Domestic Violence: Recent Developments in German and English Legislation and Law Enforcement

1. INTRODUCTION

Domestic violence accounts for around 16 per cent all violent crime in Britain at a cost in excess of £23 billion a year (about 34 bn Euro). German and British studies have revealed that domestic violence incidents claim the lives of two women each week and 30 men per year and that it is the largest cause of morbidity worldwide in women aged 19-44; greater than war, cancer or motor vehicle accidents. Stanko et al (1998) noted that domestic violence affects one in four women, and one in six men in their lifetime. Has anything changed in terms of ‘the family’ or has domestic violence always occurred but was never talked about in society? This article will firstly look at the historical development of the notion of ‘family’ and then look at German and English research findings in relation to domestic violence.

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1.1 What is ‘domestic violence’?

It has become commonplace to refer to ‘domestic violence’ in many policy and practitioner circles, even though there are a number of different definitions in active use. Starting with the word ‘domestic’ is it a substitute for ‘home’? What constitutes the family today? Webster’s Dictionary entry of 1913 in its definition of ‘the family’ reads: ‘The collective body of persons who live in one house, and under one head or manager; a household, including parents, children, and servants, and, as the case may be, lodgers or boarders; the group comprising a husband and wife and their dependent children, constituting a fundamental unit in the organization of society.’ Webster’s 2005 entry reads: ‘Parents and their children considered as a group sharing the same blood – i.e. a group in which persons are together under the same identity’.

The German Constitution of 1949 (Grundgesetz = GG) protects ‘the family’ as a fundamental human right in Art. 6(1) GG: ‘Marriage and family enjoy the special protection by the state.’ The Roman Catholic Church has long seen itself as ‘the family’, expressed recently by the German Pope Benedict XVI in his ‘First Encyclical Letter’ (December 2005) stating that, ‘The Church is God’s family in the world. In this family no one ought to go without the necessities of life … today as in the past. The Church as God’s family must be a place where help is given and received, and at the same time, a place where people are also prepared to serve those outside her confines who are in need of help.

Domestic violence has existed for centuries, but it is only recently that legislation in Western industrialised countries (such as Germany) has addressed this as a criminal offence, thereby enabling law enforcement agencies with powers to punish perpetrators. German Administrative law had severely curtailed a married woman’s freedom until the late 1970s, with the male as ‘householder’ and legal ‘supervisor’ of marital wealth. This can be linked to old-style patriarchal beliefs such as those advocated by the Leipzig born Psychiatrist and Neurologist, Paul Julius Möbius (1853-1907). In his publications linked to ‘The psychological mental weakness of woman’ of 1900 (‘Über den physiologischen Schwachsinn des Weibes), he verified common beliefs

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that ‘the female hysteria can only be controlled by a firm hand’, namely that of her husband. Möbius’ publication was issued in its 12th edition in 1922.

Kürzinger (1996) established that until fairly recently, German police in the various 16 federal states (Länder) would tend to send a complaining victim back home, with the ‘common sense’ advice not to press charges against her husband, and to ‘give it time’ until ‘things had calmed down at home.’

But do those who have suffered such actions think what happened to them can be described as ‘domestic violence’? The definitions used by those suffering the violence is of importance to those seeking to encourage them to seek help, since if the vocabulary used by agencies in different countries is different from that used by victims themselves, this will hinder the law making and law enforcement process. By naming the incident as ‘domestic violence’ the law makers in each country have not necessarily increased the likelihood of victims and survivors of violence seeking help from the relevant agencies.

According to the British Crime Survey (BCS 2006), three-quarters of women who had been victims of domestic violence since 16 in the UK agreed that they would call their experience ‘domestic violence’, one quarter did not (non-sexual domestic threats or physical force). Among men, only 41 per cent would call it domestic violence, and the majority, 59 per cent would not. Walby and Allen (2005) established that people were more likely to define the event that had happened to them as a ‘domestic’, if it was more serious, such as assault (actual bodily harm – ABH) or GBH (grievous bodily harm) (see below). Older women were more likely than younger women (especially those 16-24) to define an event as domestic violence. Women from poorer households were slightly more likely than women from more affluent households to define the event as domestic violence. Women were more likely to use the concept of domestic violence than men. Those who told others, especially those who sought legal help, were more likely to use the concept of domestic violence.

1.2 Children and domestic violence

Nearly one million children in the UK could be living with domestic violence, according to a 2006 report by the United Nations Children’s Fund, Unicef. The Report estimates that between 240,000 and 963,000 children in the UK annually witness violence against a parent or caregiver. And it said the effects on children could range

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7 As defined by the English ‘Offences against the person Act 1861’ under ss. 47 or 18.

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from poor exam results to them becoming violent themselves. The Home Office and Children’s Society research studies focused on children as victims of domestic violence. The ‘Safe on the Streets Research Team’ of the Children’s Society found that 100,000 British children run away from home every year in the UK, and that four out of five children who run away from home said that they did so to escape family conflict, violence or domestic abuse. The 2004 survey highlighted drink and drug abuse as linked to domestic violence and some 12 per cent of youngsters described themselves as ‘maltreated’ at home.

Humphreys and Mullender (2005) linked children on the UK Child Protection Register to direct and indirect domestic violence. They found that among victims of child abuse, 40 per cent of the children interviewed reported domestic violence in the home. Humphreys and Mullender established that of one-third of children on the ‘Child Protection Register’ in the London Borough of Hackney, their mothers were also known to be being abused. Their sample of 1,888 child protection referrals across several local authorities in England found that in 27 per cent of cases, domestic violence was an issue in the family.

A 1998 survey by the British ‘Zero Tolerance Charitable Trust’ found that of 2,039 young people (13-19 years old), one in five young men and one in ten young women thought violence against women was acceptable. One in four young men thought it acceptable to hit a woman if she had ‘slept with someone else’; one in five young men considered it acceptable to force a woman to have sex if she was his wife. A 2000 survey by the same trust of 1,300 schoolchildren found that one in three boys thought

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12 Source: The Children’s Society (1999), op. cit.; The Children’s Society sampled a total of 10,772 schoolchildren aged 11-16 in 70 mainstream UK schools by way of face-to-face oral interviews supported by a standard anonymous questionnaire with tick boxes. The return rate was 73 per cent in the 2004/05 survey. Whilst in 1999, some 10 per cent had run away from home, this increased to 16 per cent in the latest cohort sample. The 2004 survey found that girls were more likely to run away from home than boys, and that the peak age of running away was 14-15; disabled children or those with learning disabilities, as well as those describing themselves as gay or lesbian were more likely to run away. Those living in single parent or lone families were twice as likely to run away from home, compared with those in ‘normal’ families (incl. stepfamilies).

violence against women was ok. Not all children fall into the trap of becoming victims or abusers. Many adults who grew up with violence in the home are actively opposed to violence of all kinds. There is reason to believe that children know that domestic violence is wrong and actively want it to stop. Many children who are present during acts of domestic violence try to help.

2. THE IMPORTANCE OF DARK FIGURE RESEARCH

The first reliable and representative ‘dark figure’ studies regarding the extent of domestic violence originated in the United States. The extent and nature of domestic violence in the UK became a substantial part of the British Crime Survey (BCS) from 1999 onwards. The BCS 2002 found that domestic violence incidents made up nearly a quarter of all violent crime (499,000 cases of domestic violence incidences in 2002). The study conducted by Mirrlees – Black, found that among women, the average number of domestic abuse incidents was 20 times; with men it was seven times in 2000. Simmons et al found that there were an estimated total number of abuse incidents against women of 12.9 million and against men 2.5 million in the UK. In 2001, the BCS representative sample of 22,463 women and men (aged 16 – 59) reported that over the previous period of 12 months, some 13 per cent of women and 9 per cent of men had been subject to domestic violence of one kind or other (abuse, threats or force; sexual victimisation or stalking). Among the women, the average number of abuse incidents was 20 times, with men it was seven times. Approximately eight per cent of women and six per cent of men were subject to stalking in 2000 (1.2 million women and 900,000 men). The BCS 2004 further estimated that one in five women (2%) and one in ten men (0%) experienced at least one incident of non-sexual

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domestic violence or force since the age of 16. 24 per cent of women and five per cent of men had experience some form of sexual victimisation since the age of 16.18

2.1 Public opinion polls as a source of hidden criminality

Public interest in domestic violence in the UK increased with the publication of her groundbreaking research into the effects of domestic violence by Betsy (Elizabeth) Stanko. Stanko and her research team found that one in four women had experienced domestic violence at least once in their lifetime. Her research firstly concentrated on the United States, later in Britain, and linked domestic violence with direct and indirect costs to society.19 Stanko (1998) estimated that the London Metropolitan Police (‘the Met’) would receive a distress call from a victim every minute of the day.

More recently, research has addressed ‘risk factors’ resulting from domestic violence incidences. Humphreys et al (2005) conducted an evaluative study of the police pilot programs surrounding risk assessments of domestic violence victims in Cardiff, London’s ‘Met’ and Yorkshire; these forces had implemented extensive risk management strategies since 2002 following distress calls from domestic related incidents.20 Common risk factors are: ‘culture’ (e.g. honour killings 21). Robinson found during her study in the Welsh city of Cardiff that: ‘partners with drug problems inflicted significantly more violence and injuries on their partners and were therefore considered a heightened risk factor.’22 Pernamen (1991) found that the presence of Class A drugs and/or alcohol heightens the severity of domestic violence, as measured by injuries requiring hospitalisation.23 Obsessive jealousy and controlling behaviour is another main risk factor as Robinson found: ‘Analysis of the risk factors revealed

that the ‘perpetrator is jealous or controlling’ is a particularly important risk factor.24 ‘Threats to kill’ (either self or others) is another significant barometer of dangerousness and denotes a high risk factor; this includes stalking.25

The BCS 2004 linked domestic violence to poverty; it established that women were at greater risk of inter-personal domestic violence than men if their annual household income was less than £11,000 per year (approx. 14,750 Euro) and that they were three and a half times more likely to suffer abuse than those with an income over £20,000 (approx. 30,000 Euro).26

Taylor-Browne (2001) led the Home Office research ‘Crime Reduction Programme’ on the ‘Violence against Women Initiative’ since 1999. Results showed that the majority of domestic violence incidents reported to the ‘Met’ in London in 2000 were by female victims.27 January to March 2001 figures revealed that 128 of 180 victims of domestic violence in that period were unwilling to pursue the allegation and when it came to court action, would not show up or be willing to give evidence (‘hostile witness’). It is important to note that one in six men experience some form of domestic violence at least once in their lifetime.28

Kury et al (2000) compared international studies of domestic violence by looking at victims’ reasons for non-reporting of ‘domestic’ incidents.29 Victims mostly cited that the incident was not really ‘that bad’ in the hope that the perpetrator would stop and become less hostile. ‘Wife beating’ has been permitted throughout the ages, tolerated and supported by legislation that saw male dominance and the chastisement of women and children as part of domestic life.30

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26 Home Office, HORS Study 276 (London 2004).


2.2 Under-reporting of domestic violence and sexual abuse

The systematically high dark figure of domestic violence is attributable to the under-reporting of these types of offences. Leuze-Mohr found the same in Germany where she found the dark figure of under-reporting by female victims of domestic violence to be around 90 per cent. More than 80 per cent of abused women interviewed did not eventually wish to press charges against their abuser. One of the reasons is that society still sees domestic violence as an ‘internal’ family problem compared with ‘ordinary’ violence outside. 45 per cent of the questioned women in Leuze-Mohr’s study stated that they had initially pressed charges against their abusers once or several times; but 55 per cent of the seriously abused women had not reported the incident/s to the police at all. In England and Wales, court statistics speak for themselves in that about 80 per cent of (female) victims will become ‘hostile’ witnesses, refusing to give evidence against their perpetrators at court. Leuze-Mohr cites the following as the main reasons:

- The likelihood that the (male) offender will ‘get off’ during criminal proceedings is high; the fear of victim’s [witnesses] stigmatisation during trial.
- Unwillingness to report the offence to the police, influenced by victim-offender proximity; keeping the family intact ‘for the sake of the children’: ‘It is important when we talk about reducing the scandalous taboos surrounding domestic violence that victims must be assured [by law enforcement agencies] that they can be trusted when a victim reports her degrading treatment by the perpetrator and that the victim’s anonymity must be safeguarded.’
- No faith in the criminal justice system by victims/ witnesses. More than three-quarters of women victims reported bad experiences with the police and the courts. Victims believed that the courts were pro-offender. Women felt that they were merely a ‘number’ in the system.

3. DOMESTIC VIOLENCE IN GERMANY: RESULT FROM THE ‘BIELEFELD’ STUDY

At the start of the new millennium, the ‘Federal Ministry for Family, Senior Citizens, Women and Young People in Germany’ commissioned a study which was to examine life-style behaviours in East and West German states.\(^{34}\) The study was conducted by the ‘Interdisciplinary Centre for Women’s Studies’ at the North-Western University of Bielefeld in the state (Land) of North Rhine Westphalia. One feature was to gather quantitative data on the ‘extent, the causes and types of violence against women in the domestic setting in Germany, compatible with other pan-European studies of this kind.’\(^{35}\) The Bielefeld study sampled 10,264 women (February to October 2003) and questioned them about their experience with domestic violence, their feeling ‘safe’ in their own home and their psychological and physical well-being. An additional sample of 250 foreign immigrant women from Turkey and Eastern Europe were interviewed with interpreters present, plus an additional small sample of prostitutes, asylum seekers, and women in prison. The study took account of physical and sexual abuse, as well as psychological and sexual violations in the domestic and partnership setting; this was to include stalking. Smartt found that ‘das Stalking’ was a relatively new phenomenon in Germany and the term ‘staking’ did not actually exist in Germanic vocabulary until the end of the millennium. The term now exists in the new ‘Gewaltschutzgesetz 2000’ (Protection from Violence Act).

Seven per cent of women had been physically abused; 25 per cent had been either physically and/or sexually abused (in other countries results vary from one to 19 per cent in sexual violence and ten to 35 per cent in physical and/or sexual violence). 52 per cent of the women stated they had been raped, 41 per cent attempted rape, 51 per cent forced indecent assault, 29 per cent forced or coerced other sexual practices and ten per cent unwilling coercion to practice pornographic encounters (multiple answers).\(^{36}\) Nine per cent of the surveyed women living in Germany stated that they

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\(^{36}\) Müller and Schröttle (2004a), op. cit., Seite 41.
had experienced various forms of sexual abuse and misuse before the age of 16; 45 per cent in the domestic setting. 13 per cent of the surveyed women had been sexually abused at least once since the age of 16; 40 per cent had been physically or sexually violated. From the oral evidence, the prevalence is reduced to 12 and 35 per cent respectively. In total, 58 per cent stated that they had been abused in one way or other and were living in violent partnerships – particularly with unmarried couples. Seven per cent stated (verbally) that they had been subjected to sexual abuse, 25 per cent had been physically and/or sexually abused. From the oral evidence, the results were reduced to five and 17 per cent respectively; the written evidence showed an increase to five and 23 per cent.37

Overall results revealed that there was a high victimisation rate amongst both the married and unmarried women. In 49 per cent of the victimised women the perpetrators were the husband or partner, in 22 per cent mere acquaintances (‘just friends’ or ‘one night stands’ or neighbours), in 15 per cent strangers, in 12 per cent work or school colleagues, and in 10 per cent family members.38 69 per cent of victimisations took place at the victim’s home, 30 per cent at another place, 20 per cent in a public place and 17 per cent in a car. 34 per cent of the female victims reported that the perpetrator had been under the influence of alcohol, 1.3 per cent under the influence of drugs and 3.4 per cent both. Nine per cent of the women stated that they too had been under the influence of alcohol, 1.8 per cent under drugs and/or alcohol influence. 58 per cent of the women reported being sexually abused.

Worth noting are the differences between East and West Germany bearing perhaps the 1990 German Unification in mind: 20 per cent of women living in West Germany and 16 per cent of women living in the Eastern part reported being a victim of sexual domestic violence over a period of twelve months. At least 48 per cent of the female victims stated that they were partly initially to blame for the ensuing violent or sexual abuse, whilst 58 per cent believed that the sole responsibility lay with the perpetrator. With former partners, the victims attributed 3 per cent to their own part-responsibility, and 68 per cent stated that it was solely the partner’s fault.39

The Bielefeld study also established the link between the likelihood of adult domestic abuse and being abused as a child in a violent family: ‘Those women who experienced sexual or physical abuse from their own parents, guardians or relatives were three times more likely to be victims of domestic violence in their adult relationship/s, compared with women who had not experienced any violence during their adolescence (13 % versus 38 %). Women who had experienced sexual abuse before their 16th birthday, were twice as likely to be abused by their current/ former partner (23

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% versus 54 %). Of the children who lived in a violent domestic setting, 57 per cent were victimised as well, by hearing parental violence, and in half (50%) of the cases, the children actually witnessed violence or abuse. Of the surveyed female victims, 21–25 per cent reported that the children had been involved in domestic violence.40

If we compare the ‘Bielefeld’ study with international empirical results, we can see that the occurrence of sexually-related violence is between five and 34 per cent amongst women over the age of 16, depending on the type and definition of research methodology. In Britain it is generally believed that one in four women will experience some form of domestic violence during their lifetime.41 According to the BCS 2001, one third of the victims of any violence were victimized twice or more within a year. Nearly three fifths (57%) of those who had been a victim of domestic violence became repeat-victims of domestic violence (not necessarily with the same perpetrator).42

Other European studies into domestic violence have been conducted in the Netherlands (Römkens 199743), in Switzerland, Portugal and Finland (Heiskanen u. Piispa 1998 and 200144), in Denmark, Sweden, Iceland, Spain, Ireland, England, Scotland and Wales.45 Furthermore, the Canadian ‘Violence Against Women Survey’,46 the US ‘National Violence against Women Survey’47 and the Australia ‘Women’s Safety Survey’.48

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40 Müller and Schröttle (2004b), op. cit., Seite 204.
41 E.A. Stanko et al. (1998), op. cit.
42 Sources: Crime in England and Wales, Home Office, (London 2002b); Home Office (2005), op. cit.
44 M. Heiskanen, M. Piispa, F. Hope, Battering. A national victim survey on men’s violence against women in Finland (Helsinki 1998); M. Heiskanen, M. Piispa, The costs of violence in a municipality. A case study of violence against women and its costs in the City of Hämeenlinna 2001 (Helsinki 2002), based on estimates provided by authority representatives, Ministry of Social Affairs and Health; see also: M. Piispa, M. Heiskanen. The price of violence. The costs of violence against women in Finland (Helsinki 2000).
4. DOMESTIC VIOLENCE AND ITS IMPACT ON SOCIETY

4.1 Costs and impact on employment

There are a number of different ways of measuring the degree of severity of domestic violence. One of these is cost. Sylvia Walby and Jonathan Allen – as part of the Home Office British Crime Survey 2004-05 – measured the impacts of inter-personal and domestic violence on people’s capacities for many kinds of activities. One of these was employment.\(^9\) Walby (2004) had already undertaken a costing study for the UK Women’s Equality Unit where she had established the actual annual cost to society resulting directly or indirectly from domestic inter-personal violence. This had amounted to approximately £23 billion in 2001 (~ 34 billion Euros).\(^8\) Heiskanen and Piispa (2002) established similar findings in Finland at an estimated cost of about 91 million Euros per annum. They attributed one-fifth of the costs to health and medical care, about half in social services requirements and more than a quarter attributed to criminal proceedings.\(^5\)

Some hidden costs are found in the employment sector, such as costs to employers by way of employee absences from work and a higher sickness rate. Losses to employers might include having to pay wages during the victim’s time taken off work, her reduced workplace performance, as well as temporary staff costs. The Domestic violence victim’s time off work and reduced performance can lead to loss of promotion possibilities, or, at worst, the loss of a job, particularly where there is a need to move from her area to escape the inter-personal violence at home. The fact that domestic violence has been linked to low income might well be linked to this type of hidden cost. The state and the wider community may also sustain costs by the need to fund sick pay as well as the costs to the productivity of the economy as a whole.

But how big is the impact and how great the losses? The British Crime Survey data of 2005 established that more than one-fifth of women (21%), who were employed and who had suffered domestic violence in the year prior to interview (2003-04), took time off work as a result of the worst incident. Men also took time off, but at lower rates (6%). While for around half the women the time taken off employment was limited to a day or two, for nearly a quarter this lasted more than a week. Most seriously, two per cent of women and of men lost their jobs because of this incident.\(^2\)

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\(^5\) M. Heiskanen, M. Piispa, F. Hope, (Helsinki 1998), *op. cit.*

4.2 Not only women are victims of domestic violence

Over the past few years, research has shown that not only women and children are victims of domestic violence, but also men. This type of research was initially blurred by feminist research, concentrating purely on female victims and male perpetrators. More recently, male pressure groups have pointed out that men can be victims of domestic violence and abuse as well (‘Fathers for Justice’ in the UK). Kelly undertook research in this field in the USA (2003). Approximately one in six men will experience domestic violence during their lifetime. Men can be subjected to domestic violence too, particularly in respect of assault (occasioning actual bodily harm) or serious assault (grievous bodily harm); though quantitatively these statistics are far lower than physical abuse against women or children by men. There are however different findings regarding assault and battery – type offences, and psychological abuse against men.

Lamnek and Luedtke (2005) found in their Southern German Bavarian study of ‘partnership abuse’, that two-thirds of the surveyed households had experienced no domestic violence (65.7 %) but that a quarter had experienced parental violence during childhood (28.4 %); about 3.5 per cent reported partner – and/or parent-child abuse, whilst 2.4 per cent gave details about their own partner-on-partner abuse. Types of abuse were cited as: 73 per cent were ‘hit with the [flat] hand’; 33 per cent were ‘kicked’; 15 per cent were battered with an object and ten per cent were ‘hit with the fist’. An equal number of men (3.2%) and women (3.0%) reported that they had been victims of domestic violence; but women still form the majority (58.3%) compared with men (41.7%). A new German federal study comprises violence against and amongst males, including victims of domestic violence. Of the 266 males surveyed, 23 per cent stated that they had experienced some form of physical or sexual abuse within their (past or current) relationships. The vast majority were abused outside the domestic or familial environment. The researchers noted that conducting this type of sensitive research was fraught with methodological difficulties, because of the social taboos such as homosexuality in Germany which has only been decriminalized relatively recently.

5. LEGISLATIVE CHANGES

It is now taken as read that most industrialised nations are now addressing changes in legislation to incorporate domestic violence. The problem remains: how do we define domestic violence? There is no universally accepted definition of domestic violence and each country will have different cultural perceptions of what constitutes the offence. The 1993 Home Affairs Select Committee (HASC) Report on Domestic Violence used the following definition:

‘Any form of physical, sexual or emotional abuse which takes place within the context of a close relationship. In most cases, the relationship will be between partners (married, cohabiting, or otherwise) or ex-partners’.

5.1 Changes in German legislation

From 1977 onwards, German law acknowledged equal standing and rights of the married woman to her husband. The First Right to Marriage Reform Act of 14 June 1976 (‘Ehereformgesetz’) gave the married woman equal rights such as the keeping of her surname, rights to found a business or own land, without having to seek permission from her husband. Legislative measures to tackle domestic violence have been slow in forthcoming, only recently adjusting to changing social norms and public attitudes. In Germanic legislation (incl. Swiss and Austrian law), the female is still by no means equal in social or employment status. Here follows some German legislative changes so far that can now be called on in ‘domestic’ situations:

- In 1976 the ‘Victim Compensation Act’ came into force (Opferentschädigungsgesetz [OEG] of 11 May 1976). The 1976 Act was specifically aimed at the protection of the private life of victims involved in criminal proceedings (especially from the media). According to § 1 (1) OEG only those victims are compensated by the state who suffered damage to their health as applied by this Act or on a German ship or aircraft resulting from a deliberate, illegal violent attack against him/her or in self-defence, when suffering damages to one’s health.56

- On 1 April 1987 the OEG (‘Victim Compensation Act 1976’) was amended by the ‘Victims of Criminal Acts 1987’ (Opferschutzgesetz [OSG] ‘for the improvement and support of victims in criminal proceedings’). The 1987 Act grants the victim increased protection from personal questions

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during trial proceedings; furthermore, it is the victim’s right to ask for the removal of the defendant from trial proceedings while the victim is giving evidence, in case of victim-intimidation. Additionally, the public can be excluded from the proceedings, on application of an ‘in camera’ anonymity order by the victim to the presiding judge, particularly when the victim is ordered to give evidence about his/ her personal or private information. The Act also grants the victim an improved ‘freedom of information’ right, such as insight into personal data files and disclosure, and is entitled to an advocate. From now on, victims of serious criminal offences are entitled to avail themselves of criminal proceedings by way of a separate private prosecution against the defendant.\(^\text{57}\)

- The German Criminal Code (\textit{Strafgesetzbuch}) was amended in 1997 by means of the 33rd Amendment Act (\textit{Strafrechtsänderungsgesetz}). The Criminal Code now includes that offences such as ‘sexual assault causing a person to engage in sexual activity without consent’ (\textit{sexuellen Nötigung}) and ‘rape’ (\textit{Vergewaltigung}) are now possible offences within marriage.
- On 1 December 1998, the ‘Victim Protection Act 1998’ came into force (\textit{Zeugenschutzgesetz [ZSchG]}. This introduces statutory protection of victims, vulnerable persons and witnesses under the age of 16 in criminal proceedings; these include, inter alia, taped and video evidence by such victims / witnesses, and thus avoids duplicate witness statements at the police interview stage and at court. Child or youthful witnesses are entitled to an advocate (legal aid), whilst their evidence is being broadcast in sound and vision.
- The statutory provision of the ‘Parental Right to inflict corporal punishment on children’ (\textit{Züchtigungsrecht der Eltern gegen Kinder}) was abolished and substituted by an amendment to the ‘Child Support Act’ of 7 November 2000. The father’s right to punish his children by beating had existed since 1896 (§1631 BGB); likewise the right to ‘chastise’ his wife existed until 1928. The general right to ‘chastise’ ones children continues to exist in customary law of most Germanic states.
- On 1 January 2002, the ‘Protection from Violence Act 2000’ came into force (\textit{Gewaltschutzgesetz [GewSchG]}); this civil legislation acts as a ‘protection for victims of violence, persecution, and other unreasonable acts (such as stalking) and for the easement of legislation regarding the allocation of the domestic and marital home during divorce proceedings.’

partner from the marital home in cases of domestic violence.\(^8\) (Smartt noted that this Act only protects those who are actually married and where the domestic violence offence occurs in the ‘marital home’; cohabitees who fight in the pub, for instance, are not covered.\(^9\)).

– On 1 September 2004, the Improvement of the ‘Rights of Victims Act’ (in criminal proceedings) came into force (Opferrechtsreformgesetz [OpferRRG] of 24.6.2004, announced in BGBl I 2004 No. 31 of 30.6.2004). The Act states that, inter alia, victims of crime have a statutory right to legal aid and the assistance of an advocate; victims have a right to victim protection schemes and victim support in court proceedings; furthermore, that victim compensation is paid as part of the sentence – if the victim so wishes. This is similar to the ‘victim compensation order’ in the British Crime and Disorder Act 1998. The victim has the right in the German 2004 Act to be accompanied at every stage of the criminal proceedings by a confidant/e or victim support person.\(^60\)

5.2 Changes in attitudes of policing towards domestic violence in Germany

Each of the 16 German Länder police forces now has its own regulations regarding domestic violence. It is fair to say that some forces have embraced this ‘soft’ type of policing more willingly than others. This may be linked to different ways of religious upbringing, with the Southern German states (such as Bavaria and Baden-Württemberg) having Roman Catholic orientation and the Northern states (such as Lower Saxony or Berlin) more Protestant (Lutheran) upbringing. The East German states had been essentially ‘free’ from any official religion for some 40 years, since Communism did not permit any religions during the former GDR (German Democratic Republic) regime. A decade ago the police ‘were just not willing to assist the woman who had called for police assistance after she had made the 110 [distress] call stating she had been beaten up at home by her husband. If they did turn up, police would say at the scene that they were not ‘competent’ enough to deal with domestic violence; after all, they had no available police sanctions at that time in their regional police legislation.’\(^61\)

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Bergdoll and Namgalies-Treichler noted a change in attitudes amongst some German police forces from the late 1980s onwards. They reported that the sampled police officers’ ‘main aim – when dealing with domestic violence or family arguments – was the establishing of peace and quiet, i.e. mediation and a tendency to offer helpful advice and possibilities to calm things down.’ Steffen noted: ‘abused wives and women cannot presently rely on the help and support of the police, neither can they rely on the help from other formal authorities – something which they ought to be able to hope for and rely on since domestic call-outs are rather unpopular with the police and yet such emergency call-outs are increasing in frequency.’ Stumper et al noted that calling out the police to attend to a ‘domestic problem’ some 15 years ago would have only ‘made matters worse, especially when it came to charging the perpetrator; police interference in such matters was only regarded as necessary as a secondary preventive measure in the most violent of domestic assaults.’

5.3 ‘Platzverweis’: displacement, banning, or exclusion orders

A relatively new legislative measures in German law to combat domestic violence is the ‘Platzverweis’ – a court or police order which places an injunction of an exclusion, displacement or ‘banning’ on the perpetrator. But only for a short time. The order forms part of the ‘Protection from Violence Act 2000’ (see above – Gewaltschutzgesetz) and came into force in 2005. It was based on the headnote, of the ‘White Paper on Domestic Violence 2003’: ‘He (or she) who assaults – goes!’ The term ‘Platzverweis’ is taken from the world of sport (e.g. football or ice hockey) where someone who has engaged in foul play, is sent into the ‘sin bin’ for a short while after he has been shown the red card. Practicalities of the ‘red card’ (Rote Karte) order include: taking away the house keys; doorstep curfews or reporting regularly to the local police station. Essentially a civil order, it becomes ‘criminal’ once the order is breached. ‘Platzverweis’ is initially

for a ten-day duration only; the victim can apply for an extension or variation to the order via the courts.\textsuperscript{65}

Police statistics from the Land Baden-Württemberg (10.7 million inhabitants) for 2005 show that the ‘red card’ measure seems to be working: of the 8,966 domestic-related distress calls, 2,968 Platzverweis measures were ordered (2,559 in 2004). 927 victims pressed charges in connection with molestation, harassment or stalking by their partners. The state of North Rhine-Westphalia currently supports 62 female refuge hostels, 55 female victim advice centres and 48 establishments that deal with sexual assaults and rapes and offers these female victims advice and refuge centres. About 70 per cent of victims make use of these facilities.\textsuperscript{66} Most police distress calls deal with actual bodily harm or assault by beating (14,998 cases = 83\% of all cases), threats (2,435 cases = 14\%), sexual assault and rape (175 cases = 1\%).\textsuperscript{67}

5.4 How is the victim protected under German law?

We have already noted the ‘Protection from Violence Act 2000’ (\textit{Gewaltschutzgesetz}), a civil statute; additionally, each of the 16 federal German states (Länder) has its own police laws. The Police Act for the Land Baden-Württemberg, for instance, cites under §§ 1 and 3 that police can make a ‘special measures’ order in form of the ‘Platzverweis’ (e.g. exclusion order).\textsuperscript{68} The general popular opinion is still that the German Criminal Penal Code (\textit{Strafgesetzbuch}) is still the most important legislation to get police reaction in domestic violence incidents where offences such as assault, criminal damage, or hostage-taking are enshrined in codified law. A ‘Platzverweis’ injunction is usually applied in conjunction with a criminal offence relating to, say, ‘breach of the peace’. ‘Platzverweis’ orders are typically only of a one-week duration in nearly half of the cases (47.3\%); about a quarter are for two weeks to three months (24.4\%).\textsuperscript{69} Though the German ‘Platzverweis’ order seems to be a good idea in principle, it is generally believed that the measure is too short-lived compared with, say, court injunctions in


\textsuperscript{69} M. Leuze-Mohr (2005), \textit{op. cit.}; 151; 152.
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England which can last for years to exclude the perpetrator from the domestic setting. Leuze-Mohr concludes that the ‘Platzverweis’ order cannot give victims of domestic violence the assurance of lasting protection.70

5.5 Victim protection in English law

There are civil and criminal remedies available to victims. Factors as to which legal route can be taken by the victim depend on the following criteria:

- the severity and/or nature of the violence or harassment;
- the familial relationship between the abused and the abuser;
- the stricter burden of proof required by the criminal courts compared to the civil courts – in criminal proceedings a case has to be proved ‘beyond reasonable doubt’ – whereas in civil proceedings the court will arrive at its decision on the ‘balance of probabilities’;
- the wishes of the survivor or victim about the protection they require from the law; and
- the actual and perceived protection the law can deliver in practice, as well as the availability of appropriate support services.

Legal steps that victims of domestic violence can take to pursue civil action can be in the County Court, the Family Court (i.e. Magistrates’ Court) or the High Court. Criminal proceedings and remedies are available through the criminal courts, including Magistrates’ Courts and the Crown Court. There are five Acts that apply in varying degrees to domestic violence in the civil jurisdiction:


Part IV of the FLA 1996, provides for a non-molestation order (similar to the German ‘Platzverweis’). Its purpose is to protect people who experience domestic violence in a family relationship. A non-molestation order is used to restrain someone from causing or threatening violence to the applicant or to any children, or from molesting them. Regrettably, the Act does not define ‘molestation’, but case law has established that it can include intimidation, pestering, threats and harassment. The actual wording of non-molestation orders forbids the respondent from using or threatening violence

against the applicant and instructing, encouraging or in any way suggesting that any other person should do so. It can also forbid the respondent from intimidating, harassing or pestering the applicant and instructing, encouraging or in any way suggesting that any other person should do so. This includes children.

Protection from Harassment Act 1997 (PHA 1997)

The PHA 1997 contains both criminal and civil remedies for domestic violence; civil remedies overlap with those in the Family Law Act 1996 (FLA). The PHA 1997 was originally designed to address the problem of ‘stalking; it is now often used by people who cannot apply for an order under the FLA 1996 because they do not meet the necessary requirement for ‘association’ through ‘family relationships’ – including cohabitation.  

The PHA 1997 provides civil remedies for restraining respondents and for seeking damages for harassment offences. They include injunctions and claims for damages. This Act contains no provision for the court to make occupation orders and is limited to non-molestation orders.

Housing Act 1996 (HA 1996)

The HA 1996 provides indirect means to protect women who experience domestic violence because it relies on a third party – their landlord – to apply for a possession order. But the Act only covers ‘social landlords’ – specifically a local authority – who can take action, if it is brought to their attention that a tenant is being violent towards another tenant. It is one way for a (social) landlord to regain a property by taking action against an abuser who remains in occupation. It does not enable the victim of violence to stay in the property. Nor does it provide any protection – in the form of an injunction if the woman is relocated.

Children Act 1989 (CA 1989)

An amendment to the CA 1989 now permits the courts with powers of arrest to remove a suspected child abuser from the home (s. 8 CA 1989). The court will only make such an order for exclusion (of the perpetrator) of this is part of an application for an ‘Emergency Protections Order’ (EPO) or an ‘Interim Care Order’ (ICO) for the child. For example, the court may require a statement from the Local Authority to the effect that there is reasonable cause to believe that the child is likely to suffer significant

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harm if the suspected abuser is not removed from the home. Local authorities usually make these types of applications for an exclusion order to the family proceedings in the Magistrates’ Court.

Adoption and Children Act 2002 (AChA 2002)

This Act provides an amendment to s. 8 of the Children Act 1989, providing guidance for the courts that add to existing guidelines on contact orders in domestic violence cases. The Act considers whether a child has suffered, or is likely to suffer harm in placement orders (with families) and the court must also consider harm that a child may suffer not just from domestic violence, but also from witnessing it.

Crime and Victims Act 2004

This Act came into force on 15 November 2005 and gives the police and other agencies (e.g. Social Services; Education; Health) the legislative framework and power to get to the heart of domestic violence crimes and to assist victims and witnesses (often the same person) with practical advice including witness protection schemes (e.g. emergency refuge accommodation in safe houses), safety planning advice and translation facilities.

As we have already established, there is no specific offence of ‘domestic violence’ under criminal law. In terms of specific criminal sanctions, specifically applying to domestic violence cases, legislation is as follows:

- Police and Criminal Evidence Act 1984 (PACE)
- Criminal Justice Act 1998
- Criminal Justice Act 1988
- Offences Against the Person Act 1861
- Homicide Act 1957
- Sexual Offences Act 1956
- Public Order Act 1986
- Criminal Damage Act 1971
- Criminal Justice and Public Order Act 1994
- Youth Justice and Criminal Evidence Act 1999
- Protection from Harassment Act 1997 (PHA)
- Sexual Offences Act 2003

In order to determine which charge in which particular circumstances is linked to domestic violence, it is the offence in terms of the abuse or violence caused, that determines which legislation is to be applied. For example:
A person accused of choking, strangling or suffocating can be charged with common assault or actual/grievous bodily harm, or the specific offence of attempting to choke, strangle or suffocate (s. 47 ABH [assault occasioning actual bodily harm]; s. 20 GBH [grievous bodily harm – malicious wounding]; s. 18 GBH [wounding] with intent of the Offences Against the Person Act 1861; s. 39 Criminal Justice Act 1988 – ‘common assault & battery’);

A person accused of locking another person in a room or house or preventing them from leaving, can be charged with false imprisonment or harassment (Offences Against the Person Act 1861; Protection from Harassment Act 1997);

A person accused of violence resulting in death can be charged with murder or manslaughter (Homicide Act 1957);

A person accused of damaging or destroying property can be charged with criminal damage (Criminal Damage Act 1971);

A person accused of enforced sexual activity can be charged with rape, indecent assault or harassment (Sexual Offences Act 1956; Sexual Offences Act 2003).

Initially, it falls within the jurisdiction of the Magistrates’ Courts to deal in all instances with all domestic violence cases. Depending on the severity of the offence, cases may then be sent to the Crown Court ‘on indictment’ (such as rape). Victims of domestic violence cannot insist that the Crown Prosecution Service (CPS) pursues a criminal prosecution. If the CPS decides not to proceed with a case, for reasons outlined below, then the survivor may consider pursuing a civil rather than criminal remedy. However, the CPS now has a policy to prosecute in all cases wherever possible.

5.6 Victim protection and risk management in England

From 2004, the British Government invested £14 million (~ 21 million Euros) into tackling domestic violence; the ‘Domestic Violence National Action Plan’ contains substantial policy proposals to further improve support for victims and to bring more perpetrators to justice. Many police authorities now have ‘Domestic Violence Units’ and ‘Domestic Violence Liaison Officers’ attached to local police stations. Community Safety Units attached to local police stations also provide information and advice to victims. The Thames Valley Police now has a cadre of 90 specialist police personnel in each of its five divisions who are responsible for dealing specifically with domestic violence.

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violence issues. Where a victim has been identified, various agencies – such as schools, victim support, health services, social services, probation, prison service etc., – will convene a local ‘Multi-Agency Risk Assessment Conference’ (MARAC) in order to develop and deliver an effective safety plan.73

Many English police forces have developed risk assessment processes to prevent (known) victims of domestic violence suffering further abuse. The most popular model is known as SPECSS: Separation (child contact); Pregnancy; Escalation (attacks worsen/happen more often); Cultural issues; Stalking; Sexual assault (make up the acronym SPECSS). The London ‘Met’-SPECSS model was introduced in 2003, and has since been evaluated by Laura Richards in relation to ‘Domestic Violence Murder’.74 Richards found that the SPECSS risk assessment model helps in the training of police officers when attending ‘domestic problems’ as well as developing systems to support the risk assessment process in respect of (future) victims of domestic violence. The Association of Chief Police Officers (ACPO)75 ‘Guidance on Domestic Violence’ model makes it clear that risk assessment in domestic violence cases is a complex process requiring training which should be used to enhance victim safety and improve the standards of investigation. It is clear though, that more research is needed in respect of the SPECSS factors and whether they are of equal or more importance in cases of serious domestic violence offences (e.g. the Pemberton murders in 200376).

There are times when domestic violence can lead to murder of the perpetrator. This was the case of Kiranjit Ahluwalia, the battered woman who was driven to extreme measures by killing her husband after years of physical and mental abuse.77 The young

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75 The Association of Chief Police Officers (ACPO) is an independent, professionally led strategic body. In the public interest and, in equal and active partnership with Government and the Association of Police Authorities, ACPO leads and coordinates the direction and development of the police service in England, Wales and Northern Ireland. In times of national need ACPO, on behalf of all chief officers, coordinates the strategic policing response: <http://www.acpo.police.uk>.
76 Julia (48) and her son William Pemberton (16) were shot and killed at their family home in Hermitage, near Newbury, Berkshire, Southern England in 2003. The murders, at the hands of William’s father, Alan, came after a series of incidents which family members believe should have been recognised as clear alarm bells. At the time of the tragedy, Mr Pemberton was already the subject of a court order banning him from going anywhere near the family home. At an inquest in 2004, the Thames Valley Police was severely criticised by the coroner for taking 6 hours to get to the scene of the crime, after repeated distress calls from Mrs Pemberton. The inquest heard on 27.9.04 how Mrs Pemberton had pleaded with a police operator that she had ‘about one minute before I die’, as she hid in a downstairs cupboard while her husband rampaged through their home in Hermitage.
Asian woman, living in Southall, West London, had been subjected to ten years of spousal physical violence and psychological degradation; she doused her husband in petrol whilst he was asleep, set him alight, and he died of his fatal injuries. She was convicted of murder since the prosecution (rightly) proved her intent to kill. On retrial, Lord Chief Justice Taylor commented on the fact that women find it difficult to avail themselves of ‘self defence’ in court when accused of murder. After a long campaign by the London pressure group ‘Black Sisters of Southall’, new evidence was permitted to allow the ‘slow burn’ effect (to long-term spousal abuse) as a form of defence into English criminal law. At the Court of Appeal, the ‘battered woman syndrome’ defence set the precedent, quashing Ahluwalia’s murder conviction on the basis of her depressed condition at the time. She was freed in 1992.

What do the courts do when any order are breached – such as non-molestation orders or injunctions? Under the ss. 2 or 4 of the Protection from Harassment Act 1997, the police can take criminal proceedings, since breach of an order under this Act is a criminal offence. Once the (Magistrates’) court has granted an injunction in order to restrain a defendant, and a claimant states that the defendant has breached this order, she may apply for a warrant of arrest (through the court where the order was made). Under s. 3 of the PHA 1997 a respondent can be arrested immediately, and brought before the court. The court then has various options, depending on the severity of the breach, and magistrates can currently hand down a custodial sentence of up to two months and the County Court up to two years.

If the victim decides to ‘drop the charges’, that is, withdraw her support for the prosecution, or does not wish to give evidence (‘hostile witness’), the case is not necessarily dropped. New government policy states, that the CPS ought to continue on the strength of other evidence gathered at the scene by the police. Alternatively, a hostile witness (i.e. the victim) may be compelled to attend court by means of a warrant. In some domestic violence cases the violence is so serious, or the previous history shows such a real and continuing danger to the survivor or the children or other people, that the ‘public interest’ in proceeding with the prosecution outweighs the survivor’s wishes. As a rule, the CPS prosecutes all cases where there is enough evidence and there are no other factors preventing them from doing so.

6. CONCLUSION

We have come a long way since feminists such as Shere Hite alerted us by way of her now 30-year old ‘Hite Report’ that family life and relationships can be terrifying.78

78 The ‘Hite Report’ was a sexually liberating hit through the 1970s and 80s. The Report into female sexuality, by sex-psychologist Shere Hite (short for Shirley), became popular in more than 45
In 1993, the United Nations included ‘domestic violence against women’ in their ‘Declaration on the Elimination of Violence against Women’. In 1997 the UN called on all member states to ratify international agreements regarding the human rights of women.

Whatever form it takes, domestic violence is rarely a one-off incident. More usually it is a pattern of abusive and controlling behaviour through which the abuser seeks power over their victim. Domestic violence occurs across society, regardless of age, gender, race, sexuality, wealth and geography. Research figures have shown that it consists mainly of violence by men against women. Victims of domestic violence suffer on many levels – health, housing, education – and lose the freedom to live their lives how they want, and without fear. European legislators are now addressing changes in legislation in favour of curtailing domestic violence, and to protect the victim.

In the past, battered women used to have to leave the family home; some found refuge in safe houses or hostels. Germany has implemented legislation adhering to the slogan: ‘He who assaults – goes!’ There are a number of British statutes that address the punishment and/or displacement of the perpetrator via court injunctions (e.g. Protection from Harassment Act 1997; Crime and Disorder Act 1998 etc). The German ‘Platzverweis’ order is one short-term interventionist measure to ban the perpetrator from the domestic home or from seeing the victim via a ‘red card’ system. German experts warn that the ‘Patzverweis’ order is only temporary and not a solution in its own right; the order (similarly to the temporary orders by the English courts) do not solve domestic violence and the root causes for such conflict. Such police or court orders can be effective and immediate measures that prevent further aggression and harm against the victim/s – but at the same time, they are not a permanent solution to complex family problems. With new legislation in place, German and English law enforcement agencies have now developed strategic risk models linked to police forces’ anti-violence and domestic violence projects in order to prevent future harm to potential victims.

Due to extensive research in the field, domestic violence is now a recognized social problem in most Western civilizations and high on governments’ agendas. Domestic violence can no longer be ignored, least of all by legislators and those who have to deal with the daily consequences such as the police and other criminal justice agencies. Domestic violence is often closely linked to poverty, unemployment, poor standards of living and economic deprivation; therefore, it is not just the criminal justice, but...
also social policy legislation that need to address this issue (e.g. health; education; housing etc.).

Recent research by Unicef (2006) established that child abuse was prevalent where the rate of domestic violence was ‘high risk’. The single best predictor of children becoming either perpetrators or victims of domestic violence later in life is whether or not they grow up in a home where there is domestic violence. Studies from various countries support the findings that rates of abuse are higher among women whose husbands were abused as children or who saw their mothers being abused. The separation in both policy and practice of child abuse from woman abuse has meant that the level and effects of domestic violence are consistently under-estimated. There now exists an urgent need for more intervention by other agencies (education; health; housing etc) to assist victims and witnesses.

The more we realize the escalating hidden costs of domestic violence – by means of time off work and employee sickness absence – the more there is an increased public demand for preventive measures in the domestic violence setting. The police alone cannot tackle the many facets of domestic violence. There is a need for more support by means of restorative justice programmes or mediation between perpetrator and victim as well as family liaison programmes in order to combat and prevent future domestic conflicts. Most importantly, there has to be a multi-agency approach to bring the problem to the forefront of public attention.