

Focus on women

Issue 4 Spring 2006

Welcome to the first 2006 edition of the Rights of Women Policy Newsletter *Focus on Women*, we hope that you will find this issue as informative and interesting as the 2005 editions.

The months since the last edition of the Newsletter have proven a legally challenging time for women; several new pieces of legislation have been passed, whilst others, such as provisions in the Domestic Violence Crime and Victims Act 2004, are yet to be implemented. In addition, the end of 2005 and the start of the new year saw several Government consultations concerned with women's rights, including the criminalisation of forced marriage. There are set to be several important Government consultations in the coming months, such as the Law Commission's consultation on reforming the law on homicide, including the defences of provocation and diminished responsibility. The Government have also launched a Coordinated Prostitution Strategy and are consulting on a UK Action Plan to tackle Trafficking.

In this edition we have returned to some of the issues featured in previous Newsletters, to highlight any progress that may have been made. In particular, we have continued to track developments in women's access to justice. We have also taken the opportunity to highlight our 30th Anniversary Conference, "Women and Violence: What's Law Got To Do With It?" held in London on 3rd November 2005.

We always welcome your feedback, and any comments should be sent to Sanchita Hosali, our Policy Officer, at sanchita@row.org.uk. Further information and resources are available on our website at www.rightsofwomen.org.uk

Ranjit Kaur
Director, Rights of Women

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This newsletter is published by Rights of Women, 52-54 Featherstone Street, London EC1Y 8RT.
Telephone: 020 7251 6575/6 Fax: 020 7490 5377 Textphone: 020 7490 2562 Email: info@row.org.uk

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Celebrating 30 years of Rights of Women

Domestic violence is the leading cause of death “worldwide in women aged 19-44, greater than war, cancer or motor vehicle accidents.” So stated Baroness Scotland in her keynote address to the Rights of Women’s 30th anniversary conference, “Women and Violence: What’s Law Got To Do With It?”, held on 3rd November 2005 at Hamilton House (NUT) London.

Our Conference aimed to examine the impact of violence against women, especially on Black and Minority Ethnic women; the laws response to this violence; to identify potential changes; and to develop strategies of response.

The event was attended by over 130 women delegates made up of women’s organisations, trade unionists, lawyers, academics, policy makers and representatives from the statutory sector. The diverse audience made for interesting discussions and the sharing of ideas and information.

Violence against Women: Rhetoric or Remedy?

During the morning session, chaired by the Chair of Rights of Women, Carol Valentine, Baroness Patricia Scotland focused on the Government’s work on tackling domestic violence. This included the Domestic Violence, Crime and Disorder Act 2004 which she described as “the biggest overhaul of domestic violence legislation for 30 years” and the Government’s Domestic Violence National Plan. She also spoke about the creation of specialist domestic violence courts being rolled out to each region of England and Wales by April 2006.

Baroness Scotland acknowledged that domestic violence impacts differently on women from different communities. She thanked voluntary organisations like Rights of Women for their positive contributions to tackling domestic violence and emphasised the value and importance of partnership working.

Marai Larasi, Executive Director of the nia project (formerly Hackney Women’s Aid), referring to the title of the Conference said law had everything to do with it. The law operated both to provide women with opportunities for redress and to deny them access to justice. She identified areas of concern within the law including immigration, child contact and the availability of civil remedies. Marai spoke about the challenges facing women’s groups delivering services to women. She questioned why women’s groups should have to fight for the retention of women only services if it was accepted that safe women-only spaces were

necessary and an understandable response to violence against women.

Yvonne Rhoden, a police officer from the Diversity Directorate, New Scotland Yard, Metropolitan Police Service (MPS) spoke about the Service’s work on domestic violence. Initiatives included “Enough is Enough”, the MPS Domestic Violence Strategy, and establishment of Community Safety Units in each London borough. Yvonne said that in 2004-5, the MPS received 110,658 reports of domestic violence, and such abuse accounts for 24% of all violent crimes in London, with a repeat incidence far greater than any other crime. Yvonne ended by highlighting the MPS domestic violence media campaign, which had been particularly effective.

During the Conference, workshops were held to examine the issues of domestic violence, sexual violence, forced marriages and honour crimes, and protection from violence for women seeking asylum.

Violence against Women: Is there Refuge Within the Law?

Alison Stanley, Solicitor and Partner of Bindmans and Partners gave the first talk of the afternoon session, chaired by Rights of Women Director, Ranjit Kaur. Alison focussed on developments in immigration and gender, highlighting the “no recourse to public funds” rule and the domestic violence concession. Alison critiqued refugee law, noting whilst its language is considered gender neutral, in practice women’s experiences are marginalised. Typically, the 1951 Convention defines a refugee by reference to persecution for political activity which has traditionally been thought to exclude sexism. Finally, she raised concerns about the crisis in funding which had led many firms to withdraw from legal aid work.

Poonam Joshi, Gender Adviser to Amnesty International UK, focused on whether civil and criminal law really provides refuge to Black and Minority Ethnic and Refugee (BMER) women that have suffered violence, including domestic violence, forced marriage and dowry-related abuse. She reiterated the problems created by cutbacks in legal aid funding. Poonam said that violence against women could only be addressed effectively when the Government and enforcement agencies improve their delivery on all forms of violence against women rather than specific manifestations of violence. This also meant recognising and addressing the overt and covert racism experienced by women from BMER communities.

The closing address was provided by **Doreen Lawrence**, the Director of the Stephen Lawrence Charitable Trust and mother of Stephen Lawrence.

Doreen delivered a powerful speech about the problems of access to justice for women. She stressed the importance of having women's organisations managed and run by women for women. Doreen also spoke about the need to celebrate the achievements of women. Doreen praised the work of Rights of Women which had grown from strength to strength over the last 30 years, empowering and assisting many women during this period.

Doreen then spoke about her experiences dealing with the murder of her son, Stephen, which changed her life beyond all recognition. The actions of those that should have supported and protected her family had resulted in her distrust of authority. She noted her strong sense of justice and truth, which she uses in her everyday life. Without such guiding principles, she felt we had little. She concluded by saying that the ability to draw strength from others is not to be understated and without the people around her, Doreen was not certain that she would have been able to address the Conference.

We have been delighted by the positive feedback from delegates. Typical amongst the comments we received, was this from one delegate who summed up the event as follows; "This conference was outstanding. It met its aims and objectives. It was very well presented, in clear and concise terms."

We are producing a detailed report of the Conference; please see the Noticeboard for further details.

Developments in Access to Justice

Rights of Women are very concerned about women's access to justice, particularly in the current context of diminishing civil legal aid. The Government is a signatory to the United Nations Beijing Declaration, signalling its commitment to improving women's legal literacy and access to justice. However, many women are denied access to justice because they cannot afford to seek assistance from the courts, or those who are entitled to legal aid are increasingly finding that there are few, if any, legal aid lawyers in their area. The impact of these "advice deserts" is often intensified when seeking specialist legal advice. Access to justice remains a priority issue for Rights of Women and we are actively engaged in keeping access to justice on the political agenda and tracking developments in this area.

New Focus Reforms

The "New Focus Reforms" (a package of changes concentrating mostly on entitlement to civil legal aid) includes a new power in the Funding Code, which is likely to have a significant impact on family law proceedings. From the 3rd October 2005, funding for legal representation can be refused in ancillary relief (division of matrimonial property) and other financial cases if 'it appears reasonable in all the circumstances for proceedings to be privately funded, having regard to the financial circumstances of the client and the value of the assets in dispute.' There are three issues which will be considered when deciding whether someone is eligible for funding – the availability of capital assets that you can reasonably use to cover the legal costs, your borrowing potential, and evidence that you cannot obtain a loan.

This refusal to provide funding is intended to be discretionary, and we hope that this power is used with due care. There is a very real risk that making women's ability to seek legal remedies dependent on their ability to raise private funding may compromise their right to access to justice, and may well place them and any children they have at risk of harm or destitution.

Right to Justice Campaign

In February 2006 the Access to Justice Alliance - a group of more than 30 organisations, including Rights of Women - launched its *A Right to Justice* campaign pack to draw attention to the current funding crisis in legal aid and to put real access to justice higher up the political agenda. In particular, the campaign is advocating the support of Early Day Motion 453 on Civil Legal Aid. Marsh Singh, Labour MP, is the sponsor of the motion, which currently has the support of 33 other MPs. The motion states:

'That this House welcomes the establishment of the Access to Justice Alliance to promote the need for properly resourced civil legal aid services, as well as the Lord Chancellor's recent acknowledgement that there has been a 22 per cent. reduction since 1997 in the amount spent on civil legal aid; and calls on the Government to take urgent action to restore funding levels adequate to ensure access to civil justice for ordinary people.'

For a copy of the campaign pack, including suggested campaign actions and a model letter to send to your local MP, contact the Access to Justice Alliance, details available at: www.accessjusticealliance.org.uk

The Coordinated Prostitution Strategy

On the 17th January 2006, the Government launched the 'Coordinated Prostitution Strategy'.¹ Introducing the Strategy, Home Office Minister Fiona Mactaggart, MP, said "we will not eradicate prostitution overnight, but we must not condone this exploitative industry."

Rights of Women welcomes the Government's acknowledgement that prostitution is a form of exploitation, requiring a wide-ranging coordinated approach which moves beyond policing women involved in prostitution. The Government's Strategy establishes a framework for tackling on- and off-street prostitution using preventative measures, tackling demand, developing exit routes for those in prostitution, and by ensuring justice through targeting those who traffic or otherwise abuse women and children involved in prostitution.

The measure of the Strategy which has received the most media attention has been the future reform of the crimes of loitering and soliciting which will allow two or three women to operate in so-called "mini-brothels." Currently, it is illegal for more than one woman to be involved in prostitution from a premises. In the short-term this change may offer some women involved in prostitution a level of safety which they do not currently have. However, this reform should be no more than an interim measure; a temporary stop-gap which is part of a wider strategy aimed at empowering women to leave prostitution through exit routes with appropriate and long-term support.

Many of the measures in the Strategy are to be welcomed; however, concerns remain over the substance and implementation of the Strategy. Whilst prostitution is recognised as a form of sexual exploitation, this is not the starting point for the document. Rather, the Strategy is framed in terms of "communities"; its first two paragraphs focus almost exclusively on the right of residents and businesses not to have to tolerate the neighbourhood nuisance associated with prostitution. This community-focus was underlined by Minister Fiona Mactaggart at the Strategy's launch where she said "communities who suffer the side effects of prostitution end up with no choice over what happens on their streets – and they are the ones who see used condoms on the streets,

who live in fear of innocent women being abused or attacked and who have the stigma of living in a red-light area." The use of the term "innocent women" also raises concerns over the Government's commitment to tackle the abuse and violence that women involved in prostitution are often subjected to; their involvement in prostitution should not mean they are any less deserving of the protections of the law.

There is also a lack of acknowledgement that the majority of those involved in prostitution are women and girls (although this is briefly mentioned in the Strategy's Regulatory Impact Assessment). Consequently there is a failure to recognise the impact of gender on the sexual exploitation involved in prostitution. It is crucial that services and exit strategies for leaving prostitution are able to respond to the specific needs of women and girls.

The Strategy sets out a range of actions to be taken by central Government and "local partnerships"² in implementing the Strategy, and many of the concrete actions lay with local partnerships. However the Government has made no indication of the availability of additional resources to do this.

Whilst acknowledging the need to tackle prostitution has moved beyond the narrow focus on criminalising women and young people involved, the depth of the Government's commitment to tackling demand, developing exit strategies, and ensuring justice will be tested in the implementation of the Strategy. Implementation, however, without additional and dedicated funding is likely to be problematic.

Forced Marriage: A Wrong not a Right – Criminal without Criminalisation

In September 2005, the Government published 'Forced Marriage: A Wrong Not a Right', a consultation on the possible criminalisation of forced marriage. Rights of Women welcomed the initial observations of the Government, which included noting that forced marriage occurs in a variety of cultures, and cannot be justified on religious or

¹ 'A Coordinated Prostitution Strategy and a summary of responses to Paying the Price' available from the Home Office at: www.homeoffice.gov.uk/documents/cons-paying-the-price/

² The Strategy goes on to note a range of agencies and groups that will "need to be involved" in most areas where prostitution is identified as an issue, including: Crime and Disorder Reduction Partnerships, Community Safety Teams, Local Strategic Partnerships, Local Safeguarding Children's Boards and Children's Trusts, Social Services, Health Agencies (NHS, Primary Care Trust and the Sexual Health Programme Manager), Housing Agencies (including Supporting People Partnerships, Drug Action Teams and other substance abuse agencies, enforcement agencies (including the Police and Crown Prosecution Service), domestic violence services and job training services.

Consultations

A significant amount of our policy work relates to responding to consultation papers from the Government and other bodies. Through our engagement in the consultation process, we aim to ensure that women's voices are heard at every stage of policy formation.

Our recent policy responses to consultation are available on our website (www.rightsofwomen.org.uk) and include:

- *Advancing Equality for Men and Women* [the gender duty]
- *Forced Marriage: A Wrong Not a Right*
- *Possession of Extreme Pornography*
- *Review of the Human Fertilisation and Embryology Act*
- *Equalities Review*

Ongoing consultations include:

- *Rebuilding Lives: Supporting the Victims of Crime*
Deadline to respond to the Home Office: **1st March 2006**
- *Tackling Human Trafficking: A Consultation on Proposals for a UK Action Plan*
Deadline to respond to the Home Office: **5th April 2006**
- *A New Homicide Act for England and Wales?*
Deadline to respond to the Law Commission: **13th April 2006.**

We are particularly keen to highlight the Law Commission consultation paper on the law of homicide (see www.lawcom.gov.uk). The consultation recommends restructuring the law to provide a system of first and second degree murder with a limited concept manslaughter. The consultation discusses the defences of diminished responsibility and provocation. Given the controversial and different application of these defences to women as defendants and to men who have killed women, we encourage women's organisations to respond to this consultation. This consultation paper is the result of a long-running review of the law on homicide, and provides the women's sector with the opportunity to utilise our depth and breadth of experience in seeking justice for women, both as defendants and victims.

Rights of Women encourages women's organisations to engage in the policy decision-making process, either through drafting responses or by endorsing the responses of others in the sector. If you would like to endorse any of the consultation responses written by Rights of Women, please send a short letter or email to the appropriate Government body or department supporting our submission. If you would like more information on endorsing our consultation responses please contact our Policy Officer, Sanchita Hosali, at sanchita@row.org.uk

cultural grounds. The Government clearly noted that forced marriage is an abuse of human rights and a form of domestic violence. However, we were disappointed that despite acknowledging that the majority of victims are women and girls, the Government chose to use gender neutral language throughout the report, masking the gendered nature of this form of violence against women.

Several women's groups, in particular Black and Minority Ethnic (BME) women's groups, held events to discuss and dissect the consultation document. The proposed criminalisation of forced marriage provoked animated and different responses from all parts of the sector. Rights of Women, however, were not convinced by the proposed criminalisation of forced marriage, either in general or the specific options set out in the consultation document. In our opposition to the criminalisation of forced marriage we advocated an analytical approach located within a feminist

perspective. We are concerned about violence against all women, and are particularly concerned that violence against BME women is addressed appropriately and effectively, with the safety and protection of women being the highest priority.

From a legal perspective some of the most compelling arguments against the creation of a forced marriage offence are to be found in the history of using the criminal justice system to address domestic violence. Domestic violence is not in itself a free-standing crime. Rather, there are a range of criminal law offences which deal with violence and abuse (physical, sexual, and in some cases psychological) separate from the motive for committing those acts. We called on the Government, the Police and the Crown Prosecution Service to view each situation of violence and abuse – whether forced marriage or any other manifestation – from an analytical perspective, seeking to use the current criminal law to its fullest extent,

without being distracted by the apparent or perceived motives for the abuse.

Whilst Rights of Women do not subscribe to the idea that forced marriage is an issue of race or ethnicity, we do recognise that these are factors in addressing forced marriage, presenting very real cultural barriers in terms of access to services, protection, support and legal justice. To view forced marriage as simply an issue of race, ethnicity or religion conceals the violence suffered by BME women. Further, to specifically criminalise forced marriage, in isolation from other forms of violence against women, compounds the perception that violence against women in BME communities is somehow qualitatively different to violence against women in majority communities. This perception contributes to the feeling of attack that such communities are already under, which in turn feeds into the more conservative traditionalist elements of the communities that perpetrate practices such as forced marriage in the name of cultural cohesion. We have strongly disassociated ourselves from such arguments; our opposition to the criminalisation of forced marriage is for a fundamentally different reason.

Rather than simply seeking to criminalise specific manifestations of abuse, we argued that the more cogent approach is for the Government to adopt a clear definition of violence against women, encompassing all manifestations of gendered violence, and applying across all state departments, bodies and agencies. In this regard we reiterate our call on the Government to adopt the definition contained within the United Nations Declaration on the Elimination of Violence against Women, which states that “‘violence against women’ means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life’ (Article 1). Such a definition is specific enough to be enforceable, and at the same time flexible enough to encompass the wide ranging manifestations of violence that women are subjected to.

The deadline for responding to the consultation passed on the 5th December 2005, and we welcomed the responses of several other organisations which shared our feminist and analytical approach, such as Southall Black Sisters and Newham Asian Women’s Project. We await the Government’s response to the consultation, which is due to be published on the 4th March 2006, and hope that our concerns have been taken on board. Our opposition to the criminalisation of forced marriage is by no means an acceptance of this human rights abuse. We continue to call upon the Government and its agencies to proactively address

forced marriage, providing women and girls with the safety and support they need to be free from all forms of violence and abuse.

The Domestic Violence, Crime and Victims Act

Although the Domestic Violence, Crime and Victims Act 2004 (DVCVA) received Royal Assent some time ago it is only slowly being implemented. The DVCVA makes a number of very significant changes to the protections available to women from domestic violence.

From 5th December 2005 the definition of “cohabiting” has changed to “two persons who, although not married to each other, are living together as husband and wife or (if of the same sex) in an equivalent relationship”. This means that lesbian and gay couples who live together will now be associated persons for the purposes of applying to the court for a non-molestation order under the Family Law Act 1996. The definition of “relatives” has also been extended to include first cousins meaning that you can now apply for a non-molestation order or occupation order against your first cousin.

One of the most significant changes to the law relating to protection from domestic violence in the DVCVA was that breaching a non-molestation was to become a criminal offence. This part of the new Act has not yet been implemented. The Home Office have informed us that there is no timetable for this very significant change to be implemented but that they will shortly be sending out an explanation to the domestic violence sector. Until this change is implemented non-molestation orders should continue to be enforced by applying back to the court that made the order.

Another change to the law set out in the DVCVA was that common assault was to become an arrestable offence. Although this change was not implemented, another piece of legislation, the Serious Organised Crime and Police Act 2004 allows the Police to arrest a suspect for common assault if they consider it to be necessary. No longer do the Police have to consider the seriousness of the alleged offence when deciding whether to arrest a suspect. This means that from 1st January 2006 the Police can arrest for common assault if they consider it to be necessary rather than having to summons a suspect to attend court.

The DVCVA also establishes a Victims Code setting out for victims of any crime, including domestic

violence, what they can expect from agencies including the Police, Crown Prosecution Service, Victim Support and the courts during the criminal justice process. The Code, which replaces the Victims' Charter, comes into effect in April 2006 and can be downloaded from www.homeoffice.gov.uk/documents/victims-code-of-practice.

Updates

This section provides updates to several of the issues raised in previous editions of the Policy Newsletter.

Legal Representation

In Issue 3 (2005) we noted that the Government had withdrawn from its pre-election pledge to provide victims of serious crimes with their own lawyers to represent them in court, including victims and survivors of rape. However, the Government did hold a consultation on providing the family of homicide victims with a victim's advocate. The Department for Constitutional Affairs has recently announced that the Government is considering piloting such a scheme (DCA, press release, 14/02/2006).

Rights of Women have some initial concerns about the proposed system. For example, the DCA press release refers to the idea of using members of the family or third parties as advocates. This raises many questions about the level of training of advocates, and in particular whether legal qualified advocates will be provided; we would question the effectiveness of an advocacy system which lacked legal understanding and experience of criminal law and proceedings. There may also be questions about the accountability of such advocates. Providing the relatives of victims of homicide with a voice, should not be done in half measure – we await the publication of the final outcome of this consultation, and will continue to press for an expansion of any advocate scheme to include provision of assistance to victims of violent and sexual crimes.

Living Together and the Law

In early 2006 the Law Commission are due to launch a consultation on the law relating to people who live together, rather than being married or entering into a civil partnership. The consultation will focus on whether people who live together should have rights in respect of each other's property, to claim maintenance from each other for themselves and whether cohabitation agreements should be legally binding. It will also look at whether people who have lived together should be able to inherit each other's

property in the event that one of them dies without leaving a will.

More information about the consultation process and the consultation paper when it is published can be found at www.lawcom.gov.uk

Racial and Religious Hatred Bill

In 2005 the House of Lords proposed two amendments to the Bill, firstly to only criminalise threatening words or behaviour, removing generally abusive or insulting words about religion which are not actually threatening; and secondly placing the burden on the prosecution to prove the speakers intended to stir up racial hatred, thus providing a safeguard for freedom of expression.

On the 31st January 2006, Parliament voted to uphold both the Lords amendments, despite the Government's attempts to try and reverse the changes. This was only the second time the Government has lost a vote in Parliament, since its election in 1997. It emerged that one of the votes on the amendment was lost by one vote, and Tony Blair had not attended this ballot. The Home Office has said that the Bill should soon be given Royal Assent.

Civil Partnerships

The Civil Partnership Act 2004 came into force on 5th December 2005, allowing lesbian and gay couples to register their relationship in a very similar way to marriage and ensuring that they are treated in the same way as married couples for the purposes of the law. By becoming civil partners, couples will have almost exactly the same rights and responsibilities in relation to each other, their property and children. Importantly it means that they will be recognised as each others next of kin and also as a couple for the purposes of welfare benefits, employment benefits, pensions and life assurance. Being a civil partner also has important implications in relation to immigration status and inheritance. We will be publishing a new Information Sheet on various aspects of civil partnership later in 2006.

Adoption

Also in December 2005, the new law relating to adoption set out in the Adoption and Children Act 2002 was implemented. This means that for the first time unmarried couples including lesbian and gay couples can adopt together. Previously only married couples or single people could adopt a child.

The Noticeboard

Rights of Women National Training Programme

Through training we enable individuals and agencies to ensure that they are properly informed about protecting women's rights effectively. We are delivering training throughout 2006. Current courses include:

- Domestic Violence and the Law – securing women's rights to the home and finances; and
- Sexual Violence and Criminal Law – supporting women through the criminal justice process.

We will also be piloting a new course later in 2006, titled Violence against Women, Asylum and Immigration Law – protecting women from violence and securing their position in the UK.

Our first round of training was held in Swansea in February, and was very well attended. Forthcoming confirmed training events include:

- Kent on 20th and 22nd March 2006;
- London on 17th and 18th May 2006; and
- Bristol on 5th and 27th April 2005;
- Reading on 22nd and 24th May 2006.

In addition, we will be delivering training in the following areas, with dates to be confirmed:

- Nottingham, early June 2006;
 - Sunderland, July 2006;
 - Coventry, late September 2006;
 - Luton, late June 2006;
 - Leeds, early September 2006;
 - London, early October 2006 to pilot two new courses;
 - Liverpool, November 2006.
- and

For further information on our National Training Programme contact Kathy Francis our Training Officer on 0207 215 6575/6 or training@row.org.uk.

Forthcoming publication

Rights of Women is pleased to announce its forthcoming publication *Women and Violence – What's Law Got to Do With It? Report of the 30th Anniversary Conference*.

Complimentary copies of this detailed conference report will be sent to all delegates. The report will be available in March 2006 in hard copy and for downloading free of charge from our website at www.rightsofwomen.org.uk. If you would like to order a hard copy of the report, please download an order form from our website or send a letter, with a cheque for £5 made payable to Rights of Women, to Rights of Women, 52-54 Featherstone Street, London EC1Y 8RT.