

# **Home Office call for evidence on Violence Against Women and Girls (VAWG):**

## ***Recommendations from the Helena Kennedy Centre for International Justice***

**By**

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### **1. Executive Summary**

The Helena Kennedy Centre for International Justice (HKC), based at Sheffield Hallam University, is pleased to contribute a number of recommendations to the Home Office call for evidence on its VAWG strategy. HKC is home to the work of a number of academics and postgraduate research students addressing VAWG in elements of their research. A group of these researchers have provided the submission below, structured around the themes that can be identified in the call for evidence from the Home Office:

- i) the reduction in the incidence and severity of violence against women and girls through preventative and supportive measures;*
- ii) improving outcomes for victims/survivors through better handling of these crimes in the criminal justice system, and*
- iii) identifying new and emerging forms of violence against women and girls so that they can be adequately tackled.*

This evidence submission identifies fourteen areas of recommendations and proposals, below, in Section 5. These recommendations address a range of areas supported by the research expertise of the contributors at the HKC who have worked on this submission, and cover important policy reform ideas around education, curricula and teacher training in schools; police training opportunities; a need to review the use of domestic violence disclosures schemes; and the creation of standards of protection for victims of online gender-based violence (GBV).

### **2. About the Helena Kennedy Centre for International Justice**

The Helena Kennedy Centre for International Justice is a leading centre for social justice and human rights. It provides a vibrant environment at the cutting edge of legal and criminal justice practice which prepares students for excellence in their chosen professional career. Its central values are those of widening access to justice and education, the promotion of human rights, ethics in legal practice, equality and a respect for human dignity in overcoming social injustice. The centre is home to a range of social justice and human rights activities that include:

- research and scholarship work
- global engagement
- impact on policy
- professional training and advocacy

### 3. Contributors

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#### 4. Our Submission

##### 4.1 The reduction in the incidence and severity of violence against women and girls through preventative and supportive measures

###### *4.1.1 The role of human rights education*

Under Article 3 of the Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention), violence against women and girls (VAWG) is considered to be a human rights violation if there is sexual, psychological, economic or physical violence involved. Additionally, Article 5 of the Universal Declaration of Human Rights (UDHR) and Article 3 of the European Convention on Human Rights (ECHR) require that women should not be subjected to degrading treatment. There have been multiple UN Special Rapporteurs on torture who have recognised that rape is an abuse of human rights in these terms (Amnesty International, 2011).

In a report on child sexual abuse published by the Office for National Statistics in 2019 it has been estimated that 7.5% of adults from the ages of 18 to 75 have experienced sexual abuse before they turned 16; this equates to approximately 3.1 million children (ONS, 2020). Between March 2018-2019, 73,260 cases of child sexual abuse were reported by the police. As with many sexual abuse statistics, these must be discussed tentatively as a majority of victims have not reported their abuse, often due to shame or embarrassment (ONS, 2020). Statistics gathered by the Girl Guides, and further publicised by the Department for Education, show that 64% of girls from the ages of 13 to 21 had experienced sexual violence or harassment at school or college (Department for Education, 2018). In 2015, a BBC Journalist showed that there had been 5,500 cases of child-on-child sexual offences over a 3-year period, and stated that this was just the “...tip of the iceberg...” (Women and Equalities Committee, 2016). Further FOI requests to 28 police forces in 2020, made by Channel 4, have shown that reported sexual abuse cases in schools have increased to 6800 over the previous three years (4 News, 2020). Whilst this rise in cases could be due to higher levels of reporting, this could also be evidence of this issue growing in severity. Within the further education sector, the National Union of Students published a study in 2019 which showed that one in eight of the respondents had experienced unwanted sexual intercourse, with half of this group having this happen more than once (NUS, 2019).

In relation to this, in 2018 the Department for Education published advice for educators on sexual violence between children (Department for Education, 2018). Whilst this is a beneficial and welcome conversation on the topic, improvements on the current educational process needs further discussion. In recent years there has been more focus on sexual violence within higher and further education; however, understanding of consent is also essential in the contexts of primary and secondary schooling (Garcia and Vemuri, 2017). Furthermore, charities such as End Violence against Women (EVAW), whilst welcoming the additions of Female Genital Mutilation, consent and domestic violence to the curriculum, still feel that further intervention is needed. This would require removing some of the flexibility with which the schools are allowed to teach these subjects and removing the right of parents to remove their children from these lessons (EVAW, 2019). Not only would this help to address the nature of child-on-child abuse within schools, in time this approach to education may also help to create more informed and educated adults. By providing young people with regular and sustained knowledge of these issues, in time they may be less likely to believe rape myths and ultimately make more unbiased decisions on a jury during sexual abuse trials (which have notorious conviction rates in part due to the acceptance of rape myths). There has been evidence to show that the inclusion of educational programmes on consent and sexual violence “...significantly affected students’ knowledge and attitudes about rape myths” (Fonow, Richardson and Wemmerus, 1992). Through the use of the Rape Myth Acceptance Scale (RMAS) (Payne, Lonsway and Fitzgerald, 1999; McMahan and Farmer, 2011), this led to students being less likely to believe rape myths, as shown in both immediate and delayed tests, proving that this could influence their adult decision-making skills (Fay and Medway, 2006). Overall, it is clear that whilst there have been positive interventions by the

state, in terms of efforts to adapt the curriculum in schools, further attention is needed on this issue, as appropriate education for all you people may lessen the prevalence of sexual abuse and increase the long-term understanding of the issue.

#### 4.1.2 Domestic Abuse Disclosure Schemes (DADS)

Domestic Abuse Disclosure Schemes are used in all parts of the United Kingdom, and police forces in England and Wales are encouraged by the Home Office to use the Domestic Violence Disclosure Scheme, often known as 'Clare's Law'. This allows the details of previous domestic abuse against former partners of a perpetrator to be disclosed to their current partner, using a common law power of the police to make lawful, proportionate disclosures where there is 'a pressing need' to do so. Clause 70 of the Domestic Abuse Bill, at the time of writing, concerns the creation of 'guidance about the disclosure of information by police forces' for the purposes of preventing domestic abuse. This will have the effect of creating a duty on police forces to have regard to Home Office guidance on the Domestic Violence Disclosure Scheme (DVDS) in England and Wales. The Home Secretary, in introducing the recent call for evidence to inform the VAWG strategy going forward, gave the DVDS as an example of methods giving 'increased protection and support for victims and those at risk'. The problem is that we do not, in truth, currently understand how DADS affect disclosure recipients overall, and to what extent such disclosures make them or their children safer from harm.

The efficacy of the use of DADS is unknown. The results of a recent freedom-of-information study underpinning this evidence submission show that at least 45% of early recipients of disclosures under the DVDS in England and Wales have gone on to be victimised by the very partner they were warned about. The original empirical data to substantiate this estimate comprises freedom-of-information responses that could be obtained from 26 out of 43 police forces in England and Wales in 2018 (Grace, 2019). DADS place pressure on victims to safeguard themselves when they receive disclosures, as the support for recipients is not guaranteed, and DADS processes might well increase risk to victims and their families if a disclosure triggers events leading to further violent or controlling behaviour in a relationship (Duggan and Grace, 2018). Home Office evaluations of a pilot of the DVDS and following its first year of operation in England and Wales were not designed to establish as understanding of the efficacy of disclosures, only the procedural efficiency of operating the Scheme. Furthermore, where a type of DADS was piloted in New South Wales for two years to 2019, no conclusive evidence could be determined in an evaluation of the pilot as to the effectiveness of the Scheme in terms of disclosures precluding later intimate partner violence (Grace, 2021).

The available data from the ONS show that the uptake of the DVDS, by both potential victims and concerned police officers and other public protection professionals, has resulted in an increase from 3,410 disclosures in the year to March 2017, to 6,583 in the year to March 2019, and most recently 8,715 in the year to March 2020. However, there is a 'postcode lottery' of the usage of the Scheme across forces, which has continued in an unmonitored fashion (Hadjimatheou and Grace, 2020; Grace, 2018). Much of this variation in the use of the DVDS will stem from the vague nature of the 'pressing need' test which is applied in order to determine whether disclosures should be made under common law police powers (Grace 2015a; Grace 2015b). There also appears to be no obvious relationship between the number of DVDS disclosures per year, and the number of intimate partner homicides per year in England and Wales, for example.

With the current drafting of Cl. 70, the Domestic Abuse Bill, as it stands, potentially misses an opportunity to more closely monitor and refine the operation of the Scheme. As a result, that Home Office should ensure through updated guidance that police forces in England and Wales should begin to properly evaluate whether recent disclosures under the DVDS have been having a positive impact on the safety and empowerment of victims. The Home Office should place a duty on police forces in England and Wales to undertake an exercise to establish the efficacy of the disclosures they have made under the DVDS in the last 12 months, and potentially through to four years previously.

YEAR	Right to Ask Apps	Right to Ask Disclosures	Right to Ask Disc Rate	Right to Know Apps	Right to Know Discs.	Right to Know Discs. Rate	Total Disclosure	Domestic Homicides by Partner/Former Partner (E&W)
Year to March 2017	3045	972	31.9%	5445	2438	44.8%	3410	95
Year to March 2018	4655	2055	44.1%	6313	3594	56.9%	5649	70
Year to March 2019	6496	2575	39.6%	7252	4008	55.3%	6583	96
Year to March 2020	11556	4236	36.7%	8591	4479	52.1%	8715	<i>Forthcoming 25<sup>th</sup> Feb 2021</i>

*Figure 1. Source: ONS statistics on the use of the Domestic Violence Disclosure Scheme, 2017-20, and domestic homicides in England and Wales, 2017-2019.*

The Home Office could also refine and clarify the 'pressing need' test based in common law and which disclosures under the Scheme are predicated upon. In addition to this, Home Office guidance on the DVDS in England and Wales should feature more of an emphasis in key areas, to address several shortcomings in the current 2016 guidance: on the full range of human rights obligations to consider when making decisions about a possible disclosure; the best interests of children that would be affected by a disclosure into relationship, or non-disclosure; as well as being updated to reflect the obligations on police forces under the Data Protection Act 2018 (Grace, 2021).

#### *4.1.3 Sexual violence against women: Findings from research with convicted rapists*

Violence against women and girls continues to be one of the most systematic and pervasive human rights violations across the world (Ellsberg, Arango, Morton, Gennari, Kiplesund, Contreras and Watts, 2015; Michau, Horn, Bank, Dutt, Zimmerman, 2014). The United Nations defines violence against women as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life” (General Assembly Resolution 48/104 Declaration on the Elimination of Violence against Women, 1993). Furthermore, according to UN General Assembly (2006) violence against women transcends socio-economic, educational and geographical boundaries and is deeply rooted in societal structures.

Pandey (2018) in her seminal research, interviewed more than a hundred convicted rapists in South Asia’s largest prison complex, Tihar Jail in Delhi, India. Her research findings highlighted how historically created and culturally defined traditional gender roles in India have led to the formation of negative and oppressive societal attitudes towards women which continue to persist till today. Sykes and Matza (1957)’s influential work argued that all of their techniques of neutralizations were “extensions of patterns of thought prevalent in society rather than something created de novo” (p.669). This was also observed by Pandey (2018) in the narratives of men convicted rape, who relied on common rape myths and gender stereotypes to evade responsibility for their crimes. Figure 1 below presents the empirical model linking gender socialization and perceptions of culpability amongst convicted rapists in India. It articulates how deeply-rooted traditional attitudes towards

women are socialized and subsequently employed as justifications for sexual offending in the accounts of convicted rapists.

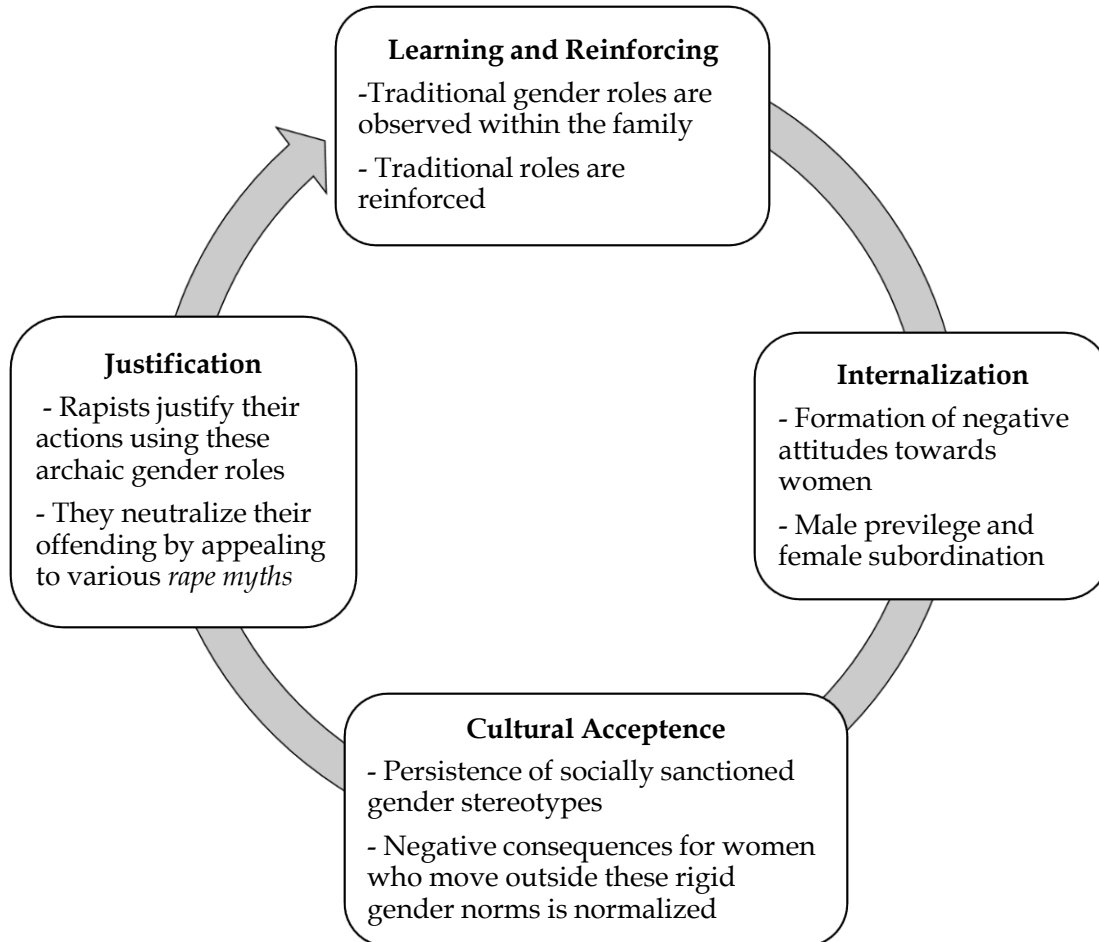


Figure 2. Empirical model linking gender socialization and perceptions of culpability amongst convicted rapists in India (Pandey, 2018)

The first three stages of the model were common for both men convicted of rape and men convicted of murder as both groups of men had socialized gender in a similar manner. This was also evident through their scores on the ATW questionnaires. Therefore, it was interesting to note that internalized gender roles and socially validated traditional attitudes towards women featured prominently only in the justifications of the men convicted of rape. This highlights how socially sanctioned and normalized female oppression allows rapists to justify and minimize their sexual offending, evade responsibility and blame the victim.

Research conducted by Pandey (2018) also sheds light on the ambiguity surrounding consent. Several researchers have stressed on providing a definition of consent in order to establish a clear distinction between wanted and unwanted sex (Graves et al, 2017; Beres, 2014; Muehlenhard and Peterson, 2005; Adams-Curtis & Forbes, 2004; Breitenbecher, 2000). Part of the problem associated with a lack of knowledge about consent and how it is communicated relates to an absence of a clear definition (Beres, 2014). Legal experts and researchers have struggled to define consent, particularly in respect to rape, since the notion of non-consent is often inconsistent with how consent is described in legal

discourse (Cook and Moore, 2017). Currently, most states in the United States define rape using three components: penetration, force, and lack of consent (Decker & Baroni, 2012; Lyon, 2004; Remick, 1993). This definition is not very different from most other legal definitions of consent around the world (particularly to those of the UK and India). Most anti-rape campaigns in India and around the world have largely focused on “no means no” as a means to establish consent. However, when Friedman and Valenti’s (2008) book “*Yes means yes!*” was published, it changed the discourse of consent. As a result, in September 2014, California became the first in the United States of America to implement a “yes means yes” (Cook and Moore, 2017). Under this law, any unwanted sexual activity taking place after a lack verbal consent, physical resistance, or silence is interpreted as rape (Chumley, 2014). Such changes to the definition and understanding of consent can particularly be useful in the prosecution of cases of sexual violence as well as in promoting awareness about seeking consent, which is much needed.

In line with previous research, Pandey’s (2018) work stresses on using education as a medium for change, particularly a call for including comprehensive sex education module in schools. Her research found that most men in the sample of convicted rapists did not understand what consent meant or that it needed to be sought and their narratives also highlighted a sense of entitlement and ownership over the victim.

#### 4.2 Improving outcomes for victims/survivors through better handling of crimes in the criminal justice system

##### *4.2.1 Violence against women and girls as a human rights issue*

Women and girls are subjected to grave forms of violence including domestic abuse, forced marriage, sexual assault and rape, sexual harassment, stalking, coercive control, so-called “honour” crimes, and female genital mutilation (UK Gov, CEDAW Committee, Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (2011) *herein the Istanbul Convention*). The violence women and girls are subjected to violates their right to equality, and right to be free from discrimination. It is both a cause and consequence of their inequality and continues to be “a major obstacle to the achievement of equality between women and men.” (Istanbul Convention).

Violence and discrimination against women and girls are not just perpetrated by private actors. Institutions and social structures discriminate and perpetuate and exacerbate the inequality, discrimination, and oppression women as a class are subjected to on a daily basis. The UK government ratified the European Convention on Human Rights (ECHR) in 1951, the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1976, the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1986 and is striving towards ratifying the Istanbul Convention (OHCHR, Home Office, 2020). The UK has therefore not only accepted legal obligations on the right to equality between men and women, freedom from discrimination on the basis of sex, and the right to equality before the law, but the UK has also been a world leader in drafting and ratifying human rights laws.

The right to equality and to be free from discrimination are accepted as fundamental rights and are firmly embedded within domestic UK laws and international treaties that the UK has ratified. Access to justice for women and children is required as a right on the basis of equality, as well as to achieve equality in outcome. Access to justice is therefore a fundamental principle of the rule of law and good governance which applies to both judicial procedures and to the access and enjoyment of public services.

Women and girls have the right to live free from violence, discrimination, and inequality. To address violence against women and girls (VAWG) States must ensure neither State organs including national

and local governments, the police, and the judiciary, nor non-State actors discriminate against women and girls. Any failure to prevent discrimination from occurring is a violation of the legal principles laid down by the IECSCR, CEDAW, and Istanbul Convention (CESCR Committee, 2000; CEDAW Committee, 2017). Both the CEDAW and the Istanbul Convention require States, including their officials and institutions, to refrain from engaging in violence or discrimination against women in their laws or policies. Discrimination can take place in treatment or in outcome (CEDAW, 2010). They also require States to “exercise due diligence to prevent, investigate, punish and provide reparation for acts of violence covered by the scope of this Convention” (Istanbul Convention, Art. 5; CEDAW, 2010).

#### *4.2.2 VAWG and Domestic Abuse*

In 2020, the Crime Survey for England and Wales showed that an estimated 1.6 million women aged between 16-74 years experienced domestic abuse in the year ending March 2020 (ONS, 2020(a)). There are wide reports that rates of domestic abuse spiked during the Covid-19 pandemic and its associated lockdowns. “Police recorded crime data show an increase in offences flagged as domestic abuse-related during the coronavirus (COVID-19) pandemic,” and there are suggestions that domestic abuse related homicides more than doubled in the first three weeks of lockdown (ONS 2020(b), Hohl and Johnson, 2020; Women’s Aid, 2020; Safe Lives, 2020).

The consequences of increased rates of domestic abuse related offences will not end when the COVID-19 pandemic ends. The same barriers that prevent women from being able to make rights affirming choices and to live with dignity and equality will continue to persist. Perpetrators of domestic abuse need to be removed from shared properties, the burden of leaving an abusive relationship should not be borne by the victim-survivor. When victim-survivors are not able to stay in their home the hardship, inequality, and oppression they experience is reinforced and multiplied by the burdens and difficulties of securing permanent housing solutions, by losing contact and no longer being proximate to their social support networks, places of employment, and for women with dependants, their school and childcare provision. They also need to re-build their lives and often need to replace all of their possessions. Placing such a significant burden onto the abused party is not consistent with the principles of equality or non-discrimination.

#### *4.2.3 Coercive and controlling behaviour; dominant discourse, police response and the victim-survivor experience*

Intimate partner abuse (IPA) is a pervasive social issue, resulting in a range of long-term negative health outcomes (WHO, 2005). While it is important to acknowledge that IPA is perpetrated in all forms of intimate relationship, regardless of sexuality, and that victims and perpetrators can be of any gender, the majority of violence in intimate relationships is committed against women (Stark, 2007; Myhill, 2015). Dominant discourse around domestic abuse or IPA has shifted dramatically over the last fifty years, with the victim-survivor experience gaining a voice through the refuge movement in Britain in the 1970s and 80s, amplified by experienced practitioners and researchers working through victim support agencies (Dobash & Dobash, 1992). This counter discourse, which challenged and disrupted historically dominant patriarchal discourse, has resulted in sweeping social change, including legislation and criminal justice responses. Most recently this shift is captured in Section 72 of the Serious Crimes Act 2015, which criminalises patterns of coercive and controlling behaviour (CCB) in intimate relationships. However, despite these changes in attitude and approach, IPA remains widespread and a comprehensive understanding of its dynamics remains lacking (Wydall & Zerk, 2020). Police response to IPA, and specifically CCB, has been shown to be problematic (Barlow et al, 2019), yet given that for many people the police are a vital point of contact and potential lifeline, their role within this issue is critical.

A qualitative research project by Sarah Tatton (SHU) explores the position of the police within discourse around IPA and CCB, examining how dominant discourse and the cultural environment



impacts police responses, and in turn the impact of police responses on dominant discourse and the cultural environment. Crucially, it considers the necessity of continued engagement with the victim-survivor experience in informing a deeper and more useful understanding of CCB in intimate relationships. Qualitative data will include observations of police staff undergoing new domestic abuse training (DA Matters), which has a focus on the victim experience; questionnaires completed by police staff on completion of the training; semi-structured interviews with response officers, higher ranking officers and victim-survivors who have sought help through the police.

Initial thematic analysis of the data collected so far reveals frustrations of officers in dealing with IPA and CCB, which is reported as between 60-80% of response workload, including a lack of understanding in victims of the potential dangers inherent in their intimate relationships. While initial research questions sought to explore the impact of the ecological context - specifically media representations of gender, relationships and abusive dynamics - on police, many officers have suggested that they do not engage directly with media representation, and are thus unaware that these representations are instrumental in driving social change, including police policy. Those who were directly engaged with victim-survivor narratives through social media expressed a more empathetic approach to victim support. It has also become apparent that police are impacting on decision-making of victims, even if this does not result in criminal justice outcomes, since they routinely shed light on the controlling nature of their relationships and associated risks through the DASH risk assessment at an individual level and media campaigns at a force level. One of the key themes emerging from the data is the need for the police to cultivate and maintain strong partnerships with other agencies. Many victims may be unwilling to proceed down a criminal justice route on initial contact with the police, and may be deterred from help-seeking in the future where pro-arrest policy is enforced against the victim's wishes. However, support from other agencies has been shown to increase the likelihood of victim-survivor support for criminal justice outcomes (Garcia-Jimenez, 2020). Another emerging theme is the focus on risk severity perceived by the CJS as related to homicide/femicide (Monckton Smith, 2020) which is undoubtedly a grave concern, but which does not acknowledge the 'loss of life' inherent in coercive and controlling relationships, where the level of CCB amounts to virtual imprisonment and total isolation of the victim, and severe emotional and psychological harm which inhibits the victim's ability to live life (Stark, 2007; Johnson, 2008).

#### *4.2.4 Need for Enhanced Police and Judicial Action Focussing on Equality in Outcome*

To achieve equality in outcome for women and girls, the police and courts must consistently respond in a coordinated and comprehensive manner to issue Domestic Violence Protection Notices/Orders, restraining orders and non-molestation orders to protect the safety and health of victim-survivors, and their dependants. When perpetrators of abuse are arrested and charged, bail conditions need to be imposed in all cases where there is a risk of future harm. Perpetrators must be arrested when they fail to comply with these orders/provisions. The Centre for Women's Justice alleges the police are failing to comply with all of these requirements (CWJ, 2019).

In other cases police forces across England and Wales have failed to appropriately respond to/investigate domestic abuse cases with fatal consequences, and homicide prosecutions have failed to result in a conviction for reasons not rooted in law, but instead in deeply embedded social prejudices (IPCC, undated; BBC, 2018). Securing the safety of vulnerable women and children, and enforcing legal responsibilities are the cornerstones of a functioning democracy and pillars of good governance. Failure to arrest perpetrators for non-compliance puts women's lives and safety at risk and gives perpetrators freedom to act with impunity.

A VAWG strategy must recognise gender-based violence, including domestic abuse, as a form and consequence of gender inequality. Due to a failure to impose Domestic Violence Protection Notices and Orders, and a shortage of refuge places, due to government decisions at the national and local level to cut funding to refuge providers, women are often trapped in abusive relationships as they have no where to go. For many women who are unable to access emergency refuge accommodation

they are often faced with either staying in their shared home, or becoming homeless. For women with dependants it is both harder to access to emergency housing and harder to leave abusive relationships and risk becoming destitute. With DVPN/Os not being issued and refuges not having spaces, women do not have a choice. They are forced to stay in abusive relationships. This is not a choice. It subjects women to torturous, cruel inhuman and degrading suffering and perpetuates the discrimination women experience.

#### *4.2.5 Housing, Domestic Abuse and Inequality for Women and Girls*

The current Domestic Abuse Bill intends to address homelessness for victims of domestic abuse by requiring section 189 of the Housing Act (1996) to give priority for accommodation to persons affected by domestic abuse. This is a very welcome amendment. The funding of housing is also to be made the responsibility of Local Authorities. Housing in England and Wales is under-funded and in short supply.

Placing the responsibility for funding housing with Local Authorities creates the possibility that women fleeing domestic abuse in one area will be unable to access housing in another area. A nationally funded, coordinated response needs to provide women and their dependants with access to emergency shelter and long-term housing solutions. Delegating responsibilities to Local Authorities opens up scope for inconsistency in service provision between areas and creates barriers to access. This would result in unjustifiable discrimination between women based on their place of residence. Further, women from one area may be denied housing in another area if that local authority does not wish to recognise a non-resident as entitled to local housing. If housing is not available and DVPN/Os are not issued and enforced the chance of women becoming homeless, or being forced to stay in abusive homes and risk being killed escalates. This is a foreseeable outcome.

Research shows BAME women are more likely to access specialist provision that meets their cultural, linguistic, and other needs (WAHA, Imkaan). Specialist refuge providers need to be funded. A failure to do so means minority women may not be able to access service provision and may be disproportionately impacted by changes to housing provision. A failure to provide services needed by sections of society, in this case women and their dependants reinforces inequality and is a failure of State obligations to fulfil their human rights obligations.

In the year April 2019-March 2020, 25% of all refuge referrals were declined due to a lack of capacity, and 31% were declined due to an inability to meet the support needs of the abused person (ONS, 2020 (c)). The government is failing to provide women with safe housing. This affects their right to the highest attainable standard of health, well-being, and survival. Subjecting women to the mental effects of not being able to escape abuse may subject women to degrading, inhuman and torturous treatment. The UK Supreme Court has stated Article 3 of the ECHR is absolute in nature and it “unequivocally forbids torture or treatment which can properly be regarded as inhuman or degrading.” It added “that the primary focus of article 3 is on its effect on the victim.” ([2018] UKSC 27). To leave women with no option to live safely is to subject women to unjustifiable treatment inconsistent with obligations to not subject women to torturous treatment. Access to safe, good quality housing that does not compound their suffering is an essential obligation.

#### *4.2.6 Sexual Assault, the Judiciary and Discrimination against Women and Girls*

For the year ending June 2020, 152,977 sexual offences were recorded by the police, and rape accounted for 36% of all sexual offences recorded by the police in the same period. Despite these significant numbers for the year ending March 2017, 25% of all women who reported rape or assault by penetration to the police felt the police were not very/not at all helpful on first contact. 37% of female respondents thought the police were not at all, or not very helpful during the investigation (ONS, 2018). In addition to poor levels of satisfaction with how the police handle reports of sexual assault, if a person reports a rape to the police in England or Wales, the chance of that case securing a

conviction is currently at the lowest level since records began (Topping and Barr, 2020). “The proportion of rapes being prosecuted in England and Wales has plummeted to just 1.7 per cent” (Dearden, 2019). This demonstrates that both the police, the criminal justice system, and the associated support systems are failing to recognise and respond to the needs of victim-survivors. As women and girls are over-represented in this group this constitutes discrimination on the basis of sex.

In the UK the number of rapes prosecuted in the year ending March 2020 is lower than for any other year where data exists. This has led campaigners to claim rape is being decriminalised (Topping and Barr, 2020). Previous sexual history continues to be used in the cross-examination of complainants due to what appears to be a deliberate defence strategy to exploit a provision in the legislation expressly aimed at prohibiting the inclusion of previous sexual history in rape trials. Academic research has claimed current restrictions are ‘evaded, circumvented and resisted’ and judges, when asked, are granting permission for these questions to be asked, often with the explicit purpose to discredit the complainant (Ministry of Justice, 2017, citing Kelly et al, 2006).

The result is that in two-thirds of rape trials previous sexual history is being heard in courts without the procedures being complied that were introduced to expressly counter this from happening (Ministry of Justice, 2017; McGlynn, 2017; see generally Section 41 of the Youth Justice and Criminal Evidence Act 1999). Research has shown that juries are easily influenced by these strategies and gender-stereotypes are fuelled by socially constructed opinions of ‘appropriate’ behaviour which contributes to the low conviction rate (Smith and Skinner, 2012; Childs and Ellison, 2000; McGlynn and Munro, 2011).

The significant rate of attrition in securing prosecutions for rape can be linked to several factors: Women are forced to hand in their mobile phones and are made to feel like perpetrators; if women choose to access counselling and psychological support to address the trauma and violence they were subjected to this may jeopardise the success of the trial and it can be labelled interfering with a witness; rape myths and gender-stereotypes continue to be exploited to influence the outcome of trials -both by juries and judges; and judicial delays often act as a barrier impeding women’s recovery. This has most recently been highlighted in an expose of family court judgments where an allegation of marital rape initially failed to secure a prosecution due to a lack of ‘adequate’ physical resistance and other flawed reasons rooted in victim blaming (Fouzder, 2021). These factors often co-exist with one another and compound the violence and discrimination women and girls have already experienced. Combined with poor levels of satisfaction with the police response these factors all contribute to low levels of reporting, prosecution, and subsequent convictions. Training of the police, judiciary, and jurors on the falsity of rape myths and the gender-stereotypes with the purpose of eradicating false, victim-blaming notions and replacing with rights based, research informed education should be essential. Failure to do this perpetuates discrimination and disadvantage (Ellison and Munro, 2013).

The short, medium, and long-term impact of sexual assault has long been recognised (Dube et al, 2005; Solomon & Heide, 2005; Ullman et al, 2007;). Failure to recognise, accommodate, and support these needs both within the law enforcement and criminal justice systems, as well as via additional forms of support to aid recovery and healing perpetuates the gender-based violence and discrimination women are subjected to, both by the perpetrators and by the State. Inadequate responses by State institutions such as the police and judiciary which fail to instil trust in the law enforcement process “lessens women’s understanding of themselves as rights-holders and condones the violence, potentially discouraging women from reporting violence, dropping charges, or otherwise withdrawing from the legal process. This contributes to re-victimization of women in a climate of impunity.” (Chinkin, 2013).

#### *4.2.7 State inaction denying women access to justice*

Women must be able to access justice and States have a duty to provide victims of crimes and/or discrimination with an effective and prompt response (Chinkin, 2013, CEDAW 2015, Fredman 2016).

State responses must aim to provide a framework where the emancipatory and transformative potential of law enforcement and accompanying criminal justice systems ensure women's rights to substantive equality. Victim-survivors should be able to receive effective protection, care, and redress from State institutions including the police, courts, local authorities, and health-care providers.

Obstacles to accessing and receiving justice stubbornly persist. “[G]ender stereotyping, discriminatory laws, intersecting or compounded discrimination, procedural and evidentiary requirements and practices, and a failure to systematically ensure that judicial mechanisms are physically, economically, socially and culturally accessible to women” all contribute towards women being denied their fundamental right to equal protection of the law (CEDAW, 2015). When inequalities in the process of accessing justice discriminate disproportionately against women, violence against women and girls is perpetuated by unjust power-relations within society which exacerbates their oppression and contributes to creating impunity for perpetrators. Legal aid cuts disproportionately affect women's access to legal representation, and this exacerbates the inequality and discrimination women experience.

For access to justice to be meaningful and compatible with the UK's legal duties and obligations the government must prioritise: affordable, accessible, good quality, and accountable justice mechanisms. A failure to impart training on laws affecting women and girls to ensure high-quality implementation violates women's right to equality. To increase the accountability of law enforcement and justice institutions the government must hold institutions accountable for perpetuating gender-discrimination when they engage in victim-blaming and/or fail to uphold laws expressly enacted to increase equality for women and girls. Mandatory training and monitoring mechanisms will contribute towards remediating these injustices.

A failure to address the causes of discrimination against women and to adopt measures to redress them makes the UK complicit in the discrimination and inequality women experience. Without these measures women and girls will continue to be denied access justice and to effectively realise their rights to life with dignity, right to equality, and right to be free from gender-based discrimination. Strengthening the accountability of law enforcement and criminal justice institutions must be seen as a priority to achieve gender equality and to end violence against women and girls.

#### 4.3 Identifying new and emerging forms of violence against women and girls so that they can be adequately tackled

##### *4.3.1 Online harms against women and girls*

The report of the Special Rapporteur on violence against women identified that women often face online forms of violence, which hinders women's full enjoyment of their human rights and ability to achieve gender equality (Human Rights Council, 2018). According to a briefing paper from the House of Commons (2017) some have argued existing laws are adequate to deal with online harassment (for example online stalking is covered by sections 2A and 4A of the Protection from Harassment Act 1997). Others have pointed out several offences' pre-date the widespread use of social media platforms and have called for the law to be reviewed.

Due to the decentralized nature and multi-stakeholder governance of online platforms, States have a major role in developing laws and processes that encourage Internet intermediaries to be accountable for addressing VAWG in a way that is compatible with human rights (Kulesza, 2014). Emphasis must be placed on online aspects of crime as legal conceptions of rights cannot be simply translated into technical standards (Kulesza, 2014; Mueller and Badiei, 2018). Furthermore, due to their central role Internet intermediaries have ethical and human rights responsibilities to their users affected by their networks (House of Common, 2017; Council of Europe, 2018). Thus, public sector participation in the regulation of human rights in the digital sphere is very limited and primarily relies on the private

sector for managing content that is considered illegal. Arguably, this circumvents international human rights law, and often domestic laws, therefore sidestepping the protections afforded to individuals by the international human rights framework (Zalnieriute and Milan, 2019). Research from the Institute of Development Studies (2018) shows that women often face severe challenges in getting legal guidelines enforced online. Social media providers such as Facebook, Twitter and Instagram have tools in place for reporting abusive behaviour to combat violence online. However, these tools alongside the social media company's policies have had varying success. The VAWG Helpdesk (2018) argues the effectiveness of international human rights frameworks and laws is constrained by gaps in specialised national legislative and policy measures, procedures, and expertise. Furthermore, according to the Council of Europe (2018), Internet intermediaries should ensure their actions do not have direct or indirect discriminatory effects or harmful impacts on their users or other parties affected by their actions.

Anonymous accounts make identifying perpetrators of online GBV challenging (Aziz, 2017). However, although anonymity can conceal the identities of perpetrators, it is also crucial to women's rights organisations and women who want to speak out about issues without fear of backlash, as well as to survivors wanting to re-enter online spaces anonymously (Human Rights Council, 2016). Yet, a quantitative research project conducted by Chaggar at Sheffield Hallam University found that, in relation to anonymity, 88.9% of research participants felt it is more important that people feel welcome and safe online compared to 8.9% who felt people being able to speak their minds freely online was more important. For many women who are active online, online spaces are intricately linked to offline spaces; making it difficult to differentiate between experiences taking place online versus offline (End Violence Against Women Coalition, 2013). The merging of violence in online and offline spaces, includes individual instances of abuse which can begin offline and be taken online, or vice-versa, or simultaneously. A UK study reported that 50% of victims of revenge pornography said it was a part of a wider pattern of harassment, many of which were committed at the end of an abusive relationship (VAWG Helpdesk, 2018).

## **5. Conclusions and Recommendations**

1. HM Government need to address the under-provision of spaces in refuges, and, more widely, poor access to housing for female victims of violence of all kinds.
2. HM Government should create a clearer and perhaps an affirmative definition of sexual consent, which is necessary for our society and its institutions to develop more effective prevention and response strategies for victims.
3. HM Government should promote comprehensive sexuality education as a means to combat violence against women. The discourse around sex needs to be challenged. UNESCO (2018) has been promoting their Comprehensive Sexuality Education (CSE), which is both inclusive and non-stigmatizing in promoting gender equality. There is a great need of comprehensive sex education or modules focusing on sexual violence and sexual exploitation awareness. Introduction of such modules in the curriculum at both school and college levels can empower the students from a young age by highlighting women's changing roles in society, addressing distorted views of masculinity and create awareness on violence against women.
4. Regarding consent and sexual abuse education, the Department of Education should re-design these classes to be compulsory (EVAW, 2019); every school and college should provide obligatory and regular information to pupils (such as either building upon this information every year or having refresher classes every two academic years).
5. More research should be conducted on this matter and the best teaching approaches for this subject. This could include the creation of a specific training pack for teachers on how to

explain this subject to different age groups in the most engaging and informative way. This could remain under constant review; determining the best approaches and in order to keep the information current and up-to-date.

6. As mentioned above, it has been recommended by EVAW that parents should not be able to remove their children from sexual education classes (EVAW, 2019). Article 28 of the UN Convention on the Rights of the Child recognises that education is a fundamental human right for children. Additionally, Article 29(b) specifically states that “the education of the child shall be directed to... the development of respect for human rights and fundamental freedoms...”. Therefore, due to the subject matter that is being discussed and that these are global human rights issues, young people have the right to be included within these classes without outside interference.
7. HM Government should work on fostering an understanding of violence against women in its larger context to identify root causes and long-term solutions. Outward manifestations of unequal power dynamics coupled with deeper, somewhat unexplored emotional factors on the part of men, are representative of only one piece of the puzzle. In order to formulate informed and successful strategies to end violence against women, it is crucial to form a solid understanding of the different ways gendered violence is experienced, which inevitable includes what can be considered as ‘invisible’ or ‘symbolic’ violence (Bourdieu, 2001) within the structures of societies.
8. HM Government should highlight the key role of men as agents of change in combatting violence against women/ Addressing men’s issues as a means to eradicate violence against women. prevention approaches can focus on shifting the unequal power relations in our society by including men in this dialogue and empowering them to prevent violence against women. There is no dearth of research literature highlighting the need to address men’s role in ending violence against women. The idea is to bridge the gap between the two genders, wherein normative male behaviours are often synonymous with rape culture.
9. With the current drafting of Cl. 70, the Domestic Abuse Bill, as it stands, potentially misses an opportunity to more closely monitor and refine the operation of the Scheme. As a result, that Home Office should ensure through updated guidance that police forces in England and Wales should begin to properly evaluate whether recent disclosures under the DVDS have been having a positive impact on the safety and empowerment of victims. The Home Office should place a duty on police forces in England and Wales to undertake an exercise to establish the efficacy of the disclosures they have made under the DVDS in the last 12 months, and potentially through to four years previously.
10. The Home Office could also refine and clarify the 'pressing need' test based in common law and which disclosures under the Scheme are predicated upon. In addition to this, Home Office guidance on the DVDS in England and Wales should feature more of an emphasis in key areas, to address several shortcomings in the current 2016 guidance: on the full range of human rights obligations to consider when making decisions about a possible disclosure; the best interests of children that would be affected by a disclosure into relationship, or non-disclosure; as well as being updated to reflect the obligations on police forces under the Data Protection Act 2018 (Grace, 2021).
11. Initial recommendations from Tatton's research are that police responders would benefit from greater engagement with the victim-survivor voice, including training which is informed by victim-survivor experiences, and an increased emphasis on partnerships between police and other support agencies, including those in the voluntary and community sector.

12. HM Government should increase funding for research into the scope, nature and impact of online GBV to improve on global data collection, in line with commitments in key international human rights standards including mental health.
13. HM Government should agree a comprehensive definition of online VAWG and methods of measurement, recognising it as part of the continuum of violence in the offline world and rooted in the same systems of gender inequality.
14. HM Government should facilitate and simplify access to justice for victims of GBV online. This includes improving law enforcement response and evaluating the effectiveness of the criminal justice system's response. Internet intermediaries must improve their policies and implementation, and consistently enforce their policies on discriminatory, hateful, and abusive conduct.

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# Sheffield Hallam University

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