow, due to the fluctuation of governments and public attention to this issue and the perpetuation of the gendered norms placed on masculinity and femininity in the legal system.

Outside the scope of criminal justice, this complex phenomenon needs to be addressed through a whole range of different measures; the adoption of further remedies, social actions and measures in relation to underpinning the structural inequality of women with men are seen to be needed. It would be even more useful for combatting domestic violence to develop prevention programs and to provide support services to the domestic abuse victims even before the involvement of criminal law, like free counseling / treatment programs and sessions for victims and more generally raising the public-awareness about the criminal nature of such acts, victims' rights and related proceedings. The creation of women's shelters, as a place of temporary protection and support for women escaping domestic violence, the provision of medical services, psychological and legal support would be also a more resolute approach to address this issue. In addition, the acceptance of diversity is a very positive step in combating structural inequality.

Any attempt to deal with the domestic violence, without developing actions to eliminate its root causes effectively, would be doomed. Education is key facilitators who can help dispel gender stereotypes that promote violence in the domestic settings. Furthermore, increasing public awareness of all the forms of this phenomenon and its consequences could certainly contribute significantly to rid society of the notion that domestic violence is a private matter¹⁰¹.

¹⁰¹ K.Ingala and Women's Aid Federation of England working in partnership, with support from Freshfields Bruckhaus Deringer LLP and Deloitte LLP, *The Femicide Census: 2017 findings. Annual Report on cases of Femicide in 2017*, 2018, <https://1q7dqy2unor827bqjls0c4rn-wpengine.netdna-ssl.com/wp-content/uploads/2018/12/Femicide-Census-of-2017.pdf>, pp.41-42, (accessed 10 April 2020).

In conclusion, combating domestic violence against women can bear fruits only if there are a universal application to women of the rights and principles of equality and an understanding of peculiarities of each distinct type of domestic violence. Nothing could better illuminate the potency of this social problem than the fact that women are “ignored” in societies.

Domestic violence is first and foremost an appalling crime. Violence should not be the heavy price the women are made to pay, within the scope of the IPV, because of the wrong choice of partner. Women should not stay in abusive relationships for the sake of their children. Even though the majority of the domestic violence awareness movement has focused on heterosexual relationships, framing of domestic abuse as a pattern of violence or abuse that occurs within same-sex relationships as well, brings to light the social nature of the problem.

Domestic violence is not taboo. It is not a common secret. Life without being in this state of constant worry about living in anxious expectation of blows is an innate and inalienable right to human dignity. Adopting appropriate measures to tackle this problem constitutes state obligation and social responsibility. There are still many gaps to be covered, although the literature that studies violence in the domestic settings has grown productively during the last two decades. A better multi-disciplinary approach is needed to address this phenomenon holistically.

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