

## **A Critical Analysis of Domestic Violence Intervention Practice within the Criminal Justice System.**

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### **Abstract**

Increasing awareness of domestic violence (DV) as a progressively prevalent societal issue has contributed to the implementation of DV interventions within the Police and the wider Criminal Justice System (CJS). This critical analysis evaluates the relationship between DV and the CJS with a particular focus on the legislative responses to Violence Against Women and Girls through the current and statutory definitions of domestic abuse. While applying alternative theoretical and conceptual frameworks for analysis including social constructionism, essentialism, gender, and patriarchy to allow for a unique understanding of how DV is perpetrated. This research also examines the limitations of data collection methods in accurately capturing the extent of DV due to methodological constraints. Typologies of DV perpetrators are also assessed considering the different causes, consequences, and criminogenic needs of each subtype. In addition, the impact of patriarchal societal structures, cultural narratives of love, and gender inequality are discussed throughout to aid in the evaluation of DV interventions and highlight opportunities for further research in a push to highlight the ongoing efforts to eradicate DV and enhance interventions to protect victims.

**Keywords:** Domestic, Violence, Intervention, Criminal, Justice, Women, Girls, Abuse

Domestic violence (DV) has become increasingly prevalent as a societal issue this research aims to evaluate DV and the Criminal Justice System with a specific focus on the police including interventions and risk assessments. While applying alternative theoretical frameworks of DV using academic literature to support these theories. After critically evaluating the police and DV interventions a conclusion will be identified as to whether they are effective in reducing instances of DV. DV is currently characterised as ‘Any incident or pattern of incidents of controlling, coercive or threatening behaviour, violence or abuse between those aged 16 or over who are or have been intimate partners or family members regardless of gender or sexuality’ (Home Office, 2013. P.1). DV can manifest in various forms of abuse and behaviour including psychological,

physical, emotional, economic, and sexual abuse and threatening or violent, and coercive or controlling behaviour (GOV, 2012; Domestic Abuse Act, 2021). This current definition of DV was implemented by governmental policy in 2013 to aid in reducing violence against women and girls (VAWG), increase awareness of DV amongst young people, and was extended to include coercive and controlling behaviour. The definition is now applicable to individuals between the ages of 16-19 as they were the grouping most likely to be subjected to DV (GOV.UK, 2012) the Serious Crime Act (2015) also recognises patterns of coercive or controlling behaviour as abuse. The current statutory definition implemented by the Domestic Abuse Act (2021) brings certainty to the legislation and is inclusive of age but fails to recognise individuals under the age of sixteen as victims of DV, However, there is still no specific criminal offence for DV (The Crown Prosecution Service, 2022). The coalition government launched The Violence Against Women and Girls Strategy (VAWG) (2010) to eradicate VAWG and prevent abuse, VAWG implemented abuse campaigns aimed at educating young people aged thirteen to eighteen on abusive relationships (DA Act, 2021; GOV.UK, 2015). VAWG uses a multi-agency approach making VAWG everyone's business this campaign approach was used to improve police response to DV, strategies are continually developed to raise awareness and have aided in the implementation of interventions (HM Government, 2016).

DV is measured through crime surveys, statistical analysis, and police statistics, however, data collection methods have methodological limitations in attaining accurate statistics (Dobash and Dobash, 1998). Limitations that affect the collection of data are vast as many women do not report DV out of fear of reprisal, abuse may not be recognised as it can manifest in many forms (Felson, *et.al.* 2002). The Crime Survey for England and Wales (2022) estimates 2.4 million individuals were affected by DV in 2022 this equates to one in twenty individuals. However, this survey can not accurately convey the extent of DV that is occurring due to the methodology used for data collection (OFNS, 2023). Police statistics of DV are also limited as the majority of DV goes unrecorded and unreported due to its private nature (Felson, *et.al.* 2002). The dark figure of crime needs to be considered it is more prevalent in low socioeconomic backgrounds due to levels of legal cynicism within these communities individuals may be sceptical about police involvement (Buil-Gil, et al, 2020). The magnitude of DV is immeasurable (Mooney, 2000). Due to methodological limitations, it is unknown whether DV affects all groupings to the same extent when considering intersections such as ethnicity, social-class, age, disability, and sexuality (Harne and Radford, 2008; Mooney, 2000). Harne and Radford (2008) theorise that DV does not conform to social divisions, but the impact is severe across all groupings though abuse varies culturally. The impact of DV is considerable as abuse against intimate partners is

aggravated as the severity and variation of abuse can increase compared to stranger assault as a singular incident (Mooney, 2000). Abuse between intimate partners leaves the victim in a state of fear, children are also impacted by DV, they are at risk of primary or secondary victimisation through direct abuse or witnessing violence, this may lead to considerable social consequences for children affecting their education and ability to maintain healthy relationships (Mooney, 2000).

The gendered nature of DV is associated with males perpetrating violence as women have higher rates of victimisation and are subjected to coercive or controlling behaviour (OFNS, 2023; Dobash and Dobash, 1998). Alternatively, males are also victims of DV, but the extent of their victimisation is unknown, perpetrators of intimate partner violence (IPV) can originate from all backgrounds (Holtzworth-Munroe. *et al.* 1997). Characteristically perpetrators of DV act with hostility towards female figures it is postulated that males who commit DV have experienced some form of abuse during their youth (Holtzworth-Munroe and Stuart, 1994).

Johnson's (1995; 2005; 2006; 2008) typology of perpetrators identifies four typologies, patriarchal terrorism is generated through societal inequality between gender groups, social organisation of society sees male dominance and female subordination this is a form of terroristic control and is established through isolation, economic deprivation, violent threats or other coercive or controlling strategies exhibited by males. Violence resistance occurs in response to patriarchal terrorism, to resist control and prevent abuse, associated with females due to the reactive nature (Johnson, 2006). Common couple violence (CCV) is created out of dispute and conflict where violence occurs but neither partner asserts controlling behaviour, Similarly, mutual violent control (MVC) depicts partners who similarly perpetuate violence and controlling behaviours to assert dominance, CCV and MVC are gender symmetric (Johnson, 1995; 2005). Typologies enhance knowledge of perpetrators, each typology has different causes and consequences with each needing a specific form of intervention to manage risk factors and consider the criminogenic needs of each subtype (Johnson, 2008). However, research understanding the effects typologies have on survivors of DV is yet to be explored, understanding this would add to the advancement in treatment interventions for survivors (Bender and Roberts, 2007). Kelly and Johnson (2008) argue that typologies lack focus on the female perpetration of DV and do not capture the extent and complexity of DV.

Essentialism perceives gender as a product of biology, it is scientifically proposed that gender is assigned genetically and hormonally before birth, which is reflected through an individual's anatomy these divides in gender are fixed (Morton, *et al.* 2009). Through gender essentialism all males are biologically equal, and all females are biologically the same, each gender

has masculine or feminine qualities and characteristics (Giddens and Sutton, 2021). This has been extensively critiqued as it perpetuates negative gender stereotypes and limits the life choices of an individual it also justifies social divisions (Rhodes and Moty, 2020). Feminist economics argue that a capitalist patriarchal society fails to recognise the needs of women creating gender wage gaps and inequality for women (Pearse and Connell, 2016). Essentialism rationalises that DV occurs through biological factors, studies have developed from Lombroso's theories of atavism, and phrenology to genetic and chromosomal explanations (Lombroso and Lombroso, 2011; Baker, *et al.* 2010). Jacobs syndrome denotes the presence of an additional Y chromosome only present in males (Jarvik, 1973). The MAO-A gene is associated with aggressive and violent tendencies due to the increased levels of serotonin and dopamine which are stabilising neurotransmitters (Levitt, 2012). However, scientific research has rejected this as the presence of an additional chromosome in males is only ascribed to violence when correlated with economic and social considerations (Denno, 2006). Similarly, the MAOA genes linked with aggression have been criticised as environmental and biological factors influence whether the gene produces increased levels of aggression (Levitt, 2012). The legal considerations of individuals having a chromosomal abnormality that affects their behaviour and decision-making lead to mental capacity and criminal liability being questioned (CPS, 2019).

Social constructionism postulates that gender is a social construct produced through cultural norms, values, ideologies, and beliefs. This theory differentiates from essentialism as they believe gender is developed through social institutions and is fluid (Giddens and Sutton, 2021). Society has produced masculine and feminine roles socialised through interactions between institutions. However, gender as a creation of society is subject to alter as individuals can choose to not conform to these gender roles, they may mix elements of femininity and masculinity to create their own identity. Social constructionism rationalises that DV can occur out of societally pressured traditional gender roles that oppress women (Giddens and Sutton, 2021). Gender role theory suggests individuals are pressured to conform and internalise behaviour that is appropriately associated with their gender (Woodin and O'Leary, 2009). Masculinity and femininity are internalised sex roles created through socialisation, societal expectation, and biological status which are sex-specific (Connell, 2005). The functionalist sees sex roles as integral and fundamental parts of society as it increases the efficiency of labour through working collectively to ensure societal stability (Turner and Maryanski, 1978). Whereas Schrock and Schwalbe (2009) deem sex roles are oppressive leaving females subordinate. Connell (2005) states that masculinity is a product of societal and historical factors, Connell (2005) postulates hegemonic masculinity is the dominant form hierarchically which is valued within society as

achievement consolidates power through career and societal goals that establish dominance over women these acts of manhood are how males distinguish themselves from females (Connell and Messerschmidt, 2005).

Walby (1990) postulates Patriarchy is the social organisation of societal structures and practices which caters to male dominance. The woman's social status through education, politics, and the economy is subordinate to the males, rigid gender roles create an imbalance where males hold societal privilege leaving traditional gender roles engrained within society, creating both perpetrators and victims as a product of patriarchal gender inequality (Bowen, 2011). Liberal feminists acknowledge that despite patriarchal control, women have progressed through the right to vote and access to equal education (Bryson, 1992). Structural gender inequality places barriers on women leaving abusive relationships leaving them to rely on their abusers for economic security (Pearse and Connell, 2016).

Love is a socially constructed concept that produces paradoxical romantic ideals where victims of DV are conditioned to accept violence disguised as love (Wood, 2001). Love itself is contradictory and produces a variation of emotions that are accompanied by both positive and negative feelings that attribute to different emotions (Frazer, 2008). Cultural narratives dominate society about love which enables harm to be entrenched into the narrative, love comes with gendered expectations, the archetypal fairy-tale narrative portrays an intimate relationship where two individuals become one, they each give themselves to one another and live happily ever after (Frazer, 2008). Gendered connotations of love, the stereotyping of gender roles, and cultural narratives allow IPV to occur as love can be used as a mechanism to exert control producing justifications for perpetrators through the guise of love, this dark form of romance can manifest in many forms of DV (Lloyd, 2000). Within the relationship, re-gendering can occur when the dominant acts outside of their gendered norm to gain control over the relationship through seeking forgiveness (Wood, 2001). Second-wave feminists focused on love as a capitalist patriarchal control mechanism designed which reinforces gender oppression keeping women subordinate in their gendered role within society and the home (Frazer, 2003; Connell, 2005).

The 1970s saw women's rights campaigns to criminalise DV, DV was historically seen as a private matter not a societal issue. The CJS failed to deal effectively with DV perpetrators leaving victims unprotected as police were reluctant to involve themselves with family matters (Dobash and Dobash, 1992). Misconceptions of DV are deeply rooted within society such as DV must always include physical violence when DV can vary these misconceptions of DV lead to stigma (Women's Aid, 2023). The economic dependence of women upon men left many with no escape from patriarchal control. Women's Aid opened the first refuge in Britain in 1972

through aid from charitable organisations and the local council, government responded to societal pressure and facilitated the expansion of refuge services (Dobash and Dobash, 1992). After considerable criticism of the policing of DV in the 1990s, new guidance on recording and investigating DV was introduced by the Criminal Justice and Public Order Act (1994). Other legislative changes included Criminal Law Rape Within Marriage (GOV.UK, 1992) criminalising sex without expressed consent within a marriage, Protection from Harassment Act (1997) protected individuals from stalking and harassment and providing framework for injunctions.

The police are required to use discretion within their roles which can affect legitimacy if officers are selectively enforcing the law (Myhill and Johnson, 2016). The Home Secretary commissioned an investigation into police forces to determine the effectiveness of their approach to DV HMIC found that 'Domestic abuse is a priority on paper but, in the majority of forces, not in practice' (HMIC,2014, P.6). HMIC cited multiple factors that contributed to this statement, officers were deficient in the comprehension and training needed to competently work with victims of DV though not assessing risk successfully, which effected the collection of evidence at DA incidents and the experience victims of abuse had within CJS resulting in re-victimisation (HMIC, 2014). In 2010 the coalition government entered austerity, which led to a substantial reduction in police budgets impacting staffing, training, and efficiency resulting in a lasting impact on policing (Brown, 2014). HMIC (2014) advised training through the College of Policing to ensure officers have the knowledge and skills to aid victims of DV.

Non-Legislative reforms to aid in safeguarding victims of DV were introduced including Multi-Agency Risk Assessment Conferences (MARAC, 2003) bringing together local statutory agencies such as the police, probation, Independent DV advisors (IDVAS), child protection, healthcare, housing, and voluntary sector to share information on high-risk individuals. This enables them to discuss coordinated action plans that will safeguard the individual, ensuring their safety by identifying, managing, and reducing risks, IDVAS are present to advocate on behalf of the victim, IDVAS are specialist advocators who are an independent entity from the CJS (MARAC, 2003).

The societal and governmental pressure encouraged the CJS to move into risk-based practice (Beck, 1992). Police officers use the DA risk assessment (DARA);(2023) which replaced the DA, stalking, and honour-based violence questionnaire (DASH);(2009) to help aid in reducing risk to the victim and protecting them from further harm or abuse. DASH (2009) was critiqued as officers required to use the risk assessment did not use it appropriately even changing or omitting questions leaving information about the risk of harm incomplete (College of Policing (COP), 2022). DARA (2023) attempts to address the inconsistent information by

using only key-identifying risk questions and offering an enhanced focus on recognising coercive and controlling behaviour. This allows officers to implement risk intervention RARA to remove, avoid, reduce, and accept risk, when implementing RARA police acknowledge risk escalating factors such as mental health and substance misuse (MARAC, 2003; HMICFRS, 2019). Additional risk assessment tools available for measuring risk in IPV cases are the spousal assault risk assessment and the stalking assessment and management tool used to provide a framework for managing stalking (HMIP, 2021). The statistically accurate evaluation of risk has been criticised as accuracy is problematic due to the human involvement in the calculation, officers' interpretations and decisions may differ from others allowing for discrepancies to occur (Kearney and Donovan, 2013; College of Policing, 2023). If risk is not accurately calculated individuals may be placed at significant risk of harm leading to escalation and patriarchal terrorism (Johnson, 1995;2006; Kemshall, 2001).

Increasing awareness of the prevalence of DV has led to legislation and governmental policy reform, the publicised murder of Clare Wood by her ex-partner led to an inquiry (IPCC, 2010) that found the police failed to assess the necessary risks posed to Wood, this disclosure of police inadequacy led to public demand for enhanced responses to DV (IPCC, 2010). This led to the establishment of the DV Disclosure Scheme (DVDS) in (2011). DVDS allows police to share information with individuals who may be at risk regarding their partner's violent offending to prevent the perpetration or escalation of abuse. Under DVDS individuals have the right to ask and the right to know the police can disclose any necessary information in prescribed circumstances (Fitz-Gibbon and Walklate, 2016). DVDS is a victims-focused law that improves victims' experiences of the CJS (IPCC, 2010). Each request is checked by the police within 24 hours of the submission. MARAC (2003) also discusses the risks and whether disclosure is necessary and lawful to protect victims of abuse or violence (Fitz-Gibbon and Walklate, 2016). DVDS has been criticized for not providing a timely risk-sensitive response to women who are at risk of IPV (IPCC, 2010). Violent and sexual offenders are also managed under Multi Agency Public Protection Arrangement (MAPPA) introduced by Criminal Justice and Court Services Act (2000) later reinforced by the Criminal Justice Act (2003). MAPPA (2019) evaluates risks posed to society by the offender they also determine whether a disclosure of the information would protect future victims from harm. Baroness Casey Review (2023) highlights the need for further training on DV interventions and highlights that DV is a multi-agency issue in which the police play a role but are not fulfilling their obligations to the victims of DV.

There are several types of preventative protection orders used for DV, The DV Crime and Victims Act (2004) was introduced to enhance civil and criminal legislative responses to DV

and by making the breach of civil non-molestation orders a criminal offence, it has been praised for supporting victims of DV through hybridised support (Bowen, 2001; Bates and Hester, 2020). DV protection orders (DVPO) and DV protection notices (DVPN) introduced by Crime and Security Act (2010) later strengthened by the DA Act (2021) and renamed DA protection orders (DAPO) and DA protection notice (DAPN'S) revised with further emphasis on coercive and controlling behaviours. DAPN is an urgent non-molestation notice used to safeguard victims of DV and is issued to a suspect by a police superintendent or inspector to implement immediate protective measures to secure the victim's safety. DAPNs offer immediate protection from further violence or threats, conditions of the notice include non-contact orders if a DAPN is breached the police have authority to arrest (GOV.UK,2022). Police have 48 hours from a DAPN being served to issue an application for a DAPO if deemed necessary to protect the victim, a DAPO is implemented for up to 28 days and has conditions including no contact orders, breaching a DAPO is an arrestable offence (GOV.UK, 2022). DVPOs have been critiqued a 2017 police inspectorate report disclosed that police forces failed to implement DVPOs when necessary to protect victims, reasons stated for not utilising interventions are lack of training and extensive paperwork, the report found evidence to suggest victims had to report breaches of DVPO's to the police multiple times before action was taken (HMICFRS, 2017). The DVPO is an extension of what the police can put in place to protect victims of DV (Bates and Hester, 2020).

In conclusion, the current and statutory definition of DV encompasses the magnitude of how DV can represent which reinforces legal protection for victims, however, DV is not limited to individuals aged over 16, children can also be subjected to DV. Both essentialism and social constructionism have alternate theories of gender and how DV occurs, but each recognises the prevalence, though due to methodological limitations, the extent of DV is immeasurable. The patriarchal society, stereotyping of gender roles, and cultural narratives of love contribute to the oppression of women and exacerbate the issue of IPV. Governmental legislative changes, strategies, and multi-agency developments have resulted in the implementation of multiple interventions including DVDS, DAPO, DAPN, and civil-criminalised non-molestation orders. This led to the development of risk assessments to recognise all aspects of DV. However, these interventions and risk assessments have been critiqued as they have not been successfully implemented in each case. These barriers still contribute to the protection of individuals at risk of harm, these interventions that have been collectively established and enforced by the government and CJS signify their commitment to preventing DV. Furthermore, there are opportunities for the enhancement of knowledge and intervention to eradicate DV.

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