DOMESTIC ABUSE OR DOMESTIC VIOLENCE – DOES TERMINOLOGY MATTER?

Introduction

The term 'domestic abuse' as opposed to 'domestic violence' is meant to encompass the wider forms of suffering over and above physical injuries which women (and men) are exposed to from partners. Many people are in 'unhealthy' relationships; that does not necessarily equate to being involved in an abusive relationship but confusion may occur if the definition of this crime is broadened. Would 'domestic abuse' rather 'domestic violence' mean the criminalisation of bad relationships and remove focus from the true nature of this crime? Is it simple semantics or would broadening definitions from 'domestic violence' to 'domestic abuse' encourage changes in society's perception of domestic violence and who precisely is likely to be involved?

Definitions

According to the dictionary, abuse is "v. 1. use to bad effect or for a bad purpose 2. treat with cruelty or violence 3. address in an insulting and offensive way" whilst violence is: "n. 1. behaviour involving physical force intended to hurt, damage or kill 2. strength of emotion or of a destructive natural force" Being offensive and cruel can, however, cause harm - particularly if there is a physical element implied or if there is a history of physical harm following on from, or alongside, verbal insults. There are interesting subdivisions of both the terms 'abuse' and 'violence'. For example, in research undertaken by the Home Office, definitions of domestic violence were dependent on victims' interpretations. If various agencies use different terms, how is it possible to specify what is, or is not, unacceptable behaviour and thus whether such behaviour constitutes a criminal offense.

So what is domestic violence? In essence, it is where a current or former partner causes physical or emotional harm or injury to the other; where one partner is forced, either physically or emotionally, to submit to the will of the other (whether the perpetrator is male and victim female, or vice versa, or both partners are of the same gender). Whilst many may consider domestic violence to consist of physical assaults by a husband upon their wife, this is not an exclusive definition. Aside from physical assaults, there are emotional, financial and social constraints placed by one partner upon the other and this can be a particular problem if one partner is the only working adult or if he or she earns substantially more than their partner. Emotional abuse can be where one partner constantly makes derogatory remarks, belittling achievements and physical appearance; social constraints can include manipulation of one's movements with constant questions about where someone is going. Verbal assaults can almost cause as much fear as physical assaults; this is especially so when assaults of any kind are directed not only towards the primary victim (i.e. partner/ex-partner) but also towards children, pets or other loved ones. Further, if verbal assaults or threats are often
followed by physical assaults, victimisation occurs on another level as the apprehension of a physical attack can be as traumatic as the assault itself.

The Home Office itself defines domestic violence as: "Any violence between current or former partners in an intimate relationship, wherever and whenever the violence occurs...[it] may include physical, sexual, emotional or financial abuse". This may, however, be purely to obtain specific information on victims rather than any legally or obligatory definition to be used in strict interpretation by agencies (including criminal justice agencies). Given that it interchanges violence and abuse, confusion may occur, and it broadens further its definition in a leaflet against domestic violence. The leaflet describes the more obvious of 'punching' and 'kicking' to the more debatable 'telling you that you're ugly', 'telling you what to wear', 'calling you a failure' and 'shouting'. These latter phrases and definitions are so broad they may in fact undermine their purpose. Pragmatic interpretations may be obvious to policymakers, academics and researchers and perhaps even the police (in that the derogatory comments and shouting are part of a pattern of abusive behaviour, rather than when used in an isolated incident) but leaflets and campaigns seen by the wider public may result in the meaning being lost. This is because, during arguments and disagreements - in various relationships - shouting and making derogatory remarks can be quite common and the intent behind the remarks may be less sinister than when used in conjunction with, or as a build up to, actual intended harm (whether physical or not).

Definitions can be misunderstood in other contexts as well. What happens when bad relationships becomes verbally abusive; when a couple shout insults at each other - perhaps frequently and with both parties being culpable - is this domestic abuse? Could the potential for a physical or verbal 'assault' on either party mean that police (or other agency) intervention is required or necessary? Arguments, discussions (heated or otherwise) and even occasional 'outbursts' may help to resolve issues; releasing tension and may make relationships healthier and stronger. What happens if neighbours contact the police concerned due to the volume of arguments: would domestic 'abuse', rather than domestic 'violence', mean that police attendance is mandatory for a simple argument? Are all relationships which encounter rough periods of time to be subject to monitoring, intervention and even prosecution? This is obviously not what is anticipated when domestic abuse was utilised as a term over and above domestic violence; nonetheless, definitions/terminology (and any interpretation thereof) remain subjective, even if guidelines are in place.

**Terminology**

Perhaps one of the main problems with terminology is the method in which it creates confusion, misunderstanding and even apathy among agencies - and society as a whole - towards the crime of domestic violence itself. Is domestic violence a crime only if there is physical violence? Is it a crime if a husband shouts so loud that neighbours can hear him make derogatory comments towards his wife - perhaps not hearing her response because of the lower volume; does this constitute domestic abuse even if no violence occurs? Certainly this seems to be the implication in an extract of the
Report of the Select Committee on Marital Violence (1975) from the Metropolitan Police: "...general principle of police...not to intervene in a situation...between husband and wife...in which the wife had suffered some personal attack, any assault upon a wife by her husband which amount to physical injury of a serious nature is a criminal offence...". Here, the emphasis is on the physical injuries - though English law states that assault is the fear of physical harm rather than actual physical harm. This is known as a 'technical assault' whereby "the defendant intentionally or recklessly causes the victim to apprehend imminent force". Psychological trauma can be suffered by the constant threat of physical harm as well as any physical injuries however; for such suffering, the Protection From Harassment Act 1997 may be utilised, though the conduct 'causing fear' must occur on at least two occasions (ss.1-3). Government publications use the term 'domestic violence' and 'domestic abuse' interchangeably - if the Government do not know the difference, how can anyone else?

One reason for the change in term from violence to abuse is that it may avoid the implication that only physical assault is criminal whereas 'abuse' suggests a variety of conduct used by partners. A broader term may help victims understand their partners' actions are not acceptable. Problems may arise when boundaries of terminology and interpretation become blurred. Would a man be more likely to be targeted than his female partner if both technically committed the crime of 'domestic abuse' because of gender perception (i.e. that females in the relationship are more likely to be the victim than perpetrator, or that females are less likely to cause physical harm towards male partner)? Domestic violence may well be too narrow a term and restrict what people perceive to be a criminal offence and worth reporting. The approaches of various agencies in various locations may also make a difference; if a police force responds positively towards victims, if they are proactive in their dealings of domestic incidents because of a broader term of 'abuse' then utilisation of such terms may be justified. A more reflective interpretation of domestic abuse may result in police intervention earlier in situations which may otherwise be left until consequences are dire for both victims and their families.

The Scottish Executive has settled on 'Domestic Abuse' when discussing domestic violence throughout its policies and campaigns. Though it is difficult to find the reasons behind the decision, it was agreed in September 1999 to create the definition. In 1998, the Scottish Partnership on Domestic Abuse was set up and a National Strategy created to ensure women have access to the necessary agencies, assistance, etc.

In 2001, the Protection from Abuse (Scotland) Act was introduced and the definition therein states: 'abuse' includes violence, harassment, threatening conduct and any other conduct giving rise, or likely to give rise, to physical or mental injury, fear, alarm or distress'. A draft National Strategy was produced in October 2002: key elements included public awareness raising; education; training; services for women and children; work with men who use violence; legislation; and workplace strategies. The Strategy has produced various campaigns aimed at both perpetrators and victims but also indicates that neighbours, friends and others ought to be aware of domestic abuse and not to
ignore the signs. The first of these campaigns began in 1995 and it was aimed at the perpetrators - shown specifically during programmes the majority of men would be likely to see (i.e. rugby and football world cups). For some people, however, it is not just a matter of terminology and interpretation; victims' and perpetrators' culture may mean that they do not see their situation as being the business of any outside agents.

Even internationally, communities rarely intervene for a country's inadequate and antiquated domestic criminal justice policies and even then, it is usually because the victim(s) originated from a western country (i.e. Britain/USA) or because of pressure from media and/or celebrity sources. For some countries, crimes such as domestic violence may be interpreted as minor infractions, but in the UK and other countries, such relationships may be abusive or implicitly violent. Each culture has specific interpretations of what is domestic violence; for example, Sokoloff and Dupont studied experiences of Japanese women's understanding of domestic violence: overturning a dining table, or pouring liquid over a woman is more significant to them than slapping or pushing. Sokoloff and Dupont correctly believe that, over and above the social constraints in place for some women to report abuse or abusive relationships, there may well be cultural constraints which further isolate women and enhance their victimisation. Further, should women from traditional insular communities reside in western society, they may be unwilling or unable to report domestic violence due to language barriers, fear of reprisals not only from their partners, but their own communities. This will be enhanced if the victim and/or her partner are illegal immigrants; not only would she bring authorities' attention to her own immigration status, she may also raise awareness of a community previously unknown to authorities.

For the UK, the levels of control over a spouse/partner by perpetrators within the immigrant community (whether legal or otherwise) may be even more acute due to language, cultural and community barriers and restricted access to support agencies. Home Office research on the provision of 'advocacy services' to black and other ethnic minority women shows that problems can arise where and when women are uncertain as to their legal rights and what facilities are available to them and that multi-agency support and co-operation is essential in tackling domestic violence in such communities. In some cultures, victims and perpetrators may accept violence and/or abuse and may not believe such behaviour is wrong, let alone illegal. Even if the victim and/or perpetrator recognises that domestic violence/abuse is unacceptable, their country of origin may be unwilling to prosecute the perpetrator and protect the victim; what then for those who seek asylum? For those in England, the Law Lords have ruled that they may well be protected under the Geneva Convention - and thus attain the rights as refugees and gain protection of the English legal system and remain indefinitely.

Other problems prevail when using terminology or definitions which limit the ability of objective interpretation particularly by the police. As Edwards discusses in her book 'Policing Domestic Violence', the charity Violence Against Women puts forward the view that: "...police response...judgemental attitudes to the behaviour of women victims which they may consider
contributory...the woman is 'nagging', 'hysterical', or a 'sluttish housewife'." Edwards further refers to Stanko who found that: "Decisions to arrest....charge a suspect with 'disorderly conduct' rather than assault...all affect how men's threatening or violent behaviour comes to be defined as criminal or non-criminal". Edwards refers to research by Chatterton who found one reason for the lack of police intervention is down to "...[a police officer's] decision not to arrest by referring to the moral characteristics of the father...counterposed against the mother who kept a slovenly home and was difficult and 'mouthy' ". Thus, the drunken husband or partner who is abusive towards the police is more likely to be arrested and charged as a domestic violent offender than the husband or partner who is calm, collected and uses manipulation more than violence to abuse his spouse, or who is considered to have been provoked by a horrid wife. Sympathy for the victim only occurs apparently when she fits the stereotype of weak and blameless wife or partner. Another factor may also be the victim's appearance, i.e. would the more attractive woman be deemed helpless and thus gain higher levels of sympathy and ultimately intervention by the police.

Terminology and definitions can cause problems in other legal settings as well. In court, lawyers and judges may refer to the legally defined terms whilst victims, witnesses and even jurors may have an alternative understanding of the issues in contention. If the abusive behaviour in question is not physical, any reference to 'domestic violence' may be confusing as violence may be interpreted to mean physical injuries sustained. If no physical injuries were suffered, confusion may exist and wrong interpretations may lead to a different verdict had clarification been obtained. Alternatively, if 'domestic abuse' is referred to by lawyers, when there is obvious physical injury to the victim, there may be confusion as to what other actions are implied but not specified. Confusion may be exacerbated when the terms are used interchangeably and clarity is most definitely required when women defend themselves to the degree that their abuser dies and they are charged with murder and their defence is based on a history of abusive behaviour from their [now dead] partner. In such cases of 'Battered Wife Syndrome' there may also be ambiguity in relation to the problem of terminology: syndrome implies a medical nature behind a legal definition often used in defences against murder charges.

The term 'domestic abuse' over 'domestic violence' may broaden the scope and it may result in police officers interpreting the offence on a wider scale so including incidents which have not become physically violent, but are nonetheless harmful to the victim. With some incidents of domestic violence actually having little physical violence but with the victim feeling continually threatened, isolated and fearful that it could become violent, or that she (or he) is being manipulated in such a way that disables them from leaving, domestic abuse may help the police understand that intervention in such circumstances is not only acceptable but necessary. The Scottish Executive's terminology and definition makes such an interpretation: "...can include physical abuse (assault and physical attack)...sexual abuse (acts which degrade and humiliate...perpetrated against their will...mental and emotional abuse (such as threats, verbal abuse, withholding money and other types of controlling behaviour such as isolation from family or friends)". This gives a clear indication of the types of unacceptable and thus criminal behaviour which would constitute an offence making
police intervention justified. Of course, others may need assistance in comprehending new terminology and definitions: neighbours, teachers (many children witness domestic incidents) and emergency room staff, as well as employers, etc. When domestic violence is denied as being the cause of stress or physical injuries, what should or could people do? When should they intervene and where would they go? Is it not easier for people to simply ignore the obvious as this constitutes a personal problem and one requiring intervention?

Whilst it may be up to society as a whole to deal with domestic violence in order to reduce its frequency, there are problems in attempting to alter attitudes and understanding of a situation so hidden or considered private. This is clearly evidenced by the Scottish Executive's own research into the response by the public to their campaigns against domestic 'abuse'. Respondents in 2005 and 2005/2006 showed little change in attitudes and understanding of domestic violence or domestic abuse. Whilst the research does make a caveat - that funding and availability of channels on which to show advertisements on domestic abuse were significantly different between the 2005 campaign and 2005/06 campaign, with the former having less available channels, the figures to appear to indicate that the public on the whole did not alter their perception of domestic abuse.

One method of dealing with the varying acts which constitute domestic violence could be to create a specific offence of 'domestic abuse' in statute; this offence should give definitions and meanings which have been widely consulted upon. As offenders are often charged with minor offences including 'Breach of Peace' or 'Affray' and/or the more serious offences such as 'Assault Occasioning Actual Bodily Harm' and 'Wounding', it may well be that a specific offence of domestic abuse (or violence - depending on which is considered the best) would resolve some of the confusion. There is no doubt that causing severe alarm or distress and/or physical injury to a partner is unacceptable, but there are many varying degrees of abusive behaviour that, to have such behaviour subjected to various laws - some antiquated - confusion is a constant problem. If a specific offence were introduced, then the offence can be dealt with similar to other specific offences (e.g. arson, rape, criminal damage, etc.). Current offences can be incorporated in a list of actions which are deemed to fall within the remit of such an offence. Specific deterrent sentences can be identified, including rehabilitative and/or cognitive therapy programmes, as well as custodial methods; protection orders - with powers of arrest attached - could automatically be included. The police recognised in 1998 that the lack of a specific (and national) definition of 'Domestic Violence' was problematic: 'The lack of a nationally agreed definition of domestic violence is a major obstacle...Agreeing a national definition is essential..." Whilst this was in relation to effective policy monitoring and to enable greater comparative analysis, it can be seen as indicative of problems widely experienced by officers. In 2000, it was noted that 'standardised definitions of domestic violence and repeat victimisation between forces and other agencies' were essential to ensure that domestic violence could be effectively policed. If the police, prosecution services and other agencies could refer to specific legislation or a specific offence, rather than rely on a plethora of offences with which to charge offenders, administrative and other bureaucratic problems may be reduced significantly.
One of the few (indeed probably the only) laws to actually specifically mention domestic violence is the Domestic Violence, Crimes and Victims Act 2004. However, the offence of 'domestic violence' is not actually specified, nor defined; it is simply an amendment and clarification of what may occur to those who breach 'non-molestation orders' and provides a review for those deaths which occurred within a domestic setting (referring to these as domestic homicides: s.9). This legislation relates to evidence and procedures and allows the introduction for cohabiting couples to be of the same sex - i.e. extending existing legislation to cover those in homosexual relationships. Other legislation deals by implication with domestic violence and the problems of witnesses who retract statements due to fear or for other reasons: prosecution authorities in England and Wales can utilise the Criminal Justice Act 1988 (s.23) where submission of written statements in the absence of oral evidence is allowed. However, authorities seem reluctant to utilise such laws as they rarely continue with cases when witnesses fail to attend. Indeed, the retraction of statements has long been a problem in many prosecutions of domestic violence and cited as the reasons for low conviction rates; however, given the wider problems faced by victims of domestic violence, it is unlikely to be the sole reason and, even if it were, should not dissuade authorities from prosecuting. Definitively categorising an abusive relationship, providing a specific term and defining the behaviour referred to as criminal (to include psychological, emotional, physical and financial behaviour) may assist in raising levels of conviction rates within this area of criminal behaviour.

Other reasons for low conviction rates may be juries' lack of understanding given the multitude of charges brought. Charges can include common law assault, breach of peace, harassment or sexual assault, etc. These charges may mean juries only choose the one with which they have any understanding (however misconceived). Indeed, in Scots law, 'assault' seems even more abstract than English law; in Scotland, assault is "committed when one person makes an attack upon another with the intention of effecting the immediate bodily injury of that other person or producing fear of immediate bodily injury in his mind." In English law, assault is committed by someone when he "causes another person to apprehend the immediate application...of unlawful force" or "Technical Assault. This offence is committed when the defendant intentionally or recklessly causes the victim to apprehend imminent force". In the Protection From Abuse (Scotland) Act 2001, there is an interpretation of 'abuse' which: "...includes violence, harassment, threatening conduct and any other conduct giving rise, or likely to give rise to, physical or mental injury, fear, alarm or distress". All these interpretations and definitions are undoubtedly causing confusion for those involved in the whole process.

The other side of the argument, however, is that bad relationships may be deemed criminal if definitions are too broad. As mentioned, relationships have good times as well as bad and argumentative couples are not unusual. Indeed, it can be seen as a good and healthy relationship when couples release tension through arguments, even if they are derogatory. Being insulted can be hurtful but the intent behind such behaviour is not always criminal. Whilst legislation such as the Protection From Abuse (Scotland) Act is for the protection of those who suffer (or are likely to suffer) systematic abusive behaviour, specifying that "...any other conduct giving rise, or likely to
give rise to...alarm or distress" is criminal, it can result in confusion. Further, control finance is commonly seen as one person's strength in a relationship; for various reasons - not all of them malicious. Partners have on occasion pushed each other, held each other (or restrained due to alcohol, drug use, for protection against the partner harming themselves due to emotional turmoil or medical conditions, e.g. epilepsy).

It is not necessarily being suggested here that a husband who protects his wife from her own self-harming actions could or would be subjected to police intervention under current definitions, but confusion may arise. Where there are isolated incidents of 'hurting' or 'insulting' behaviour, this is not to be deemed criminal, not to be considered domestic violence. However, in the litigious society we now seem to be in, civil actions could draw in criminal codes and partners who seek revenge for various reasons could instigate domestic violence procedures under any broadened definitions. Most would accept that arguments cause alarm and/or distress in any form, particularly in marriages or partnerships given the nature of relationships but not all 'bad patches' should be subject to criminalisation.

Failed marriages whereby insults are thrown, withholding money because of legitimate concerns as to the ultimate destination by respective partners (e.g. a wife or husband who closes a bank account because they simply wish to avoid paying maintenance) may fall within the remit of domestic abuse because they are controlling money and refusing access. There is undoubtedly an element of spitefulness from one or both partners; this may include shouting and insulting each other. Whilst pragmatic approaches are undoubtedly expected from all agencies, complaints may arise if conduct is either ignored when it is in fact symptomatic of domestic abuse, or if over-zealous policing or prosecution interference results in action being taken where none is required. This is particularly likely to occur if different jurisdictions actually have different interpretations or definitions which deal with domestic violence. If officers in rural communities prefer to deal with domestic violence in a quiet, 'dignified' manner to keep families together and to protect reputations in small villages, whilst officers in the City centres are constantly arresting on the spot partners who are abusive, where is the consistency of policing domestic violence given that there are no national definitions and no specific offence of domestic violence.

Terminology can cause confusion, even discrimination, though it is doubtful there is any intention to do so. By broadening terms from domestic violence to domestic abuse, inclusion of acts by perpetrators which, if taken as a pattern of behaviour, show that domestic violence (physical or otherwise) is a problem within a particular household. Domestic abuse may well be preferred terminology for some agencies, including the police and prosecution authorities, but until we have a specific, definitive and statutory explanation of what domestic violence means (by providing clarity as to the acts which can constitute such an act or acts), prosecutions and conviction rates may remain low. Further, such legislation may enable the engagement of the public at large as awareness of a specific criminal offence can be more easily identifiable. A definitive statute/law shows not only that the Government will not tolerate domestic violence because it has specifically legislated
against such behaviour, it will also assist the authorities and public to determine what is - and importantly - what is not, a criminal offence.

**Conclusion**

Domestic violence or abuse - whatever term is used - needs to be defined specifically to ensure that ambiguity is lost, that clarity is gained and that victims of this often hidden crime can point to a specific offence; it can be referred to by police officers when arresting a perpetrator, by prosecutors when bringing charges in court, and by judges when making summations to juries before they decide their verdicts. Juries may then make conclusions based on the evidence in answer to a specific offence when deciding upon guilt.

Policing this offence may not be easier, and prosecutions will still falter but by creating a specific offence and defining which actions are to be included, ambiguity is reduced and increased awareness occurs. Semantics is not the issue here; the issue is the need for effective policy, understanding by the public and the agencies involved in its dealings with such a wide (but hidden) problem. Altering perceptions, changing attitudes and providing assistance for domestic violence will all take time, money and interagency co-operation; offender programmes and education for young people to alter their views (given that many children witness violence in the home and their behavioural patterns, and understanding of violence as a problem-solving device) all need to be implemented. Otherwise we will continue to have a world full of hidden violence leading to distorted views as to what is acceptable behaviour towards others - particularly in the family home.