

# Dame Vera Baird QC



Formerly:

- Police and Crime Commissioner for Northumbria
- Association of Police and Crime Commissioners' national lead for supporting victims.
- Ministry of Justice Minister
- Solicitor General
- Member of Parliament
- Criminal Barrister and QC

## The Victims' Commissioner for England and Wales

The role of the Victims' Commissioner, as defined in s49 Domestic Violence, Crime and Victims Act 2004 is to:

- Promote the role of victims and witnesses
- Encourage good practice in the treatment of victims and witnesses
- And to keep under review the operation of the Victims' Code

# Prevalence of domestic abuse

- An estimated 2M adults aged 16 to 59 years experienced domestic abuse in UK, year to March 2018
- Women around twice as likely to experience DA as men. 1.3 million females and 695,000 males
- 173 people were killed in domestic violence-related homicides last year, 32 more than preceding year
- Three-quarters of these victims were women: suspects are predominantly male

# Domestic Abuse and Coercive Control

- Domestic Abuse is NOT a crime in England and Wales
- Section 76 Serious Crime Act 2015 introduced the crime of coercive & controlling behaviour
- To repeatedly/continuously engage in controlling or coercive behaviour towards a 'personally connected' person when behaviour has a serious effect on the other & the perpetrator knows or ought to know that it will do
- Important for getting the CJS to understand the concept of coercive control as well as practical use as a crime

# Understanding the impact(s) of coercive control

- “Desire for control ..drives domestic abuse .....abusers ..strip away a victim’s sense of identity & personhood so that they become dependent..& isolated from sources of support.” Prof Elizabeth Yardley.
- Coercive control creates invisible chains and a sense of fear that pervades all elements of a victim’s life.” Women’s Aid
- Evan Stark “the victim becomes captive in an unreal world created by the abuser, entrapped in a world of confusion, contradiction and fear”.

# Coercive Control can force/drive women Into offending

- 57% of women in UK prisons have suffered domestic abuse. Twice the prevalence outside
- In prison for small offences: theft, minor drug dealing, driving offences, possessing a weapon
- Nearly half women prisoners (48%) have committed offences to support another's drug use (c/c 22% of male prisoners)
- Voice of a victim
- What is the right approach to criminality when free will may have be undermined by coercive control? - I return to this later
- Abused women are sometimes charged with reactive violence

# Victims of domestic abuse and 'reactive' violence

- Rare that women who are violent in a domestic context set out to invoke fear or control partners –Hester (2009)
- Edleson (1998) such women = 3 groups: (a) great majority use violence in self-defence or to escape (b) those with a long history of victimisation use it to decrease their chance of further victimisation (c) a few are primary aggressors
- Women are more likely to use a weapon than men - Hester (2009)
- About 12 men a year are killed by female partners

- Typically an abused women under attack seizes a kitchen knife & stabs the perpetrator
- In the UK, Murder = killing with intent. A life sentence.
- Manslaughter = killing without that intent. Discretionary sentence
- Partial defences can reduce murder to manslaughter - (eg diminished responsibility, a psychiatric defence, not favoured since reactive violence may be a normal response to coercive control
- Self defence = doesn't work with a weapon against someone unarmed

# Self defence: reasonable force

- Legislation says:
- If attacked, a person may defend himself.. But only do what is reasonably necessary to do so
- Though he cannot weigh that to a nicety, in a moment of anguish
- So if he did what honestly and instinctively thought necessary that's strong evidence ... that it was reasonable
- Force is not reasonable if disproportionate
- Use of a weapon appears disproportionate
- I will return to it since there is a proposal to change this law for victims of domestic abuse

# Provocation

- Defence used by men and women who killed partners
- Defendant was provoked by things done or said or both into a sudden and temporary loss of self control when a reasonable person would also have lost his self control and done as the defendant did.  
(Paraphrases common law & Homicide Act 1957)
- Crime of passion, a historic defence, based on male reactions

# Provocation: domestic abuse perpetrator success

- Men acquitted - provoked by nagging, how she moved pots on the table; threatened to leave for her personal trainer
- 2 parts! Killing in a sudden and temporary loss of self control AND that a reasonable person with the same characteristics might have done the same
- But case MJ Smith said ALL the defendant's characteristics have to be taken into account, eg jealousy, possessive & bad temper
- So with all the defendant's characteristics, the reasonable person turns into the defendant

# Provocation: domestic abuse victim failure

- 12ish women kill partners every year = victims of domestic abuse
- There is no loss of self control. She is afraid
- BUT there is no partial defence of killing out of fear
- It is disproportionate so not self-defence
- Thus for many years did violent, jealous, possessive men who lost their self-control and killed their partners get acquitted of murder
- And women who may have suffered years of coercion and brutality before striking out get convicted of murder

# “Battered women who kill” Thornton, Ahluwalia & Humphreys

- First understanding that the law only fits male responses
- Ahluwalia: Argued law should recognise a "slow burn" reaction to cumulative bad treatment rather than a sudden and temporary loss of self-control.
- Thornton; Likelier to have been a sudden loss of control from even a minor incident if the defendant was abused over a period - "last straw"
- Humphreys aged 16 stabbed her violent pimp as he came to rape her. Her characteristic of being attention-seeking was relevant to if she had lost her self control
- Court of Appeal did its best but

# Legislation was required

- Coroners and Justice Act 2009 s54-5
- (1) Where a person kills s/he is not to be convicted of murder if acts/ omissions resulted from a loss of self-control, which had a qualifying trigger &
- A person of D's sex and age, with a normal degree of tolerance and self-restraint & in & same circumstances might have reacted in the same or similar way
- circumstances NOT those whose only relevance is to tolerance or self-restraint
- Importantly for women defendants, it does not matter whether or not the loss of control was sudden. “a qualifying trigger” includes fear of serious violence against self or another

# Proposed defence of ‘disproportionate’ self defence

- (s76 of the Criminal Justice & Immigration Act 2008) allows A HOUSEHOLDER to use disproportionate force when defending themselves against intruders in the home and only criminalises such force if it is ‘grossly disproportionate’
- We plan a new clause, in the Domestic Abuse Bill to replicate the householder provision if the force was used by the defendant against someone perpetrating domestic abuse against them.

# Proposed defence for minor offences done under coercive control: Modern Slavery Act 2015

- S45 A person is not guilty of an offence if s/he does the act which is the offence because s/he is compelled to do it
- the compulsion is attributable to slavery or to relevant exploitation & would be an offence under the Act
- a reasonable person in the same situation as the person & having the person's relevant characteristics would have no realistic alternative to doing that act
- relevant characteristics” means age, sex and any physical or mental illness or disability
- There is a schedule which excludes many serious offences
- Simply replace 'slavery' with 'domestic abuse/coercive control

# Conclusions

- Any offender-survivor of domestic abuse is entitled to have that experience of abuse taken into account in criminal justice. Often this does not happen. And absence of a specific defences contributes to these failures.
- Proposed changes fill a gap. Must be accompanied by statutory and judicial guidance and training for criminal justice agencies on the nature of domestic abuse, its impact on survivor behaviour & how it should be taken into account
- Given the prevalence of histories of domestic abuse amongst women in prison, criminal justice agencies must routinely enquire of suspects
- And be able to recognise signs of domestic abuse and i where this may be a factor in offending