

# Intimate Partner Violence—Is There A Solution?

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## I. INTRODUCTION

The problem of violence against women is universal. It cuts through all boundaries of nationality, race, class, color, and creed. Manifestations of the problem can be found in the historical traditions of many countries such as China, where the practice of foot-binding took place,<sup>1</sup> and India, where the ritual of *sati* was followed.<sup>2</sup> The menace is with us still today.<sup>3</sup> According to the latest British Crime Survey on intimate violence, “overall, three in ten (30%) women and two in ten (20%) men had experienced any domestic abuse since the age of 16.”<sup>4</sup>

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1. Rhea V. Almeida & Ken Dolan-Delvecchio, *Addressing Culture in Batterers Intervention: The Asian Indian Community as an Illustrative Example*, 5 VIOLENCE AGAINST WOMEN 654, 667 (1999) (demonstrating that violence against women can take the form of foot binding and is more than just beating).

2. *Sati* was a practice wherein a widowed woman sacrificed herself in the funeral pyre of her husband either willingly or forcibly. Instances of the prevalence of the practice have been reported relatively recently. *Woman Commits Sati in Bihar*, TIMES INDIA, Mar. 19, 2004, available at [http://articles.timesofindia.indiatimes.com/2004-03-19/india/28329932\\_1\\_pyre-sati-cremation-ground](http://articles.timesofindia.indiatimes.com/2004-03-19/india/28329932_1_pyre-sati-cremation-ground).

3. See, e.g., UNITED NATIONS POPULATION FUND & UNICEF, FEMALE GENITAL MUTILATION/CUTTING: ACCELERATED CHANGE 12–15 (2009), available at [http://www.unfpa.org/webdav/site/global/shared/documents/publications/2009/fgm\\_proposal\\_donors.pdf](http://www.unfpa.org/webdav/site/global/shared/documents/publications/2009/fgm_proposal_donors.pdf) (last visited Feb. 7, 2012) (finding that in many countries in Africa, violence against women continues to take place in the form of female genital mutilation); UNICEF, *Domestic Violence Against Women and Girls*, 6 INNOCENTI DIGEST 7 (2000) (finding that in Bangladesh acid-throwing is widely prevalent, and women are even killed in the name of safeguarding and upholding the “honour” of the family in several countries); Robert Tait, *Turkish girl, 16, Buried Alive for ‘Talking to Boys,’* THE GUARDIAN, February 4, 2010, available at <http://www.guardian.co.uk/world/2010/feb/04/girl-buried-alive-turkey>; “Honour” Killing: *It’s a Global Phenomenon*, THE TIMES OF INDIA, June 11, 2010, available at <http://timesofindia.indiatimes.com/india/Honour-killing-Its-a-global-phenomenon/articleshow/6154172.cms>. In England marital rape immunity persisted till early 1990s. See *R. v R.*, [1992] 1 A.C. 599 (H.L.) (appeal taken from Eng.). For a detailed account on immunity in the past, see M.D.A. Freeman, *Doing his Best to Sustain the Sanctity of Marriage*, in MARITAL VIOLENCE 124 (Norman Johnson ed., 1985).

4. Kathryn Coleman, Peter Kaiza & Stephen Roe, HOMICIDES, FIREARM OFFENCES AND INTIMATE VIOLENCE 2007/08 55 (2009) available at [http://www.google.com/url?sa=t&rc=tj&q=&esrc=s&source=web&cd=5&ved=0CFsQFjAE&url=http%3A%2F%2Fhome.btconnect.com%2Fbwp%2Fdownloads%2FHomicides%2520intimate%2520and%2520firearms%252007.doc&ei=XAyOT9WAF4me8gSB3537Dw&usg=AFQjCNGHmZjCOP-YGP1NLjybX81liDx7\\_Q&sig2=iKkm0eNqFnaF0sOtBo\\_-CA](http://www.google.com/url?sa=t&rc=tj&q=&esrc=s&source=web&cd=5&ved=0CFsQFjAE&url=http%3A%2F%2Fhome.btconnect.com%2Fbwp%2Fdownloads%2FHomicides%2520intimate%2520and%2520firearms%252007.doc&ei=XAyOT9WAF4me8gSB3537Dw&usg=AFQjCNGHmZjCOP-YGP1NLjybX81liDx7_Q&sig2=iKkm0eNqFnaF0sOtBo_-CA) (last visited May 16, 2012).

The Association of Chief Police Officers defines domestic violence as “any incident of threatening behavior, violence or abuse (psychological, physical, sexual, financial or emotional) between adults who are or have been intimate partners or family members, regardless of gender or sexuality.”<sup>5</sup> Though this definition is gender-neutral, evidence suggests that women make up the “majority of the most heavily abused group. Among people subject to four or more incidents of domestic violence from the perpetrator of the worst incident (since age 16), 89 per cent were women.”<sup>6</sup> The scope of the present Article, therefore, is restricted to the problem of battered women, primarily in England and Wales.<sup>7</sup>

For years domestic violence was considered to be a “private affair.” English patriarchal society reinforced the problem under the guise of privacy.<sup>8</sup> The issue of wife battering emerged and re-emerged with the feminist movements.<sup>9</sup> It was only in the 1970s, however, that the problem was truly acknowledged. In the early 1970s, Erin Pizzey’s refuge for battered women opened in Chiswick, a borough of Greater London, and caught the public eye.<sup>10</sup> Desperate women scurried there for safety.<sup>11</sup> A few years later, the Domestic Violence and Matrimonial Proceedings Act (1976) came into force, which sought to deal with the problem.<sup>12</sup> It provided for non-molestation and exclusion orders<sup>13</sup> which, if breached, could result in the arrest of the respondent.<sup>14</sup> Nevertheless, the judiciary considered arrest a harsh punishment, and as a result, the power of arrest was seldom used.<sup>15</sup> This legislative intervention was followed by the Family Law Act, 1996<sup>16</sup> and the Protection from Harassment Act, 1997.<sup>17</sup> These laws extended the scope of remedies and enforcement.<sup>18</sup> The civil remedies are

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5. HER MAJESTY’S COURT SERVICE, *Domestic Violence Branch Newsletter*, 1, 1 (June 2008).

6. SYLVIA WALBY & JONATHAN ALLAN, DOMESTIC VIOLENCE, SEXUAL ASSAULT AND STALKING: FINDINGS FROM THE BRITISH CRIME SURVEY vii (2004). Violence against men exists as well. See PATRICIA TJADEN & NANCY THEONNES, EXTENT, NATURE, AND CONSEQUENCES OF INTIMATE PARTNER VIOLENCE (2000). Intimate partner violence is also prevalent in homosexual couples. See Leslie K. Burke & Diane R. Follingstad, *Violence in Lesbian and Gay Relationships: Theory, Prevalence and Correlational Factors* 19 CLINICAL PSYCH. REV. 487 (1999).

7. The Article includes married as well as cohabiting women.

8. See generally M.D.A. Freeman, *Violence against Women: Does the Legal System Provide Solutions or Itself Constitute the Problem?*, 7 BRIT. J. L. & SOC’Y 215 (1980); Elizabeth Schneider, *‘The Violence of Privacy’* (1991) 23 CONNECTICUT CONN. LAW L. REVIEW REV. 973 (1991).

9. Freeman, *supra* note 8, at 220; Sally F. Goldfarb, *Reconceiving Civil Protection Orders for Domestic Violence: Can Law Help End the Abuse without Ending the Relationship?* 29 CARDOZO L. REV. 1487, 1496 (2008); Judith S. Kaye & Susan K. Knipps, *Judicial Responses to Domestic Violence: The Case for a Problem Solving Approach* 27 W. ST. U. L. REV. 1, 1 (2000).

10. ERIN PIZZHEY, SCREAM QUIETLY OR THE NEIGHBOURS WILL HEAR 4–8 (1974).

11. *Id.* (bringing to light the crises and trauma faced by battered women).

12. Domestic Violence and Matrimonial Proceedings Act, 1976, c. 50, § 1 (Eng.).

13. *Id.*

14. *Id.* at § 2.

15. SUSAN EDWARDS, *Reducing Domestic Violence . . . What Works? Civil Remedies*, in CRIME REDUCTION RESEARCH SERIES (2000).

16. Family Law Act, 1996, c. 27 (Eng.).

17. Protection from Harassment Act, 1997, c. 40 (Eng.).

18. *Id.*

now backed by criminal sanctions, including arrest and conviction;<sup>19</sup> overall, there has been a shift from civil towards criminal remedies to address the problem.<sup>20</sup> Despite these changes, domestic violence continues unabated.

This Article examines why such criminalization has not proved to be efficacious in resolving the problem of domestic violence and considers possible alternatives to deal with the issue. For the sake of convenience and ease of understanding the issues, this Article is divided into five parts. Part I is a general introduction. Part II identifies the distinct nature of domestic violence. The identified features will illuminate why domestic violence takes place and why it continues. Part III brings to terms the reasons why the criminal justice system has failed to tackle the problem of domestic violence. Part IV offers some modest recommendations. Finally, Part V sums up the paper with an appropriate conclusion. Throughout the Article the main reference point is England and Wales, though mention will be made where appropriate to approaches in different legal systems.

## II. DISTINCT FEATURES OF DOMESTIC VIOLENCE

### A. Power & Control Dynamics

Domestic violence stems from the inconspicuous currents of power and control that run underneath the relationship between intimate partners.<sup>21</sup> The perpetrator seeks to exert power and increased control over the victim in different ways, isolation being a common first step.<sup>22</sup> Dobash and Dobash, observing a common trajectory of a woman's experience in a domestic violence relationship, noted that as a woman steps into her role as a wife, she loses control over her life, loses contact with the outside world, and becomes submissive to her husband's expectations and demands.<sup>23</sup> Consequently, she becomes dependent on the perpetrator—emotionally, financially, or both.<sup>24</sup>

Emotional abuse often precedes physical violence.<sup>25</sup> The emotional abuse may have hues of discontentment, jealousy, suspiciousness, possessiveness, superiority, and authority.<sup>26</sup> It can start off subtly and psychologically by reinforcing the stereotypical ideas of what the woman should be like and what

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19. Family Law Act at § 47 (providing for arrest for breach of non-molestation and occupation orders); Protection from Harassment Act, at §§ 3, 7 (providing for both civil and criminal remedies); Domestic Violence, Crime and Victims Act, 2006, c. 28, § 1 (Eng.) (making the breach of a non-molestation order a criminal offense).

20. Family Law Act at § 47; Protection from Harassment Act, at §§ 3, 7; Domestic Violence, Crime and Victims Act at § 1.

21. R. EMERSON DOBASH & RUSSELL DOBASH, *VIOLENCE AGAINST WIVES: A CASE AGAINST THE PATRIARCHY* 75 (1979).

22. *Id.* at 76.

23. *Id.*

24. *See id.*

25. Carolyn Hoyle & Andrew Sanders, *Police Response to Domestic Violence: From Victim Choice to Victim Empowerment?* 40 BRIT. J. CRIMINOL. 14, 19 (2000).

26. *Id.* at 20.

the man expects her to do.<sup>27</sup> When there is deviance from or non-compliance with such expectations and demands, it sanctions physical violence.<sup>28</sup> This can range from pushing the woman, to throwing things around (primarily hers),<sup>29</sup> to brutally battering her.<sup>30</sup> Perpetrators may exert further control while battering the woman, including pulling out the telephone wire to prevent her from calling the police, friends, or relatives.<sup>31</sup> Controlling behavior may continue afterwards, such as not letting her go to the doctor or threatening to batter her again if she talked about it with anyone.<sup>32</sup> Repeated physical assaults lead the victim to live in fear and anxiety and feel powerless and dependent.<sup>33</sup>

Perpetrators often bind and abuse their victims economically as well. The women are likely to suffer from financial hardship and economic abuse if they do not have access to monetary resources or receive only a meager amount from their partners, especially when the women are not otherwise economically independent.<sup>34</sup> The perpetrators may insist on knowing where each penny is spent in order to maintain financial control.<sup>35</sup> As a result, these women usually do not have any money with them, particularly when they wish to flee from the relationship.<sup>36</sup>

These dynamics are not unique to any particular couple.<sup>37</sup> They are present in our patriarchal society and it is this society itself that reinforces this hierarchical and social order. Women are brought up in a social order that instills in them the belief that their worth is determined by the success of their relationships.<sup>38</sup> The concept that "it is your responsibility to set it right" is so strongly ingrained that women end up feeling responsible for unsuccessful or failed relationships, although the problem is an abusive partner.<sup>39</sup> Instead of

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27. Ellen Malos & Gill Hague, *Women, Housing, Homelessness and Domestic Violence* 20 WOMEN'S STUD. INT'L F. 397, 397-98 (1997).

28. See generally R. EMERSON DOBASH ET AL., CHANGING VIOLENT MEN 26-27 (2000).

29. Ruth Lewis, *Making Justice Work: Effective Legal Interventions for Domestic Violence*, 44 BRIT. J. CRIMINOL. 204, 210 (2004).

30. See DOBASH ET AL., *supra*, note 28, at 27.

31. Interview with author's extended family members.

32. *Id.*

33. DOBASH ET AL., *supra* note 28, at 21; Freeman, *supra* note 8, at 222.

34. Amy Farmer & Jill Tiefenthaler, *An Economic Analysis of Domestic Violence* 55 REV. SOC. ECON. 337, 348 (1997) (finding that women with higher incomes experienced less violence); Helen Reece, *The End of Domestic Violence*, 69 MOD. L. REV. 770, 785-86 (2006).

35. DOBASH ET AL., *supra* note 28, at 28 (quoting Woman, Other CJ: 1055).

36. Reece, *supra* note 34, at 786.

37. Schneider, *supra* note 8, at 992.

38. Marion Wanless, *Mandatory Arrest: A Step Toward Eradicating Domestic Violence, But is it Enough?*, U. ILL. L. REV. 533, 548 (1996) (citing *Not Just a "Family Matter": Hearings on Domestic Violence Before the Subcomm. on Criminal Justice of the House Judiciary Comm.*, 103d Cong., 2d Sess. 9 (1994) (including the testimony of Karla M. Digirolama, Executive Director, New York State Office for the Prevention of Domestic Violence)).

39. *Id.*; DOBASH ET AL., *supra* note 28, at 100. Women are often raised thinking that *they* have to ensure that the relationship runs smoothly. This notion, when rubbed in time and again, makes the woman feel that the onus for the smooth functioning of the relationship lies on her. If the relationship fails, she ends up feeling as though she has not lived up to societal expectation of a steady and stable relationship. See CATRIONA MIRRLEES-BLACK, DOMESTIC VIOLENCE: FINDINGS FROM

receiving sympathy from society, the victim is looked down upon “as a threatening cultural icon of failure—failure of marriage and heterosexual romance, failure to protect her children, and more importantly failure to take responsibility and leave.”<sup>40</sup> As Freeman states, “violence by husbands against wives should not be seen as a breakdown in social order so much as an affirmation of a particular sort of order, namely a patriarchal one. In this sense such violence is functional and not dysfunctional.”<sup>41</sup> Most violence is strategic and contributes to the patriarchal order.<sup>42</sup> Men resort to violence when their control is or appears to be under threat by their partner.<sup>43</sup>

One may ponder why, even after suffering so much, women do not leave an abusive relationship. The reasons vary. The victim may fear retaliatory attacks, may not have a place to go to, may fear losing her children, may not be financially able to support herself or any children she may have, or may be hopeful about the future of the relationship.<sup>44</sup> Hanna, elaborating on the “paradox of hope,” observed that “many women believe that violence will stop and the relationship will improve if only . . . (fill in the blank). The wish list can include: he gets a job; he stops drinking; I keep the kids from crying; I pay more attention to him; I clean the house; or I love him more.”<sup>45</sup> A wish list of this nature may never see tick-marks against it as the situation cannot change “unless her partner wants and is able to change.”<sup>46</sup> Staying in the relationship is therefore “an act of survival.”<sup>47</sup> A woman who is subjected to abuse and is continuing to live with the abuser with a hopeful mindset cannot be said to be “living” in the true sense but only “surviving.” She tries to survive through all the harshness and violence she faces by clinging to the hope and optimism that, if she does things better, the situation will change. This is, however, only a sham. A vicious cycle of hope (of the woman), action (on part of the woman to satisfy her partner’s expectations), and violence by her partner make it an act of survival.

Besides making it tough for the victim to leave an abusive relationship on a micro-level, power and control dynamics have a ripple effect at the macro-level

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A NEW BRITISH CRIME SURVEY SELF-COMPLETION QUESTIONNAIRE 40–41 (Home Office ed., 1999), available at <http://webarchive.nationalarchives.gov.uk/20110218135832/http://rds.homeoffice.gov.uk/rds/pdfs/hors191.pdf> (finding that victims feel blame, and some think they could have diffused the situation).

40. Renee Römkens, *Law as a Trojan Horse: Unintended Consequences of Rights-Based Interventions to Support Battered Women*, 13 YALE J.L. & FEMINISM 265, 276 (2001).

41. Freeman, *supra* note 8, at 216.

42. Cheryl Hanna, *The Paradox of Hope: The Crime and Punishment of Domestic Violence*, 39 WM. & MARY L. REV. 1505, 1563 (1998); Lewis, *supra* note 29, at 210; Shazia Choudhry & Jonathan Herring, *Righting Domestic Violence*, 20 INT’L J.L., POL. & FAM. 95, 103 (2006); Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 MICH. L. REV. 1, 56–57 (1991).

43. DOBASH ET AL., *supra* note 28, at 27; Hoyle & Sanders, *supra* note 25, at 20.

44. Hanna, *The Paradox of Hope*, *supra* note 42, at 1558.

45. *Id.* at 1558–59.

46. *Id.* at 1559.

47. Cheryl Hanna, *No Right to Choose: Mandated Victim Participation in Domestic Violence Prosecutions*, 109 HARV. L. REV. 1849, 1883 (1996).

and convey a message of social acceptance of intimate partner violence.<sup>48</sup> Men eventually consider the use of such violence as justified and appropriate if they are not able to “control” women.<sup>49</sup>

## B. Multi-faceted Impact

Domestic violence has a deep and widespread impact, causing the victim to suffer from practically all ends. Pleasence, Balmer, and Buck have identified domestic violence as a “trigger problem”<sup>50</sup> which, by its very nature, creates further problems.

The physical impact of domestic violence is well known. The perpetrators attack their female partners in different ways, including pushing, slapping, punching, kicking, forced sex, and strangling,<sup>51</sup> which result in latent or patent injuries. Patent injuries include bruises, cuts, split skin with profuse bleeding, broken teeth, black eyes, swellings, broken limbs, hair-line fractures, and miscarriages.<sup>52</sup> Latent injuries may include internal injuries such as sprains and muscular pain.<sup>53</sup> Along with the physical injuries, women suffer emotionally and psychologically.<sup>54</sup> Men, through their violent acts, generally make the women feel let down, failed, dejected, and inferior to them.<sup>55</sup> Men use different ways to actualize this. They may call the women names, verbally abuse them, criticize them for household work that does not correspond to the “acceptable” levels set by the men, criticize their families, or threaten to take their children away.<sup>56</sup> This creates significant mental pressure on the women and makes them feel blameworthy,<sup>57</sup> worthless, and under-confident. Victims often suffer from depression, sleep difficulties, isolation, alienation, low self-esteem, anxiety, and feelings of powerlessness as a result of domestic violence.<sup>58</sup> Domestic violence can affect women so much that their outlook toward life and future relationships may become extremely skeptical and pessimistic.<sup>59</sup> When the women suffer in

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48. See *infra* Part II.B.

49. DOBASH ET AL., *supra* note 28, at 34. See *infra* Part II.B.

50. PASCOE PLEASENCE, NIGEL BALMER & ALEXY BUCK, CAUSES OF ACTION: CIVIL LAW AND SOCIAL JUSTICE 55 (2006).

51. DOBASH ET AL., *supra* note 28, at 18–19.

52. *Id.* at 14–15, 18–19; Louise Ellison, *Prosecuting Domestic Violence without Victim Participation*, 65 MOD. L. REV. 834, 852 (2002).

53. DOBASH ET AL., *supra* note 28, at 19.

54. *Id.* at 21.

55. *Id.* at 22.

56. Malos & Hague, *supra* note 27, at 402 (quoting a White woman with four children); *id.* at 403 (quoting an Asian woman with three children). See R. Emerson Dobash, *Domestic Violence: Arrest, Prosecution, and Reducing Violence*, 2 CRIMINOLOGY & PUB. POL. 313 (2003).

57. Hoyle & Sanders, *supra* note 25, at 20; Linda G. Mills, *Killing Her Softly: Intimate Abuse and the Violence of State Intervention*, 113 HARV. L. REV. 550, 573 (2000).

58. See Choudhry & Herring, *supra* note 42, at 103; DOBASH ET AL., *supra* note 28, at 21; Ellison, *supra* note 52, at 852; Freeman, *supra* note 8, at 222; Natalie Loder Clark, *Crime Begins at Home: Let's Stop Punishing Victims and Perpetuating Violence*, 28 WM. & MARY L. REV. 263, 291 (1987); Bruce J Winick, *Applying the Law Therapeutically in Domestic Violence Cases*, 69 U. MO.-KS. L. REV. 33, 39 (2001).

59. See generally Kate Paradine, *The Importance of Understanding Love and Other Feeling in Survivors' Experiences of Domestic Violence*, 37 CT. REV. 40, 42 (2000).

these ways, they are likely to use health services quite frequently.<sup>60</sup> However, the access to or use of such services and facilities becomes particularly arduous if the victims are subjected to economic abuse.

Even if the victims are successful in leaving the abusive relationship, they are still vulnerable to myriad problems. Most victims are confined or “trapped” in the relationship in such a way that they cannot see the outside world, either metaphorically or literally.<sup>61</sup> When they move from those confines into this new world, they end up feeling overwhelmed and lost as they face the great difficulties that await them.<sup>62</sup>

One of the most common challenges is deciding where to go upon exiting an abusive relationship. Women who move out from the houses they shared with their abusive partners may have nowhere to go. If they know of or are successful in finding out about a shelter home for women, it can give them some respite. However, if they are not able to locate a shelter and their families have severed ties with them,<sup>63</sup> it is likely to steer the women (and any children they may have) to one of two alternatives. The first is homelessness.<sup>64</sup> Pleasence, Balmer, and Buck found that living on the streets can have serious consequences such as increased contact with the police, increased likelihood of physical assault, increased likelihood of alcohol and substance abuse, reduced employment opportunities, and increased dependence on welfare benefits.<sup>65</sup> The other alternative is to return to the abusive relationship.

Economic crisis can hit hard as well. Victims are often forced to return to their abusive partners as they are not able to fend for themselves when suddenly left in the outside world after years of “captivity.”<sup>66</sup> Besides, they might not be able to initiate proceedings—whether they be criminal, civil, or divorce—against the perpetrator due to paucity of funds.<sup>67</sup> They may return to the abusive partner and live “under the protection of an injunction, which often [proves to be] ineffective against continued harassment and violence.”<sup>68</sup>

Children who live in homes where domestic violence takes place suffer in many ways as well. Children constitute what are known as “secondary

60. MIRRLEES-BLACK, *supra* note 39, at 38.

61. Malos & Hague, *supra* note 27, at 399, 403 (quoting an Asian woman with three children who was literally kept in a room for six years).

62. *Id.* at 405 (quoting a North African woman with three children).

63. This may happen when the women are caught up in the power and control cycle of domestic violence where the perpetrators may isolate them from their family and friends. This may cause the family and friends to become frustrated over time and sever ties with the women. In addition, the women may have no living family, or they may be geographically isolated from their family.

64. Joan Zorza, *Woman Battering: A Major Cause of Homelessness*, 25 CLEARINGHOUSE REV. 421, 421–23 (1991).

65. PLEASENCE, BALMER & BUCK, *supra* note 50, at 56.

66. Malos & Hague, *supra* note 27, at 404; Joanne Pavao et al., *Intimate Partner Violence and Housing Instability*, 32 AM. J. PREVENTIVE MED. 143, 145 (2007).

67. Christopher James Regan, Note, *A Whole Lot of Nothing Going on: The Civil Rights “Remedy” of the Violence Against Women Act*, 75 NOTRE DAME L. REV. 797, 813 (2000).

68. Malos & Hague, *supra* note 27, at 404.

victims.”<sup>69</sup> They may suffer the repercussions of domestic violence even before they are born. “[W]omen battered during pregnancy have more than twice the rate of miscarriages and give birth to more babies with more birth defects than women who may suffer from any immunizable illness or disease.”<sup>70</sup> Children who grow up in violent homes are more likely to be abused as children and become perpetrators, victims, or abusive parents when adults.<sup>71</sup> The children grow up to find such violent behavior acceptable.<sup>72</sup> The culture of domestic violence can pass on from one generation to another.<sup>73</sup>

The power and control dynamics of abusive relationships can have a deep impact on victims and their children while also perpetuating the cycle of domestic violence.

### C. Revictimization

The relationship between intimate partners makes the crime of domestic violence stand out from other “stranger” crimes. Unlike a street brawl which tends to be a one-time incident, domestic violence is generally not an isolated incident but a continuing course of conduct.<sup>74</sup> The perpetrator and the victim often share a household, putting the victim in a disadvantageous position and making her vulnerable to violence.<sup>75</sup> The “absence of human controllers who are in a position to protect a target or place constraints on the offender” in the household makes the situation even worse.<sup>76</sup> The violence usually escalates in frequency and intensity over time.<sup>77</sup> This continuing violence proves to be

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69. Ellison, *supra* note 52, at 852; Hoyle & Sanders, *supra* note 25, at 20.

70. Joan Zorza, *Woman Battering: High Costs and the State of the Law*, 28 CLEARINGHOUSE REV. 383, 383 (1994).

71. Larry W. Bennett & Oliver J. Williams, *Intervention Programs for Men Who Batter*, in SOURCEBOOK ON VIOLENCE AGAINST WOMEN 273 (Claire M. Renzetti et al., eds. 2001); Naomi R. Cahn, *Civil Images of Battered Women: The Impact of Domestic Violence on Child Custody Decisions*, 44 VAND. L. REV. 1041, 1055–56 (1991) (finding boys who witness their mothers being battered are ten times more likely to abuse their female partners when they reach adulthood); Choudhry & Herring, *supra* note 42, at 104; Deborah Epstein, *Effective Intervention in Domestic Violence Cases: Rethinking the Roles of Prosecutors, Judges, and the Court System*, 11 YALE L.J. 3, 8 (1999); Hanna, *The Paradox of Hope*, *supra* note 42, at 1558, 1569; Hanna, *No Right to Choose*, *supra* note 47, at 1895; Myra Sun & Elizabeth Thomas, *Custody Litigation on Behalf of Battered Women*, 21 CLEARINGHOUSE REV. 563, 565 (1988); Kathleen Waits, *Criminal Justice System’s Response to Battering: Understanding the Problem, Forging the Solutions*, 60 WASH. L. REV. 267, 297–98 (1985).

72. Clark, *supra* note 58, at 267.

73. DOBASH ET AL., *supra* note 28, at 103 (showing how perpetrators see battering as acceptable and how battering passes from one generation to another).

74. Kaye and Knipps, *supra* note 9, at 4; Winick, *supra* note 58, at 37.

75. Clark, *supra* note 58, at 268; Wanless, *supra* note 38, at 546; Winick, *supra* note 58, at 37.

76. Lorraine Green Mazarolle & Jan Roehl, *Civil Remedies and Crime Prevention: An Introduction*, 9 CRIME PREVENTION STUDIES 1, 6 (1998) (explaining the “routine activity theory” as expounded in MARCUS FELSON, *CRIME AND EVERYDAY LIFE: INSIGHT AND IMPLICATIONS FOR SOCIETY* 101–07 (Pine Forge Press, 1994)). “Human controllers” refer to people (generally family members, such as elders sharing the same household) who may be able to control the offender in a heated situation. They are often absent, as the culture of joint families has almost died out. See FELSON, *supra*, at 68.

77. Clark, *supra* note 58, at 266; Epstein, *supra* note 71, at 7; MARIANNE HESTER, *WHO DOES WHAT TO WHOM? GENDER AND DOMESTIC VIOLENCE PERPETRATORS* 3 (2009); Patricia Mahoney, Linda M. Williams & Carolyn M. West, *Violence Against Women by Intimate Relationship Partners*, in

injurious to women physically as well as psychologically, as mentioned above.<sup>78</sup>

The abuse continues not only when the perpetrators and the victims are in a relationship but also post-separation. Perpetrators often stalk their ex-partners and continue to harass and abuse them.<sup>79</sup> Domestic violence continues to erode the lives of many women who are subject to what one may call a routine offense. Criminalization of domestic violence has failed to stop the abuse.

### III. WHY CRIMINALIZATION OF DOMESTIC VIOLENCE HASN'T SOLVED IT ALL

Though criminal remedies have been put in place to deal with the problem of domestic violence, these remedies suffer from significant flaws. These shortcomings, as discussed hereunder, prevent the system from responding aptly to the situation.

#### A. Police Attitude

Keeping “the couple” or “the family” intact has been the bottom-line of all legal and social intervention.<sup>80</sup> In the past, the usual attitude of the police had been that “domestic” violence was not a serious crime and that couples should be left to themselves to solve their own private affairs.<sup>81</sup> Now, England and Wales have a pro-arrest policy with respect to the crime of domestic violence,<sup>82</sup> which gives police the power to exercise discretion when arresting perpetrators. For instance, the Metropolitan Police Department has stated that it is committed to preventing and bringing to justice perpetrators of domestic abuse when reasonable grounds for doing so exist.<sup>83</sup> However, it does not explain what constitutes reasonable grounds for doing so.

The police are generally swayed by the prospects of a successful prosecution.<sup>84</sup> They often sift through the current situation and look to the likelihood as to whether or not the victim, a future witness, will cooperate in the prosecution. The police are well aware that if the victim does not cooperate, either of two results is inevitable—the charges will be dropped and the case will

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SOURCEBOOK ON VIOLENCE AGAINST WOMEN 146 (Claire M. Renzetti, Jeffrey L. Edleson & Raquel Kennedy Bergen, eds., 2001); Reece, *supra* note 34, at 782; Mills, *supra* note 57, at 573–79 (giving an account of the stages of victimization); Wanless, *supra* note 38, at 546.

78. Mills, *supra* note 57, at 573–79.

79. Malos and Hague, *supra* note 27, at 402–03. See generally *R. v. Colin Taylor* [2010] EWCA Crim. 1581 (noting that he perpetrator continued to threaten and abuse the victim even though the victim had ended the relationship with him).

80. Antonia Cretney & Gwynn Davis, *Prosecuting Domestic Assault: Victims Failing Courts, or Courts Failing Victims?*, 36 HOW. J. CRIM. JUST. 146, 147 (1997); Freeman, *supra* note 8, at 221.

81. Choudhry & Herring, *supra* note 42, at 99–100; Schneider, *supra* note 8, at 981.

82. Choudhry & Herring, *supra* note 42, at 102; HESTER, *supra* note 77, at 2.

83. See *Domestic Violence*, METROPOLITAN POLICE, <http://content.met.police.uk/Article/Domestic-Violence/1400004907755/1400004907755> (last visited Apr. 17, 2012); HESTER, *supra* note 77, at 2.

84. See Choudhry & Herring, *supra* note 42, at 102 (suggesting that since police officers might already find domestic violence calls to be of minimal importance, their likelihood to investigate is decreased unless it is a really solid case).

be dismissed, or the perpetrator will be acquitted due to lack of evidence.<sup>85</sup> If the victim does not make an effort or show an inclination to give a statement and continue with the proceedings, the officers tend to infer that the case is not worth the effort, as the victim will pull back anyway.<sup>86</sup> In such scenarios where arrest may seem to be a futile effort in the end, officers sometimes instead try to “speak” to the man and dispose of the matter.<sup>87</sup>

Another aspect that may influence the police is the ideological image of the battered women. The victim’s conduct at the scene can influence the police’s outlook, including if she is not sober or is being aggressive.<sup>88</sup> Victims are sometimes viewed as the ones responsible for provoking such an offense against them.<sup>89</sup> Police often perceive certain people in a particular way. If they believe that violence is a built-in part of the lives of such people, they may consider arrest meaningless and a waste of time.<sup>90</sup> Hence, to receive the aid of police, the victim must be perceived to be a true victim who is entitled to the protection provided by the criminal justice system.<sup>91</sup> Police, then, are more likely to take concrete steps and make arrests in those cases where the victims’ identities conform to the ideological and normative frame.<sup>92</sup>

## B. Discontinuance

The Crown Prosecution Service (hereinafter referred to as “CPS”) proceeds with prosecution only after the “full code test” has been satisfied.<sup>93</sup> The test is applied in order to ascertain whether the charges should be continued or discontinued.<sup>94</sup> The test is sequential and “has two stages: (i) the evidential stage; followed by (ii) the public interest stage.”<sup>95</sup> “The prosecutor must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction . . . on each charge.”<sup>96</sup> A major component of such evidence is the

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85. Eve S. Buzawa & Thomas Austin, *Determining Police Response to Domestic Violence Victims: The Role of Victim Preference*, 36 AM. BEHAV. SCIENTIST 610, 610–11 (1993).

86. Ellison, *supra* note 52, at 837, 840.

87. GILL HAGUE & ELLEN MALOS, DOMESTIC VIOLENCE: ACTION FOR CHANGE 80 (2005) (stating that 42 percent of cases involve an officer’s “speaking” to the male perpetrator in an attempt to dispose of the criminal matter).

88. Buzawa & Austin, *supra* note 85, at 610.

89. Barbara Hart, *Battered Women and the Criminal Justice System*, 36 AM. BEHAV. SCIENTIST 624, 626 (1993).

90. Kathleen J. Ferraro, *Policing Woman Battering*, 36 SOC. PROBS. 61, 67 (1989).

91. Römken, *Law as a Trojan Horse*, *supra* note 40, at 284.

92. *Id.*; Buzawa & Austin, *supra* note 85, at 610; Ferraro, *supra* note 90, at 67.

93. The Crown Prosecution Service is the department of the United Kingdom that prosecutes those charged with criminal offenses in England or Wales. *Facts about the CPS*, THE CROWN PROSECUTION SERVICE, <http://www.cps.gov.uk/about/facts.html> (last visited Feb. 17, 2012).

94. Susan Edwards, *New Directions in Prosecution*, in WHAT WORKS IN REDUCING DOMESTIC VIOLENCE? A COMPREHENSIVE GUIDE FOR PROFESSIONALS 219–20 (Julie Taylor-Browne, ed., 2001).

95. THE CROWN PROSECUTION SERVICE, THE CODE FOR CROWN PROSECUTORS 7–15 (2010) [hereinafter CODE FOR CPS], available at <http://www.cps.gov.uk/publications/docs/code2010english.pdf>.

96. *Id.* at 7.

witness statements.<sup>97</sup> As there is generally only one witness in cases of domestic violence, the problems regarding insufficiency of the evidence crop up in stage (i) itself.<sup>98</sup>

Witness non-cooperation is a major challenge for the CPS. Victims often back off or refuse to give witness statements.<sup>99</sup> This is generally due to three reasons: fear of retaliatory attacks, dependency on the perpetrator, or the desire not to end the relationship.<sup>100</sup> These reasons are not mutually exclusive and usually overlap. As discussed above, victims often fear the perpetrators. The perpetrators, who exercise control over their female partners, can coerce their victims to withdraw from the proceedings by use of threats, promises, or both.<sup>101</sup> If the perpetrator is successful in influencing the victim, the victim inevitably withdraws her cooperation. The perpetrator's influence on the victim's decisions is not always direct; it may be tacit and deep-rooted in the cycle of power and control that characterizes the relationship.<sup>102</sup> Since the police view those cases where the witness retracts or refuses to give a statement as meaningless, they are likely to comply with the victim's wishes.<sup>103</sup> This results in the weakening and eventual discontinuance of the prosecution's case. Victims may thus act as a prime impediment in the success of a prosecution.<sup>104</sup>

In addition, the failure of the CPS to find alternative compelling evidence often causes cases to die down.<sup>105</sup> If the victim withdraws her support or refuses to give a statement, the prosecutor has to ascertain whether "there is sufficient evidence to provide a realistic prospect of conviction"<sup>106</sup> in spite of the absence of such a statement. The police and the CPS make minimal efforts to build upon the case beyond the victim's initial testimony.<sup>107</sup> In fact, in its Annual Report the CPS acknowledges this fact when it states, "circumstances often leave the CPS no choice but to discontinue: for example when witnesses fail to attend court or change their evidence . . . or when police are unable to fill gaps in the evidence."<sup>108</sup> Individuals who are likely to be aware of the perpetrator's conduct, such as neighbors or people working in shelter homes, are seldom considered or asked to give evidence.<sup>109</sup>

97. *Id.* at 17.

98. There may be other witnesses such as the children in the house, if any, or relatives. If the only witness is the woman, though, she may retract from her earlier position, leading to a lack of evidence against the perpetrator. This in turn leads to problems in going forward with prosecution.

99. *See generally* CODE FOR CPS, *supra* note 95, at 17.

100. *See generally* Clark, *supra* note 58.

101. Clark, *supra* note 58, at 283; Hanna, *The Paradox of Hope*, *supra* note 42, at 1555; Hoyle & Sanders, *supra* note 25, at 24.

102. Hoyle & Sanders, *supra* note 25, at 25.

103. Ellison, *supra* note 52, at 835. *See supra* Part III.A.

104. E. Jane Ursel, *The Possibilities of Criminal Justice Intervention in Domestic Violence: A Canadian Case Study* 8 CURRENT ISSUES IN CRIM. JUST. 263, 271 (1997).

105. CROWN PROSECUTION SERVICE, ANNUAL REPORT 2004–2005 (July 15, 2005), *available at* <http://www.cps.gov.uk/publications/docs/annualreport05.pdf>.

106. CODE FOR CPS, *supra* note 95, at 7.

107. Edwards, *New Directions*, *supra* note 94, at 221; Ellison, *supra* note 52, at 837.

108. CROWN PROSECUTION SERVICE, *supra* note 105.

109. Clark, *supra* note 58, at 283.

Further, the pre-trial issues of compelling the witness to give evidence and documentary hearsay evidence make matters worse. The issue of compelling the victim to give evidence is a challenging and paradoxical one. Section 80(3)(a) of the Police and Criminal Evidence Act of 1984 provides that a wife is competent and compellable to give evidence against her husband.<sup>110</sup> Today, as there is no distinction between married and unmarried partners, any woman can be compelled to give evidence against her partner.<sup>111</sup> In the event of refusal, she can be held guilty for contempt.<sup>112</sup> Weighing compellability in the interest of justice and the victim's genuine concern for her safety leads to conflicting results. While it may truly be in the interest of justice to compel the victim to give evidence before the court, such compulsion may make the victim even more vulnerable to retaliatory attacks and escalated violence.<sup>113</sup> Studies have revealed that the CPS treads very carefully with regard to compelling witnesses to give evidence.<sup>114</sup> Prosecutors cite various reasons for not compelling witnesses to provide evidence, ranging from risk of escalated violence, to continuity of a relationship, to the feeling of powerlessness on part of the prosecution, as the witnesses may turn hostile.<sup>115</sup> The aforementioned reasons make it clear why the provision is hardly used and why compelling victims to provide evidence is often not the best course in cases of domestic violence.

The alternative to compelling a witness to give evidence, as suggested by the 1990 Home Office Circular,<sup>116</sup> is to use the victim's initial statement under §23 of the Criminal Justice Act, 1988 (hereinafter "the CJ Act") together with the evidence of the police officers and any other witnesses.<sup>117</sup> According to the hearsay rule, if the victim refuses to give her statement at the trial, the original statement given by the victim is not admissible as evidence before the court regardless of how crucial it may be to the prosecution's case.<sup>118</sup> However, § 23(3)(b) of the CJ Act provides an exception;<sup>119</sup> it allows admission of a written statement in the absence of oral testimony, provided that the witness is in fear or is kept out of the way.<sup>120</sup> In addition, § 25 of the CJ Act states that, if a court is of the opinion that a statement admissible under § 23 ought not to be admitted in the interest of justice, the court may order the statement be excluded.<sup>121</sup> Section

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110. Police & Criminal Evidence Act, 1984, c.60, § 80(c)(3) (Eng.).

111. See Antonia Cretney & Gwynn Davis, *The Significance of Compellability in the Prosecution of Domestic Assault* 37 BRIT. J. OF CRIMINOLOGY 75, 75 (1997).

112. *Id.*

113. *Id.* at 78–80.

114. *Id.* at 76; HAGUE & MALOS, *supra* note 87, at 78.

115. Cretney & Davis, *supra* note 111, at 80; Ellison, *supra* note 52, at 840; Epstein, *supra* note 71, at 18; HESTER, *supra* note 77, at 18; Hanna, *The Paradox of Hope*, *supra* note 42, at 1551; Hanna, *No Right to Choose*, *supra* note 47, at 1853; Hoyle & Sanders, *supra* note 25, at 17.

116. CIRCULAR 60/1990 FROM HOME OFFICE TO CHIEF OFFICERS OF POLICE (July 31, 1990) (on file at London: Home Office).

117. *Id.* at 9.

118. See generally GRAHAM C. LILLY, PRINCIPLES OF EVIDENCE (2006).

119. Criminal Justice Act, 1988, c. 40, § 23(b)(3) (Eng.).

120. *Id.*

121. *Id.* at § 25.

26 also provides discretionary power to the court.<sup>122</sup> The court is empowered to exercise discretion with regard to the admissibility of statements made under § 23 as it provides that the court may not allow such a statement if it is likely that its admission or exclusion will result in unfairness to the accused.<sup>123</sup> Section 23(3)(b) “has however been rarely used.”<sup>124</sup> This is possibly because there is no other alternate compelling evidence to support a statement.<sup>125</sup> The court is likely to view the admission of such a statement as being against the interest of justice and prejudicial to the defendant because the defense would be precluded from the right to cross examine the lone prosecution witness.<sup>126</sup> It is thus important to have additional evidence to support and corroborate the witness statement made under § 23. The police who are on the front line to collect such evidence are in fact found to have “lack of experience of using § 23(3)(b).”<sup>127</sup>

Following the evidential stage in the two-fold “full code test” is the public interest stage which must be satisfied before the prosecution can move ahead.<sup>128</sup> Public interest criterion, created by CPS Policy, takes many factors into account, including:

the seriousness of the offen[s]e; the victim’s injuries—whether physical or psychological; if the defendant used a weapon; if the defendant made any threats before or after the attack; if the defendant planned the attack; if there are any children living in the household; if the offen[s]e was committed in the presence of, or near, a child or young person; the chances of the defendant offending again; breaches of any court orders; the continuing threat to the health and safety of the victim or anyone else who is, or may become, involved; the history of the relationship, particularly if there has been any violence in the past; the defendant’s criminal history, particularly any previous violence; and any other factors that are relevant to the public interest.<sup>129</sup>

These factors provide the CPS a wide array of choices when applying the second criterion. It may seem as though once a case reaches this stage, no matter with how much difficulty, it is almost certain to be tried. This, however, is not quite the case. The Code for CPS requires prosecutors to take into consideration “any views expressed by the victim regarding the impact that the offen[s]e has had.”<sup>130</sup> The public interest criterion is very subjective in nature, and such a consideration erects yet another barrier before the case can be tried.

In light of the above, it is almost a natural consequence for the cases to fall apart and be discontinued. Though the criminal justice system does provide

122. *Id.* at § 26.

123. *Id.*

124. Edwards, *Reducing Domestic Violence*, *supra* note 15, at 2–3.

125. Ellison, *supra* note 52, at 838; HAGUE & MALOS, *supra* note 87, at 78.

126. Edwards, *New Directions*, *supra* note 94, at 233.; Ellison, *supra* note 52 at 839. *See* Criminal Justice Act, 1988, c. 40, § 26(b)(ii) (Eng.).

127. Edwards, *supra* note 15, at 2–3.

128. CROWN PROSECUTION SERVICE, CPS POLICY FOR PROSECUTING CASES OF DOMESTIC VIOLENCE (Mar. 2009) [hereinafter CPS POLICY], available at <http://www.cps.gov.uk/publications/docs/domesticviolencepolicy.pdf>.

129. *Id.* at 26–27.

130. CODE FOR CPS, *supra* note 95, at 15.

certain tools to deal with the problem of discontinuance, attrition continues.<sup>131</sup>

### C. Downgrading of Charges

Only a small number of cases pass the full code test and become full-fledged cases to be tried.<sup>132</sup> Of these cases, only a handful lead to convictions.<sup>133</sup> There is no robust prosecution, and downgrading of charges is a common practice.<sup>134</sup> Even if the perpetrators engage in domestic violence in the goriest way, charges are often lowered to the level of a mere “common assault.”<sup>135</sup> The CPS justifies the downgrading of charges on the grounds that “it allows consideration of ‘such matters as speed of trial and mode of trial.’ ”<sup>136</sup> This downplays the seriousness of the crime and weakens the case even further. Victims may be alerted time and time again about the cost and risks of prosecution and as a result are forced to believe that the “cost and risks of prosecution outweigh the potential consequences for assailants.”<sup>137</sup> As a result, criminal prosecution loses its appeal.<sup>138</sup>

Only when, in addition to the charge of common assault, multiple charges are filed against the perpetrator—such as criminal trespass, disturbing the peace, or tampering with a witness—can the system yield satisfactory results.<sup>139</sup> These charges, though low in individual punishment level, cumulatively increase the chances of conviction. However, filing multiple charges against an alleged perpetrator is not a routine practice.<sup>140</sup>

### D. Judicial Attitude

Judicial attitude can comprehensively influence the nature of the prosecution process. Judges are averse to breaking the “family unit.”<sup>141</sup> Though more prevalent in the past, this attitude of the judiciary can be seen even today. Judges may lack knowledge of the dynamics operating behind the problem,<sup>142</sup> and as a result they may continue to have a clichéd image of the victim and of the nature of domestic violence.<sup>143</sup> They may thus strive to preserve the marriage or

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131. A similar pattern is observed in cases of rape. See Sandra Walklate, *What is to be Done About Violence Against Women? Gender, Violence, Cosmopolitanism and the Law* 48 BRIT. J. OF CRIMINOLOGY 39, 47 (2008).

132. Martha H. Field & Henry F. Field, *Marital Violence and the Criminal Process: Neither Justice nor Peace* 47 SOC. SERV. REV. 221, 225 (1973).

133. HAGUE & MALOS, *supra* note 87, at 79; Hanna, *The Paradox of Hope*, *supra* note 42, at 1523.

134. Hanna, *The Paradox of Hope*, *supra* note 42, at 1523–24.

135. Wanless, *supra* note 38, at 567.

136. Cretney & Davis, *supra* note 80, at 147.

137. Hart, *supra* note 89, at 627.

138. *Id.*

139. Hanna, *No Right to Choose*, *supra* note 47, at 1905–06.

140. *Id.*

141. Freeman *supra* note 8, at 221; Hanna, *The Paradox of Hope*, *supra* note 42, at 1539; Wanless, *supra* note 38, at 567.

142. Epstein, *supra* note 71, at 44.

143. LeeAnn Iovanni & Susan L. Miller, *Criminal Justice System Responses to Domestic Violence: Law Enforcement and the Courts*, in SOURCEBOOK ON VIOLENCE AGAINST WOMEN 318 (Claire M. Renzetti,

the relationship between the victim and the perpetrator. In their attempt to do so, judges eventually end up safeguarding and upholding the patriarchal order of society.

Some judges perceive an injury obtained by a person in a bar-room brawl to be greater than the injury obtained by a victim of domestic violence.<sup>144</sup> Cases involving domestic violence are considered inferior to those pertaining to commercial matters and crimes committed against strangers.<sup>145</sup> Such an approach pushes domestic violence back into the paradigm of being a “private” problem<sup>146</sup> and belittles the seriousness of the problem.

The earnestness on the part of the judiciary can be gauged, to a degree, by the sentences it passes in the cases involving domestic violence. Judges may get frustrated with non-cooperative victims.<sup>147</sup> Due to a lack of knowledge of the dynamics of power and control, judges may believe that it is the women themselves who choose to be in the abusive relationship and that they can leave the abusive partner if they so wish.<sup>148</sup> Women have also been noted to be mistreated in the courts.<sup>149</sup> In addition, when sentencing offenders, some judges are quite unwilling to give perpetrators a sentence that is proportionate to their crime.<sup>150</sup> Batterers are usually released on bail, given a minimal sentence, or simply fined<sup>151</sup> despite the physical, emotional, and psychological damage they have done to their victims. Lenient sentencing not only trivializes the problem of domestic violence but also sends a message to the public that domestic violence is condonable and acceptable.

#### IV. MODEST RECOMMENDATIONS

Domestic violence is as much a social problem as it is a legal one. Because the legal system needs to be improved with respect to its implementation, it can at best act as only one of many necessary tools in dealing with the problem of domestic violence. For such a deep-rooted problem the solution must be commensurate with its magnitude; only a multi-dimensional approach can fit the bill.

We require a groundswell movement. This can happen only by reaching out to the common masses in varied ways and spreading the message that violence is unacceptable in any form. The following recommendations provide an impetus to make the solutions go truly public and uproot the problem from its very core.

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Jeffrey L. Edleson & Raquel Kennedy Bergen, eds., 2001).

144. Clark, *supra* note 58, at 283.

145. Epstein, *supra* note 71, at 42.

146. Goldfarb, *supra* note 9, at 1495–96; Hanna, *No Right to Choose*, *supra* note 47, at 1875.

147. Iovanni & Miller, *supra* note 143, at 318.

148. *Id.*; Epstein, *supra* note 71, at 39; Hanna, *No Right to Choose*, *supra* note 47, at 1875.

149. Epstein, *supra* note 71, at 40.

150. Epstein, *supra* note 71, at 43; Iovanni & Miller, *supra* note 143, at 318; Wanless, *supra* note 38, at 567.

151. Rebecca Morley & Audrey Mullender, *Hype or Hope? The Importation of Pro-Arrest Policies and Batterers' Programmes From North America to Britain as Key Measures for Preventing Violence Against Women in the Home*, 6 INT'L J. L. & FAM. 265, 275 (1992); Wanless, *supra* note 38, at 567.

### A. Mandatory Arrest

A mandatory arrest policy can prove beneficial to victims in a variety of ways. First and foremost, a mandatory arrest policy can provide immediate safety and relief to victims. It separates the perpetrator from the victim—even if temporarily—and gives the victim the opportunity to make alternate living arrangements, more readily guaranteeing her safety.<sup>152</sup>

Second, a mandatory arrest policy provides victims a sense of empowerment. Mandatory arrest leaves no room for police discretion and ensures that officers respond to the problem immediately. This enables the victims to become aware of their “right not to be abused.”<sup>153</sup> It also empowers victims who, on account of being trapped in the power and control circle, lack the knowledge and support to deal with the problem.<sup>154</sup> Mandatory arrest can be a stepping stone for such victims.

Third, mandatory arrest sends a strong message to everyone—perpetrators, police, and society at large—that violence is unacceptable.<sup>155</sup> With such a policy in place, the police would be more likely to take the crime seriously.<sup>156</sup> This would convey the message to perpetrators that domestic violence is not a “domestic” matter but a criminal offense with consequences.<sup>157</sup> It also sends important signals to children, indicating that violence is not a regular and acceptable code of conduct.<sup>158</sup> A mandatory arrest policy, once adopted by the State, sends an extremely powerful message to society that domestic abuse will not be condoned.<sup>159</sup>

A randomized experiment conducted by Sherman and Berk in the 1980s in Minneapolis, Minnesota,<sup>160</sup> found that arrest reduces domestic violence.<sup>161</sup> Following this study, the U.S. Attorney General recommended arrest be the uniform police response in domestic violence complaints and cases.<sup>162</sup> The experiment was criticized for “too readily concluding that the pro-arrest police response was the determining variable in deterring domestic violence repeat incidents.”<sup>163</sup> Follow-up studies were conducted and the experiment was

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152. Wanless, *supra* note 38, at 549; Winick, *supra* note 58, at 71–72. See Hoyle & Sanders, *supra* note 25, at 22.

153. Lisa G. Lerman, *The Decontextualization of Domestic Violence*, 83 J. CRIM. L. & CRIMINOLOGY 217, 225 (1993). See Wanless, *supra* note 58, at 549.

154. Hoyle & Sanders, *supra* note 25, at 17–18; Winick, *supra* note 58, at 78.

155. Wanless, *supra* note 38, at 554; Winick, *supra* note 58, at 72.

156. Mills, *supra* note 57, at 563; Winick, *supra* note 58, at 71.

157. Winick, *supra* note 58, at 77. See Mills, *supra* note 57, at 611.

158. Lerman, *supra* note 16=53, at 225. See Wanless, *supra* note 38, at 551.

159. Morley & Mullender, *supra* note 151, at 271; Wanless, *supra* note 38, at 553–54.

160. Lawrence W. Sherman & Richard A. Berk, *The Specific Deterrent Effects of Arrest for Domestic Assault*, in *WHAT WORKS IN POLICING* 227 (David H. Bayley, ed., 1998). The research design necessitated random assignment of arrest, separation, and some form of advice that may include mediation at the discretion of the officer. This was followed by follow-up interviews with the victims to assess the recurrence and severity of violence after police intervention. *Id.*

161. *Id.* at 241–42.

162. Hanna, *No Right to Choose*, *supra* note 47, at 1859; Wanless, *supra* note 38, at 554.

163. Susan Edwards, *More Protection for Victims of Domestic Violence? (The Domestic Violence, Crime and Victims Act 2004)*, 18 DENNING L. J. 243, 249 (2006).

replicated in other cities.<sup>164</sup> These studies yielded mixed results. Of the six cities in which the experiment was conducted,<sup>165</sup> mandatory arrest was in fact found to have escalated the violence in three of the cities.<sup>166</sup> These ventures were criticized, too, as the research design employed was not exactly the same as that used in Minneapolis.<sup>167</sup> Some states adopted a mandatory arrest policy while others adopted a softer pro-arrest policy.<sup>168</sup>

Some feminists have criticized mandatory arrest policies. They argue that these policies make women even more powerless; through the loss of decision-making power over the arrest of their partner, women lose their autonomy and right to self-determination.<sup>169</sup> These critics contend that the criminal justice system is paternalistic, as it does not take into account the victim's wishes.<sup>170</sup> Feminist critics contend that the women are in the "best position to judge" whether or not an arrest should be made.<sup>171</sup> However, this is not the case. The critics do not take into account the fact that the decisions made by the victims with respect to the arrest are in fact influenced by the power and control exerted by the perpetrators. Even if the victims decline arrest of their partners, their decision is not truly autonomous.<sup>172</sup> In such circumstances where the victims are not able to decide what is in their best interest, paternalism may be justified.<sup>173</sup> "[A] short-term invasion of a victim's autonomy may be necessary to protect that person's autonomy in the longer term."<sup>174</sup> Thus, the criminal justice system must not jeopardize the societal goal of eradicating domestic violence by conceding to the needs and desires of the individual victims. Mandatory arrest can work best when followed and supported by robust prosecution.

## B. Enhanced Evidence-gathering

Choudhry and Herring have rightly identified two conflicting desires of the victims—desire for the violence to end and desire for continuity of the relationship.<sup>175</sup> Most victims are reluctant to report violence against them by their partners and generally pull back from the prosecution process (for example,

164. Wanless, *supra* note 38, at 555 (listing Atlanta, Charlotte, Colorado Springs, Miami, Milwaukee, and Omaha).

165. *Id.* (listing Charlotte, Milwaukee, and Ohama).

166. *Id.* (finding violence escalated in Charlotte, Milwaukee, and Omaha).

167. *Id.* at 556.

168. *Id.* at 557 (adopting mandatory arrest policies in fifteen states and the District of Columbia). See also Machaela M. Hoxtor, *Domestic Violence as a Crime Against the State: The Need for Mandatory Arrest in California*, 85 CALIF. L. REV. 643, 644 (1997) (adopting the mandatory arrest policy even though their respective states had not enacted any mandatory arrest requirements into their law).

169. Hanna, *No Right to Choose*, *supra* note 47, at 1865–66.

170. *Id.* at 1872.

171. Wanless, *supra* note 38, at 549.

172. Morley & Mullender, *supra* note 152, at 271 (considering both victim and community wishes in arrests).

173. Winick, *supra* note 58, at 74–75.

174. Choudhry & Herring, *supra* note 42, at 103. See Hanna, *No Right to Choose*, *supra* note 47, at 1870 (stating that balancing victim and community objectives is important even if crime is within the privacy of the family).

175. Choudhry & Herring, *supra* note 42, at 102.

by refusing to testify) for reasons which may well be justified.<sup>176</sup> The Code for CPS requires the prosecution “take into account any views expressed by the victim.”<sup>177</sup> The CPS’s deference to the victim’s wishes has not resulted in a decrease of domestic violence.<sup>178</sup> The Code nevertheless directs the CPS to proceed with prosecution if there is sufficient evidence to provide a substantial prospect of conviction irrespective of the presence of the witness statement.<sup>179</sup> It also makes clear that “the prosecution service does not act for the victims or their families in the same way as solicitors act for their clients, and prosecutors must form an overall view of the public interest.”<sup>180</sup> In order to give full effect to these provisions of the Code, the CPS must gather alternate compelling evidence and proceed without over-relying on the victim’s testimony.

The police play a pivotal role in gathering evidence. With greater police sensitization and training, the quality of that evidence can be improved profoundly. The initial investigation is undoubtedly the most crucial.<sup>181</sup> With proper training, police would be able to better take advantage of the initial investigation and the evidence at the crime scene.

The police can use different strategies to aid prosecution.<sup>182</sup> These strategies may include preparing detailed reports which take account of the exact time the emergency call was made, the time of police arrival at the place of incident, the physical condition of the perpetrator and the victim (including any injuries), and the condition of the house.<sup>183</sup> Officers must confiscate any blood-stained clothing and weapons or household items used as weapons and record the statement of the perpetrator, the victim, and any other people present such as children or neighbors.<sup>184</sup> It is important the statement of the victim not be taken in the presence of the perpetrator to avoid intimidation problems. The police must also take photographs at the site. Photographs can act as crucial and compelling evidence and can strengthen the prosecution’s case.<sup>185</sup> In addition to comprehensive reports, the police must interrogate people who might have information about the battering, regardless of whether they were present during the incident. Such sources might include neighbors, family members, friends,

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176. Hoyle & Sanders, *supra* note 25, at 29 (describing reasons including fear of more violence, humiliation, and emotional and economic dependency on the male partner). *See also* M.D.A. FREEMAN, VIOLENCE IN THE HOME 157–76, 184 (Saxon House ed., 1980) (considering various motivating factors in victims’ reasoning for seeking legal help).

177. CODE FOR CPS, *supra* note 95, at 15.

178. Hoyle & Sanders, *supra* note 25, at 29 (indicating victims still make choices leading to more injury). *See* FREEMAN, *supra* note 176, at 181.

179. CODE FOR CPS, *supra* note 95, at 10.

180. *Id.* at 15.

181. Ellison, *supra* note 52, at 841.

182. Hanna, *No Right to Choose*, *supra* note 47, at 1901 (considering the use of statements and more detailed reports).

183. *Id.*; Ellison, *supra* note 52, at 841; Wanless, *supra* note 38, at 572.

184. Hanna, *No Right to Choose*, *supra* note 47, at 1901–02. *See also* Wanless, *supra* note 38, at 572 (emphasizing the importance of being very specific when collecting information from the scene).

185. Ellison, *supra* note 52, at 841 (requiring, by the San Diego police department, that officers take pictures and also equipping its squad cars with Polaroid cameras to ensure more accurate reporting); Hanna, *No Right to Choose*, *supra* note 47, at 1902; Wanless, *supra* note 38, at 572.

people working at shelter homes for women, and health service providers.<sup>186</sup> A check-list provided to the officers can be particularly helpful in prompting the officers to ensure all possible evidence has been taken into account.<sup>187</sup>

Once such evidence is obtained, the prosecution can proceed “victimless” just as in the cases of murder.<sup>188</sup> Though removal of decision-making power from the hands of the victims can attract criticism by feminists,<sup>189</sup> it nevertheless helps in promoting interests of both the individual and the society. This removal of victim choice not only helps in successful prosecution<sup>190</sup> but also relieves victims of the burden of “choosing” to go ahead with action against their partners.<sup>191</sup> Prosecution based on alternate compelling evidence and not merely victim testimony further sends out the important message that domestic violence is not a private matter but a serious offense.<sup>192</sup>

### C. Court Mandated Perpetrator Programs

Court mandated perpetrator programs can not only cater to victims’ satisfaction<sup>193</sup> but also supplement the legal response to domestic violence.<sup>194</sup> The Duluth, Minnesota, model treatment program for batterers,<sup>195</sup> based on a pro-feminist psycho-educational approach, has been at the forefront of court mandated perpetrator programs and has influenced many jurisdictions, including Britain,<sup>196</sup> in shaping similar programs.<sup>197</sup>

The programs can help target “malleable factors such as attitudes and beliefs.”<sup>198</sup> The resulting changes in the participating men’s attitudes and beliefs

186. Clark, *supra* note 58, at 283. Their participation in the prosecution process may provide additional strength to the case.

187. Ellison, *supra* note 52, at 841–42. See Hanna, *No Right to Choose*, *supra* note 47, at 1902 (emphasizing the use of standardized forms to guarantee that no important information is neglected).

188. Ellison, *supra* note 52, at 835.

189. Hanna, *No Right to Choose*, *supra* note 47, at 1872 (claiming that allowing someone else beside the victim to choose a victim’s remedy is “paternalistic”).

190. With enhanced evidence, statements made under § 23 of the Criminal Justice Act (1988) can be corroborated, thus leading to a robust prosecution. Criminal Justice Act, 1988, c. 40, § 23 (Eng).

191. Wanless, *supra* note 38, at 572.

192. Mandy Burton, *Civil Law Remedies for Domestic Violence: Why Are Applications for Non-Molestation Orders Declining?*, 31 J. SOC. WELFARE & FAM. L. 109, 114 (2009); Clark, *supra* note 58, at 287; Field & Field, *supra* note 132, at 227; Renée Römken, *Protecting Prosecution: Exploring the Powers of Law in an Intervention Program for Domestic Violence*, 12 VIOLENCE AGAINST WOMEN 160, 164 (2006).

193. Cretney & Davis, *supra* note 80, at 154 (arguing that most women seek some form of “treatment” for their partners); FREEMAN, *supra* note 176, at 184.

194. DOBASH ET AL., *supra* note 28, at 145.

195. Ellen Pence & Michael Paymar, *Power and Control: Tactics of Men Who Batter: An Educational Curriculum* (Duluth, Minnesota: Minnesota Program Development Inc., 1990) as cited in Julie Taylor-Browne (Ed.), *What Works in Reducing Domestic Violence* (London: Whiting and Birch Ltd., 2001).

196. Morley & Mullender, *supra* note 151, at 279; Audrey Mullender & Sheila Burton, *Dealing with Perpetrators*, in *WHAT WORKS IN REDUCING DOMESTIC VIOLENCE?: A COMPREHENSIVE GUIDE FOR PROFESSIONALS* 59, 65 (Julie Taylor-Browne ed., 2001).

197. Hanna, *The Paradox of Hope*, *supra* note 42, at 1530; Morley & Mullender, *supra* note 151, at 278–79.

198. Daniel P. Mears & Christy A. Visher, *Trends in Understanding and Addressing Domestic Violence* 20 J. INTERPERSONAL VIOLENCE 204, 209 (2005). See Lewis, *supra* note 29, at 209.

can provide women with an enhanced quality of life and sense of well-being.<sup>199</sup> Men in treatment need to be re-educated in terms of their attitude towards women and learn to take responsibility of their “strategic” controlling behavior.<sup>200</sup> Deterrence can play an important role in the outcome of programs.<sup>201</sup> If the program is court mandated and non-compliance results in sanctions, men would be obliged to continue with the program.<sup>202</sup> Though such coercion may be needed only in the initial stages,<sup>203</sup> it is essential in order to monitor the perpetrator’s activities and ensure that batterers complete the program.<sup>204</sup> Thus, the problems of attrition, non-compliance, and victim’s safety can be dealt with effectively.<sup>205</sup> However, caution must be exercised when referring batterers to such programs as they may not work for all perpetrators, such as repeat offenders.<sup>206</sup> Repeat offenders may have “graduated” from such programs. If they, even after completing these programs, continue to show delinquent behavior, courts should exercise discretion in referring them to such programs. The programs or courses may not be able to re-orient the repeat offenders who are, so to say, hardened criminals. They may require something of a more advanced level.<sup>207</sup>

#### D. Domestic Violence Courts

Domestic violence can often “lead directly to separation and divorce. These problems in turn entail disputes regarding maintenance and the division of property.”<sup>208</sup> Specialized domestic violence courts can smooth things out with an integrated approach.<sup>209</sup> A “one family, one judge” approach<sup>210</sup> would enhance

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199. See DOBASH ET AL., *supra* note 28, at 127–45 (describing how a change in physical and emotional relationships with abusive men will positively affect women).

200. Lewis, *supra* note 29, at 209.

201. *Id.* at 214.

202. *Id.* at 216.

203. *Id.* at 217.

204. Mullender & Burton, *supra* note 196, at 69.

205. *Id.*

206. Hanna, *The Paradox of Hope*, *supra* note 42, at 1533 (suggesting only a correlation in relationship instead of causation); Lewis, *supra* note 29, at 217 (noting that “[s]ome men in the sample had extensive experience of the criminal justice system for a range of offenses so the threat of further sanctions no longer had the power to deter them from re-offending”). Repeat offenders may have already “graduated” from such programs. If they, even after completing these programs, continue to show delinquent behavior, courts should exercise discretion in referring them to such programs. The programs or courses may not be able to re-orient the repeat-offenders who are, so to say, hardened criminals. They may require something of a more advanced level and hence, it may seem like a futile effort sending them over and over again. See generally Edward W. Gondolf, *Evaluating Batterer Counseling Programs: A Difficult Task Showing Some Effects and Implications*, 9 AGGRESSION & VIOLENT BEHAVIOR 605 (2004) (noting that, for high-risk men, intensive programs are required).

207. Intensive programs are required for high-risk men. See generally Edward W. Gondolf, *Evaluating Batterer Counseling Programs: A Difficult Task Showing Some Effects and Implications*, 9 AGGRESSION & VIOLENT BEHAVIOR 605 (2004), available at [http://www.respect.uk.net/data/files/resources/6/gondolf\\_2003\\_evaluating\\_batterer\\_programs.pdf](http://www.respect.uk.net/data/files/resources/6/gondolf_2003_evaluating_batterer_programs.pdf).

208. PLEASENCE, BALMER & BUCK, *supra* note 50, at 56. See also Winick, *supra* note 58, at 39–40.

209. Winick, *supra* note 58, at 39–40.

210. Epstein, *supra* note 71, at 29.

information-sharing between different agencies within the criminal justice system. The centralized information would ensure that the presiding judge is aware of the complete facts of the case at hand, the related cases, and the surrounding circumstance.<sup>211</sup> It would help the judge pass orders that take into account the entire background of the case and do not conflict with each other.<sup>212</sup> Consequently, it would speed up the process and prevent delays typical of the criminal justice system. This streamlined approach would also make things easier for the victim. The system would be more comprehensible, and the victim would not have to shuffle between different courts for different cases which may be interconnected. The presence of such courts may convey to the victims and society at large that domestic violence and its associated problems are taken seriously, and this may help increase victims' confidence in the criminal justice system.

#### E. Domestic Violence Registers

The police have proposed creation of a domestic violence register.<sup>213</sup> As previously indicated, there is repeated abuse of the victim by the offender.<sup>214</sup> This is not limited to the current female partner. The cycle of abuse tends to pass on to other relationships that the perpetrator may enter into if he separates from his current partner.<sup>215</sup> Perpetrators often move from one relationship to another.<sup>216</sup> The proposed domestic violence register aims to track down such offenders.<sup>217</sup> This is a very innovative yet strong step sought to be taken against the perpetrators.

It has been proposed that the register "would not be generally accessible to the public"<sup>218</sup> but that the women in relationships with such men could seek information about them.<sup>219</sup> Employers may also be entitled to access the register.<sup>220</sup> The proposed register would incorporate names and addresses of offenders with the history of previous allegations against them, their outcomes, and also any warnings.<sup>221</sup> Such registers would help women find out about their partners' violent histories. This move may be criticized on the grounds that it may infringe perpetrators' right to privacy and may affect their employment

211. *Id.* at 33.

212. *Id.*

213. Andrew Sparrow, *Police Call for Domestic Violence Register*, THE GUARDIAN (Jan. 22, 2008, 11:45 PM), <http://www.guardian.co.uk/politics/2008/jan/22/immigrationpolicy.uk>; Alan Travis, *Police Plan Register of Serial Domestic Violence Offenders*, THE GUARDIAN (Nov. 16, 2009, 1:47 PM), <http://www.guardian.co.uk/society/2009/nov/16/domestic-violence-police-register-database>.

214. See discussion *supra* Part II.C..

215. Clark, *supra* note 58, at 284; Hanna, *No Right to Choose*, *supra* note 47, at 1895.

216. See Morley & Mullender, *supra* note 151, at 282 (indicating that abusive men are "violent in a series of relationships").

217. Sparrow, *supra* note 213.

218. Travis, *supra* note 213.

219. *Id.*

220. Sophie Goodchild, *Government Considers Domestic Violence Register*, INDEP. SUNDAY (London), (Dec. 8, 2002), available at <http://www.independent.co.uk/news/uk/crime/government-considers-domestic-violence-register-610217.html>.

221. Travis, *supra* note 213; see also Goodchild, *supra* note 220.

prospects.<sup>222</sup> Nevertheless, such deprivations would not be unjustified on the ground of public interest if the perpetrator is a “serial” offender. Besides, safeguards have been proposed, such as limiting the register to serial perpetrators—those persons who have committed the offense against two or more victims.<sup>223</sup>

The maintenance of such registers would have many advantages. First, it would ensure personal safety, as the women would be able to make an informed choice.<sup>224</sup> Second, a centralized register would enhance information sharing between agencies.<sup>225</sup> Third, records of previous domestic violence could potentially be used as evidence against the perpetrators. Last but not least, it would be a powerful signal to society of the potentially serious consequence of domestic violence.

#### F. Use of Alarms

Another alternative for protecting victims of domestic violence is to provide safety alarms that can be installed in their homes or worn on their persons at all times. Stalking is “a form of domestic violence against women,”<sup>226</sup> and many men stalk their ex-partners after separating from them.<sup>227</sup> As a result, victims of stalking feel unsafe and fear escalated forms of violence.<sup>228</sup> In order to deal with this problem, the use of personal safety alarms was introduced: the AWARE (Abused Women’s Active Response Emergency) program originated in Canada and was then adopted by many cities in the USA.<sup>229</sup> Electronic alarm systems are set up in the victim’s home; if the woman is threatened by the abuser or he goes against a non-molestation or exclusion order by drawing near her in any way, she can set off the alarm by pushing a button in the house or a pendant that she can wear on or carry with her in the close surrounding area of the house.<sup>230</sup> Scientists in the Netherlands tested the effectiveness of AWARE.<sup>231</sup> A high threshold was set up for victims to qualify to get the alarm systems.<sup>232</sup> Once a victim activated the alarm, it would set off an alarm at the security company and

222. See Regina B. Schofield, *National Sex Offender Public Registry*, P.M. PUB. MGMT., Jan./Feb. 2006, at 35 (helping protect children as justification for these registries). Because these lists are so easily accessible, they have the potential for negative effects in many aspects of life. See Erica Meiners, *Never Innocent: Feminist Trouble with Sex Offender Registries and Protection in a Prison Nation*, 9 MERIDIANS 31, 39 (2009).

223. Travis, *supra* note 213.

224. *Id.*

225. Sparrow, *supra* note 213.

226. Reece, *supra* note 34, at 779. The United Kingdom defines stalking as “a course of conduct [that] amounts to harassment if another ‘reasonable person’ . . . would consider the particular pattern of behavior exhibited by the perpetrator to constitute harassment of the victim.” Adrian J. Scott, Rebecca Lloyd & Jeff Gavin, *The Influence of Prior Relationships on Perceptions of Stalking in the United Kingdom and Australia*, 37 CRIM. JUST. & BEHAVIOR 1185, 1185 (2010).

227. Reece, *supra* note 34, at 778–79; Römkens, *Protecting Prosecution*, *supra* note 192, at 160.

228. Paradine, *supra* note 59, at 46.

229. Römkens, *Protecting Prosecution*, *supra* note 192, at 161.

230. *Id.* at 166.

231. *Id.*

232. *Id.*

the company would immediately contact the police.<sup>233</sup> This would help catch the perpetrator red-handed and ensure that the victim feels safe again in her home, as the abuser would be taken away from her immediate surroundings.<sup>234</sup>

The Dutch study required the women to have already taken an action against the perpetrator, which in itself is a major step for them, and the nine women who were finally selected to receive the AWARE system indicated without exception that the alarm made them feel much safer in their homes.<sup>235</sup> Though some women may use the alarms strategically or choose to not always use the alarms,<sup>236</sup> the alarms can nevertheless be quite an empowering tool for victims. If the domestic violence registers also include a record of how many times such alarms have been used against a perpetrator, it may help make the prosecution case even stronger. Such alarm systems should be more freely available and accessible, as they would help women prevent any sort of assault, gain a sense of empowerment, and make them feel safe. Use of alarms can even have a deterrent effect on the offenders as the alarms themselves send out the signal that society is prepared to take such offenders to task.

#### G. Use of Self-Defense

The use of self-defense is not often discussed in the context of domestic violence. Although self-defense may not be directly applicable in intimate relationships,<sup>237</sup> it does go a long way in preventing and tackling domestic violence. Research has revealed that men are generally over-confident in their conduct.<sup>238</sup> They perceive that the things they do are “right,” especially when dealing with women.<sup>239</sup> Further, when over-confident, men do not engage in self-examination or critique, which is as essential as having confidence.<sup>240</sup> They see themselves as higher than women though the outcome for the same task performed by women may be no different.<sup>241</sup> Women may feel less confident when in less powerful positions but this may not hold true when they are in powerful positions.<sup>242</sup>

Self-defense challenges women physically and makes them overcome their sense of inferiority to men, as they feel “more in control” of themselves, become

233. *Id.*

234. *Id.*

235. *Id.* at 174. These women all had valid non-molestation, exclusion, or protection orders against their perpetrators. *Id.* Signaling the alarm thus signified a violation of a court order. *See id.*

236. *Id.*; Römkens, *Law as a Trojan Horse*, *supra* note 40, at 279. At one end of the spectrum they might feel sorry for the ex-partner and may not want him to get dragged into the criminal process while at the other end they might fear that the threat might actually escalate if they use the alarm when the ex-partner has not yet used “real” violence which causes the women to use the alarms strategically. Römkens, *Protecting Prosecution*, *supra* note 192, at 174–75.

237. Daniel D. Polsby, *Suppressing Domestic Violence with Law Reforms*, 83 J. CRIM. L. & CRIMINOLOGY 250, 252–53 (1992).

238. Sandra R. Farber & Monica Rickenberg, *Under-Confident Women and Over-Confident Men: Gender and Sense of Competence in a Simulated Negotiation*, 11 YALE J.L. & FEMINISM 271, 293, 294 (1999).

239. *Id.* at 301.

240. *Id.* at 293.

241. *Id.* at 294.

242. *Id.* at 300.

assertive, and become “less afraid.”<sup>243</sup> This would be a profound development for victims, physically and psychologically. Efforts should be made to provide self-defense training to women—whether by the local councils, in schools, or by NGOs. Delhi Police holds free self-defense classes for all women, setting an example well worth emulating for domestic violence victims facing financial difficulty in particular.<sup>244</sup> This type of development would help in cutting through the stereotypic image of women. This is necessary for women themselves, as they would then feel strong within and, thus, less vulnerable to domestic violence.

#### H. Better Housing

Women who separate from their partners may not have a place to go. Some women may take refuge in a shelter and others may go to their friends or relatives. Whatever the choice may be, there is often instability in such housing. Women who choose to go to the shelters may at first be happy to have a feeling of safety and get some respite from the violence. They may meet other women who have faced similar experiences as them. However, as time passes, they may realize that shelter homes may not be the best place to be<sup>245</sup> because shelter homes are generally inadequately funded and in dilapidated condition.<sup>246</sup> There may be little privacy due to the space crunch in shelters, and it may not be the best place for children to grow up.<sup>247</sup> Women who choose to live with their friends or family may face similar situations along with the burdensome feeling of intruding into other people’s lives. As a result of such circumstances and the paucity of funds, these women may have no desirable or viable option but to return to their former homes and continue to live with the abusive partner.<sup>248</sup>

Women leaving abuse have quite a clear idea of the type of rehousing they would like.<sup>249</sup> Their basic concept includes elements of space, safety, and permanency.<sup>250</sup> However, it may take a long time for the women to find a suitable accommodation through councils (local governments). Battered women are in dire need of better housing facilities. Councils should take necessary steps to fast-track rehousing of battered women. If there is proper information-sharing between agencies, the courts could possibly direct speedy rehousing of abused women and thereby ensure their safety.

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243. Lisa R. Hasday, *What the Violence Against Women Act Forgot: A Call for Women’s Self-Defense*, 13 YALE J.L. & FEMINISM 176, 184–85 (2001).

244. *The Problem and the Approach*, DELHI POLICE, <http://www.delhipolice.nic.in/parivartan/parivartan.htm> (last visited Feb. 8, 2012).

245. Malos & Hague, *supra* note 27, at 403 (describing shelters as overcrowded, with poor building conditions and lack of privacy).

246. Clark, *supra* note 58, at 264–65. *See also* Morley & Mullender, *supra* note 151, at 275 (noting that decreasing funds lead to lack of space).

247. Malos & Hague, *supra* note 27, at 403.

248. *Id.* at 404. *See* Pavao et al., *supra* note 66, at 145 (noting that one’s housing situation may require moving back or remaining with the abuser).

249. Malos & Hague, *supra* note 27, at 404.

250. *Id.*

## I. Censorship of Media

Social perceptions may influence the legal treatment of domestic violence victims and cases. Media plays an extremely important role in shaping the outlook of the people in a society. Rap music, pornography, and other misogynous media send out the message that violence against women is not only normal but also justified. Pornography portrays women as sexual objects and presents the themes of rape and other aggressive sexual behavior as “being justified, positive, and sexually liberating.”<sup>251</sup> “When sexual behavior and violent behavior are presented together and the outcome is depicted positively,”<sup>252</sup> men and society at large may believe such behavior is acceptable.<sup>253</sup> Men who batter their partners view more pornographic material than men who do not abuse their partners.<sup>254</sup>

In addition to pornographic material, rap music also explicitly depicts women in a downgraded manner. Famous rappers like Eminem have violent and misogynist lyrics in most of their compositions.<sup>255</sup> Rap music focuses on the lyrics and thus is not music as such<sup>256</sup> and therefore sends a “message” to society that such an attitude is acceptable. Though such “music” albums come with a statutory warning of explicit content, the albums are freely available.<sup>257</sup> Even if the government takes steps to ensure that such albums are not sold to minors, the music can be freely accessed over the Internet.<sup>258</sup> Such is the problem with pornographic material as well. Where efforts are being made to curb the problem of violence against women, media—particularly pornographic material and rap music—may only reinforce the problem. Media that downgrades women must be censored, and steps need to be taken to ensure children are not exposed to this media at an impressionable young age.

## J. Greater Dissemination of Knowledge

One of the key forces that can help eliminate domestic violence is education and knowledge dissemination. This act of disseminating knowledge must embrace the entire society. Domestic violence as a subject must be taught in schools and should be aimed at children over eight years of age. This would ensure that they learn from early days on that violence at home is not acceptable. Parents need to be re-educated as well. Councils should endeavor to conduct workshops for parents to help them understand the problems of child abuse,

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251. Christy Barongan & Gordon C. Nagayama Hall, *The Influence of Misogynous Rap Music on Sexual Aggression Against Women*, 19 PSYCHOL. WOMEN Q. 195, 196 (1995).

252. Vernon R. Padgett et al., *Pornography, Erotica, and Attitudes Toward Women: The Effects of Repeated Exposure*, 26 J. SEX RESEARCH 479, 482 (1989).

253. Barongan & Hall, *supra* note 251, at 196; Padgett et al., *supra* note 252, at 482.

254. Barongan & Hall, *supra* note 251, at 196.

255. Edward G. Armstrong, *Gangsta Misogyny: A Content Analysis of the Portrayals of Violence Against Women in Rap Music, 1987-1993*, 8 J. CRIMINAL JUSTICE & POPULAR CULTURE 96, 105-06 (2001).

256. *Id.* at 97.

257. Barongan & Hall, *supra* note 251, at 197.

258. With the increase in access to Internet in homes around the globe, it is simple for anyone who can sit down at a computer to access music as well as lyrics. *See id.*

domestic violence, and their interconnection.<sup>259</sup> Further, free pamphlets providing information about domestic violence and important contact numbers should be made available by the councils in all surgeries, hospitals, and cafes in their respective areas. Police, prosecutors, and judges also need to be trained and sensitized about the problem of domestic violence and the difficulties women face.<sup>260</sup> This can be done by holding periodic seminars and workshops for police, prosecutors, and judges. Also, employers must initiate employee education on domestic violence. Regular compulsory seminars should be conducted and would help in many ways: the employees would be able to better determine if they are experiencing domestic violence as either victims or abusers and would be able to understand how to deal with the problem. In the long run seminars would help address the problem of absenteeism of domestic violence victims in court proceedings and the financial impact that such absenteeism may cause. It would also help spread the message of non-acceptability of domestic violence.

Media can and does play a vital role in creating awareness. For instance, the “Bell *Bajao*” (Ring the Bell) media campaign launched in India encourages the local community to stand up against domestic violence by taking simple steps.<sup>261</sup> The ads are aired on radio, television, and print media by an NGO in collaboration with the Ministry of Women and Child Development and UNIFEM.<sup>262</sup> Such campaigns can send out a strong message to the public at large.

## V. CONCLUSION

The problem of domestic violence is a serious one. It does not confine itself to the “home” of the battered women alone, as it envelops society in its entirety. Therefore, it is not solely “her problem” or “their problem.” If not controlled effectively it can have serious repercussions not only for victims but for children, families, perpetrators themselves, and the society at large. One of the advantages that adjoin reduction in domestic violence is the reduction in child abuse.<sup>263</sup> Thus, it is in the interest of all stakeholders that this cancerous growth not be allowed to spread. Effective interventions by society, academia, law enforcement, and the media are the need of the hour and cannot brook delay.

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259. This should include parents in all scenarios: married couples, cohabiting couples, and single men or women with children.

260. Hanna, *The Paradox of Hope*, *supra* note 42, at 1581; Drew Humphries, *No Easy Answers: Public Policy, Criminal Justice, and Domestic Violence*, 2 *CRIMINOLOGY & PUB. POLICY* 91, 94 (2002); Mills, *supra* note 57, at 557. See generally Edwards, *Reducing Domestic Violence*, *supra* note 15 (describing various issues that prevent law enforcement from assisting victims).

261. Priya Ramakrishnan, *Ring the Bell, Stop Domestic Violence*, *DAILY NEWS & ANALYSIS* (Mumbai) (Aug. 29, 2008, 4:18 IST), [http://www.dnaindia.com/mumbai/report\\_ring-the-bell-stop-domestic-violence\\_1186520](http://www.dnaindia.com/mumbai/report_ring-the-bell-stop-domestic-violence_1186520).

262. The ads can be watched online. See *Bell Bajao – Ring Ring (English) (Subtitled)*, YOUTUBE, <http://www.youtube.com/watch?v=zmNz0cTcxFU> (last visited Feb. 22, 2012).

263. As has been indicated above, children who are abused often go on to become batterers when they reach adulthood. See discussion *supra* Part II.B.