

**A FEMINIST CRIMINOLOGICAL CRITIQUE OF ASPECTS OF  
THE CRIMINAL JUSTICE SYSTEM AND THE WHOLE-SYSTEM  
RESPONSE TOWARDS FEMALE VICTIMS OF INTIMATE  
PARTNER ABUSE**

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## **Abstract**

The thesis examines the development of the criminal justice system response to intimate partner abuse in England and Wales from 1997 to 2017. The examination occurs based on the intersectional gendered approach, which provides a feminist criminological perspective. This perspective aims to provide insight on the extent of the prevention of IPA and the protection of female victims by targeting gender inequality, considering their diverse identities, and promoting the transformation of the social perception. Specifically, the thesis focuses on identifying gaps between policies, laws, and practice of aspects of the criminal justice system and the whole-system response. This is achieved by investigating the governmental IPA strategies, criminal laws, and policies and practice of the police, CPS, and the courts. Moreover, the thesis focuses on three case studies, early intervention to young people through education, victims' access to justice through legal aid, and specialist refuges. These issues are examined in order to show the contribution of the whole-system response to support diverse victims and to transform the social perception towards IPA due to the limited power of the law. Additionally, feminist engagements with these developments are identified. The critiques are produced through the views of feminist theorists and activists and by applying the intersectional gendered approach.

The examination shows that the response to IPA has improved progressively through developments such as the creation of a gender-based VAWG strategy, the creation of the coercive control offence, and the mandatory teaching of Relationships and Sex Education. However, more changes are needed since there are gaps between the policies, laws, and practice. Moreover, the implementation of the Single Equality Duty needs to be changed since it undermines the implementation of the intersectional gendered approach. Feminist theorists and activists have contributed to these developments through theoretical and practical engagements such as lobbying, campaigning, and training. It is argued that the adoption of the intersectional gendered approach as the theoretical basis for the formation of the CJS and the whole-system responses could contribute to the improvement of the prevention of IPA and the protection of its victims.



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## **List of Abbreviations**

Against Violence & Abuse: AVA

Black, Asian and Minority Ethnic: BAME

Building Better Relationships: BBR

Code of Practice for Victims: VCOP

Community Domestic Violence Programme: CDVP

Correctional Services Accreditation Panel: CSAP

Crime and Disorder Reduction Partnerships: CDRPs

Criminal Justice Agencies: CJA

Criminal Justice System: CJS

Crown Prosecution Service: CPS

Domestic Abuse Intervention Project: DAIP

Domestic Violence Intervention Programme: DVIP

Domestic Violence Officers: DVOs

Domestic Violence Units: DVUs

Domestic Violence, Crime, and Victims Act: DVCVA

Domestic Violence, Crime, and Victims: DVCV

End Violence Against Women Coalition: EVAW

Equality and Diversity Unit: EDU

Independent Domestic Violence Advisors: IDVAs

Independent Police Complaints Commission: IPCC

Integrated Domestic Abuse Programme: IDAP

Intimate Partner Abuse: IPA

Legal Aid Sentencing and Punishment of Offenders Act: LASPO

Local Strategic Partnerships: LSPs

Multi-Agency Risk Assessment Conferences: MARACs

Offences Against the Persons Act 1861: OAPA

Office of National Statistics: ONS

Personal, Social and Health Education: PSHE

Police and Criminal Evidence Act: PACE

Police Crime Commissioners: PCC

Protection from Harassment Act: PHA

Relationships and Sex Education: RSE

Relationships Education: RE

Rights of Women: ROW

Serious Crime Act: SCA

Sex and Relationships Education: SRE

Single Equality Duty: SED

Southall Black Sisters: SBS

Specialist Domestic Violence Courts: SDVCs

Supporting People Programme: SPP

Victim's Personal Statement: VPS

Violence Against Women and Girls: VAWG

Violence Against Women: VAW

Women's Liberation Movement: WLM

Women's National Commission: WNC

Youth Justice and Criminal Evidence Act 1999: YJCEA



## Chapter 1: Introduction

### 1.1 The Problem of Intimate Partner Abuse

The purpose of the thesis is to examine the development of the Criminal Justice System (CJS) response regarding the protection of female victims and the prevention of physical and emotional intimate partner abuse (IPA) in England and Wales from 1997 to 2017. The term IPA is used in the thesis because the term ‘domestic violence’ has been extended to include other forms of violence between family members<sup>1</sup> while violence and abuse between current and former intimate partners is the focus of this study. Specifically, domestic violence, according to the Home Office definition, is: ‘any incident or pattern of incidents of controlling, coercive, threatening behaviour, violence or abuse between those aged 16 or over who are, or have been, intimate partners or family members regardless of gender or sexuality.’<sup>2</sup> Therefore, the term IPA rather than domestic violence characterises more specifically violence and abuse between intimate partners whether this occurs in current and former heterosexual or same sex relationships.

In addition, the domestic violence definition provides examples of types of abuse such as psychological, physical, sexual, financial, and emotional.<sup>3</sup> Although abuse between intimate partners can be manifested through different types such as sexual, physical, emotional, and financial, the thesis focuses only on physical and emotional IPA. The term IPA better represents the purpose of the thesis because the term ‘abuse’ is wider than the term ‘violence’ in order to acknowledge that some of the behaviours do not involve physical violence but non-physical ways.<sup>4</sup> Miller argued that intimate partners often experience not only physical violence but also an array of non-physical abuses, including emotional, psychological, economic, and social abuse.<sup>5</sup> These combined experiences of physical violence and

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<sup>1</sup> See Home Office, *Information for Local Areas on the Change to the Definition of Domestic Violence and Abuse* (2013) 2.

<sup>2</sup> Home Office, *Guidance: Domestic Violence and Abuse* (2013) <<https://www.gov.uk/guidance/domestic-violence-and-abuse>> accessed 30 August 2017.

<sup>3</sup> Home Office, *Information for Local Areas on the Change to the Definition of Domestic Violence and Abuse* (2013) 2.

<sup>4</sup> See Outlaw M, ‘No One Type of Intimate Partner Abuse: Exploring Physical and Non-Physical Abuse Among Intimate Partners’ (2009) 24 (4) *Journal of Family Violence* 263, 264; see also Follingstad D R, Rutledge L L, Berg B J, Hause E S and Polek D S, ‘The Role of Emotional Abuse in Physically Abusive Relationships’ (1990) 5 (2) *Journal of Family Violence* 107, 107-108.

<sup>5</sup> Miller M S, *No Visible Wounds: Identifying Nonphysical Abuse of Women by their Men* (Random House 1995)

emotional abuse can occur when an individual tries to control his partner. This control can start with emotional abuse, which aims to reduce a victim's self-esteem and make her dependent on the abuser.<sup>6</sup> However, experiencing one type of IPA does not automatically indicate that the other type is also present.<sup>7</sup> To specify the difference between physical violence and emotional abuse: physical violence includes behaviours such as hitting, shoving, pushing, punching, kicking, tripping, biting, and beating while emotional abuse includes behaviours such as constant belittling, calling derogatory names, and financial abuse in order to keep the victim dependent and plead for money.<sup>8</sup> Therefore, the term IPA is argued as more appropriate for the purposes of this study, as it focuses on the examination of physical violence and emotional abuse perpetrated by current or former intimate partners against female victims.

Further, the thesis examines the CJS response towards female victims due to the more severe qualitative impact of IPA on women than men. Dobash and Dobash reported in their research that cases of women's violence against their male partner differs from IPA perpetrated by men regarding the nature, frequency, intention, intensity, physical injury and emotional impact. Specifically, the consequences of emotional impact to male victims are usually minor, the injuries are usually less severe, and the violence often occurred as self-defense. Moreover, women did not use intimidating or coercive forms of controlling behaviour.<sup>9</sup> Since IPA can be 'any incident or pattern of incidents of controlling, coercive, threatening behaviour, violence or abuse', IPA can occur through an incident or a repetitive pattern of abuse. Specifically, according to Johnson, IPA can be manifested through a repetitive pattern of power and control exercised with coercive control but also through violent incidents that are not controlling but caused due to tensions or emotions.<sup>10</sup> Coercive control constitutes a pattern of overlapping and repetitive abuse that aims to dominate the victim in order to

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307; see also Hague G and Malos E, *Domestic Violence: Action for Change* (New Clarion Press 1993) 6-10.

<sup>6</sup> Kenney L K, *Domestic Violence* (ABDO Publishing Company 2012) 27.

<sup>7</sup> Outlaw M, 'No One Type of Intimate Partner Abuse: Exploring Physical and Non-Physical Abuse Among Intimate Partners' (2009) 24 (4) *Journal of Family Violence* 263, 271.

<sup>8</sup> Danis S F and Bhandari S, 'Understanding Domestic Violence: A Primer' in Lockhart L L and Danis S F (eds), *Domestic Violence: Intersectionality and Culturally Competent Practice* (Columbia University Press 2010) 31.

<sup>9</sup> Dobash R P and Dobash R E, 'Women's Violence to Men in Intimate Relationships: Working on a Puzzle' (2004) 44 (3) *British Journal of Criminology* 324, 343.

<sup>10</sup> Johnson M P, *A Typology of Domestic Violence: Intimate Terrorism, Violent Resistance, and Situational Couple Violence* (Northeastern University Press 2008) 7-9.

control her.<sup>11</sup> Graham-Kevan and Archer reported that in heterosexual relationships men are the main offenders of the coercive pattern of power and control while women are the major offenders of IPA incidents.<sup>12</sup> Particularly, the consequences for female victims of coercive control are different and more severe for female victims of IPA incidents that are not controlling. Victims of coercive control experience IPA more frequently and with less chances for the abuse to end. They are also in more risk of injuries, developing posttraumatic stress syndrome, missing work, leaving their parents, and seeking accommodation to safe locations.<sup>13</sup>

IPA is also manifested in same sex relationships between male and female partners through incidents and the coercive pattern of abuse.<sup>14</sup> In these relationships, although men and women experience emotional abuse, men are more likely to be financially controlled while women are exploited through their sexuality, are accused for their partner's self-harm, or being threatened about their children. Moreover, both male and female victims similarly experience physical violence but men are more physically threatened or prevented from receiving help than women.<sup>15</sup>

Additionally, the thesis examines the CJS response towards female victims because they constitute the majority of IPA victims. Although both women and men can be victims, women are more likely to be victims than men. Specifically, domestic abuse is both high risk and high volume, as the police receive an average over 100 calls an hour for domestic abuse.<sup>16</sup> The 2016 Crime Survey for England and Wales estimated that 7.7% of women and 4.4% of men reported their experience of domestic abuse. This estimate includes 1,272,000

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<sup>11</sup> Home Office, *Information for Local Areas on the Change to the Definition of Domestic Violence and Abuse* (2013) 2.

<sup>12</sup> Graham-Kevan N, Archer J, Graham-Kevan N, 'Intimate Terrorism and Common Couple Violence: A Test of Johnson's Predictions in Four British Samples' (2003) 18 (11) *Journal of Interpersonal Violence* 1247, 1255.

<sup>13</sup> Johnson P M and Leone M J, 'The Differential Effects of Intimate Terrorism and Situational Couple Violence: Findings from the National Violence against Women Survey' (2005) 26 (3) *Journal of Family Issues* 322, 344.

<sup>14</sup> See Hester M and Donovan C, 'Researching Domestic Violence in Same-Sex Relationships-A Feminist Epistemological Approach to Survey Development' (2009) 13 (2) *Journal of Lesbian Studies* 161, 170-171; Donovan C, Barnes R and Nixon C, 'The Coral Project: Exploring Abusive Behaviours in Lesbian, Gay, Bisexual and/or Transgender Relationships' (2014) 41-42; Frankland A and Brown J, 'Coercive Control in Same-Sex Intimate Partner Violence' (2013) 29 (1) *Journal of Family Violence* 15, 20-21.

<sup>15</sup> Donovan C, Hester M, Holmes J and McCarry M, *Comparing Domestic Abuse in Same Sex and Heterosexual Relationships* (2006) 8-9.

<sup>16</sup> HMIC, *Increasingly Everyone's Business: A Progress Report on the Police Response to Domestic Abuse* (2015) 31.

female victims and 716,000 male victims aged between 16 and 59. Moreover, non-sexual partner abuse is the most common type of IPA experienced (5.4% of women compared with 2.8% of men).<sup>17</sup> Furthermore, the statistics show that women are the majority of victims of domestic homicides, namely 70% with 319 victims while 76% of these victims, namely 242 women, were killed by a male partner or ex-partner. On the other hand, men constitute the 30% of domestic homicides with 135 victims while 53% of these victims were killed by a partner or ex-partner (32 male suspects and 40 female suspects).<sup>18</sup> These statistics suggest that the policies and practice of the CJS have gaps that need to be identified and resolved in order to improve the protection of female victims and the prevention of IPA. For this reason, the thesis aims to critique the CJS response in order to provide insight on potential improvements.

Although the statistics provide an idea of the impact of IPA on women, they do not provide an accurate picture of IPA crimes. Specifically, Walby and others argued that the frequency of violent crimes is not mirrored in the official statistics but they provide limited estimates that are based on capped data. Capping applies to multiple incidents of the same type of crime; thus, it decreases the total estimated count of crimes. For example, a reported count of 24 victimisations of the same type decreases to five.<sup>19</sup> Furthermore, the statistics are problematic because they do not record the relationship between offender and victim. However, this information is important in the context of domestic violence crimes.<sup>20</sup> Moreover, the statistics do not present an accurate picture of IPA crimes because threats and other non-physical forms of coercion are not included in the category of violent crime.<sup>21</sup> Therefore, although the statistics indicate that women constitute the majority of IPA victims, the aforementioned gaps of the statistics suggest that in reality the extent and impact of IPA on women is worse from what is illustrated by the statistics.

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<sup>17</sup> Office for National Statistics, *Domestic Abuse, Sexual Assault and Stalking* (2017) 9.

<sup>18</sup> Office for National Statistics, *Domestic Abuse in England and Wales: Year Ending March 2017* (2017) 18.

<sup>19</sup> Walby S, Towers J and Francis B, 'Is Violent Crime Increasing or Decreasing? A New Methodology to Measure Repeat Attacks Making Visible the Significance of Gender and Domestic Relations' (2016) 56 *British Journal of Criminology* 1203, 1210.

<sup>20</sup> Walby S, Towers J and Francis B, 'Mainstreaming Domestic and Gender-based Violence into Sociology and the Criminology of Violence' (2014) 62 (S2) 187, 196.

<sup>21</sup> Walby S, Towers J and Francis B, 'Is Violent Crime Increasing or Decreasing? A New Methodology to Measure Repeat Attacks Making Visible the Significance of Gender and Domestic Relations' (2016) 56 *British Journal of Criminology* 1203, 1208.



The generation of critiques on potential improvements can be beneficial because IPA is a complex, contemporary and developing issue. For example, the announcement regarding the creation of a new domestic violence law raises questions in respect of improvements that could be made in the response to IPA.<sup>22</sup> Moreover, the response to IPA affects victims in different ways such as the inadequate support of the CJS through the police, Crown Prosecution Service (CPS), and courts to IPA victims,<sup>23</sup> the closure of refuges,<sup>24</sup> the limitations of the legal aid provision,<sup>25</sup> and early intervention to young people through the Sex and Relationships Education (SRE).<sup>26</sup> For this reason, the thesis will examine these issues in order to produce critiques on how they could be improved.

The above issues have also been main concerns of the feminist agenda promoted by women's organisations. For example, the End Violence Against Women Coalition (EVAW) has been

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<sup>22</sup> Cabinet Office, 'Queen's Speech 2017: What It Means for You' (21 June 2017)

<<https://www.gov.uk/government/publications/queens-speech-2017-what-it-means-for-you/queens-speech-2017-what-it-means-for-you>> accessed 20 September 2017

<sup>23</sup> Agerholm H, 'Thousands of Domestic Violence Victims Withdrawing from Legal Action after Government Cuts, Figures Reveal' (Independent, 9 April 2017) <<http://www.independent.co.uk/news/uk/home-news/domestic-violence-abuse-victims-withdrawing-legal-action-support-services-local-government-cuts-a7675406.html>> accessed 5 June 2017; BBC, 'Jacqueline Oakes Murder: IPCC Finds Police "Failings"' (17 March 2017) <<http://www.bbc.co.uk/news/uk-england-birmingham-39304995>> accessed 18 March 2017; Summers H, 'CPS Accused of Failing Domestic Violence Victims after Woman Loses Eye in Attack' (The Guardian, 27 January 2017) <<https://www.theguardian.com/society/2017/jan/27/cps-accused-of-failing-domestic-violence-victims-after-woman-loses-eye-in-attack>> accessed 1 February 2017; Tickle L, 'Why Is Domestic Abuse Still Not Taken Seriously in UK Courts?' (The Guardian, 8 March) <<https://www.theguardian.com/society/2016/mar/08/domestic-abuse-court-female-victims-bbc-documentary>> accessed 10 June 2017; BBC News, 'Cricketer Mustafa Bashir Attack Sentence to Be Reviewed' (5 April 2017) <<http://www.bbc.co.uk/news/uk-england-leicestershire-39502950>> accessed 5 April 2017.

<sup>24</sup> Matthews R, 'General Election 2017: What Is Each Party Promising Women?' (Telegraph, 7 June 2017) <<http://www.telegraph.co.uk/women/politics/general-election-2017-party-promising-women/>> accessed 7 June 2017; Bloomer N, 'May's Help for Domestic Violence Victims is Too Little Too Late' (21 November 2016) <<http://www.politics.co.uk/comment-analysis/2016/11/21/may-s-help-for-domestic-violence-victims-is-too-little-too-late>> accessed 5 June 2017; Archer N, 'We at Sisters Uncut Have Occupied Holloway Prison. Why? Domestic Violence' (The Guardian, 1 June 2017) <<https://www.theguardian.com/commentisfree/2017/jun/01/domestic-violence-services-occupying-holloway-prison-sisters-uncut-cuts-women>> accessed 5 June 2017.

<sup>25</sup> Bowcott O, 'Legal Aid Shakeup Hands Lifeline to Domestic Violence Victims' (The Guardian, 23 February 2017) <<https://www.theguardian.com/law/2017/feb/23/legal-aid-domestic-violence-law-courts>> accessed 5 June 2017; Lewis K, 'Government's Cuts "Force Victims of Domestic Violence to Face Abusers in Court"' (Independent, 29 January 2016) <<http://www.independent.co.uk/news/uk/crime/government-s-cuts-force-victims-of-domestic-violence-to-face-abusers-in-court-a6841851.html>> accessed 30 January 2017.

<sup>26</sup> BBC, 'Domestic Abuse: "Make Relationship Lessons Compulsory"' (12 December 2016) <<http://www.bbc.co.uk/news/uk-wales-politics-38262165>> accessed 5 June 2017; Telegraph, 'Why Sex and Relationships Education Needs to Become Compulsory in All Schools' (23 January 2017) <<http://www.telegraph.co.uk/education/2017/01/23/sex-relationships-education-needs-become-compulsory-schools/>> accessed 30 January 2017.

arguing for the necessity of early intervention to young people through the SRE<sup>27</sup> and Rights of Women (ROW) has been asserting for the improvement of legal aid provision towards IPA victims.<sup>28</sup> Moreover, Women's Aid has been involved with the improvement of the CJS response<sup>29</sup> while the feminist activist group, Sisters Uncut, has been protesting against the Conservative and Coalition governments' policy to cut funding for IPA services in order to improve victims' equality rights.<sup>30</sup> Due to the strong involvement of the feminist activists on these issues, the examination will be based on a feminist criminological perspective, the intersectional gendered approach.

These concerns do not involve only the support that IPA victims receive by the CJS but also the social support that they receive from social welfare mechanisms such as specialist refuges, legal aid, and education. The social support is important because without this, women become hesitant to seek the support of the CJS.<sup>31</sup> For this reason, although the aim of the thesis is to examine the effectiveness of aspects of the CJS response, it will also examine the effectiveness of aspects of the whole-system response provided from these social welfare mechanisms, as case studies. In order to achieve the purpose of the thesis, the following research questions will be addressed:

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<sup>27</sup> EVAW, 'Government Announces Compulsory Relationships & Sex Education in All Schools' <<http://www.endviolenceagainstwomen.org.uk/451-2/>> accessed 15 July 2017.

<sup>28</sup> Rights of Women, 'Some Good News on Legal Aid and Domestic Violence!' (8 July 2015) <<http://rightsofwomen.org.uk/news/some-good-news-on-legal-aid-and-domestic-violence/>> accessed 15 July 2017.

<sup>29</sup> Women's Aid, 'Women's Aid Statement on Mustafa Bashir Sentence Review' (7 April 2017) <<https://www.womensaid.org.uk/womens-aid-statement-mustafa-bashir-sentence-review/>> accessed 15 July 2017; Refuge, 'Refuge Responds to the Latest HMIC Report on Police Response to Domestic Violence' (20 April 2017) <<http://www.refuge.org.uk/2017/04/20/refuge-responds-to-the-latest-report-from-her-majestys-inspectorate-of-constabulary-hmic-on-the-state-of-policing/>> accessed 15 July 2017.

<sup>30</sup> see Sisters' Uncut, 'Budget 2016: George Osborne Can Ring Fence Money to Fix Roads-Why Not Domestic Violence Services?' (The Telegraph 16 March 2016) <<http://www.telegraph.co.uk/women/politics/budget-2016-george-osborne-can-ring-fence-money-to-fix-roads---w/>> accessed 16 March 2016; see also, O'Hara M, 'Osborne' Budget Cuts will cripple Services for Vulnerable BME Women' (Guardian 16 March 2016) <<http://www.theguardian.com/public-leaders-network/2016/mar/16/budget-cuts-domestic-violence-services-bme>> accessed 16 March 2016; Sisters Uncut, 'Know How You Can Easily Shut Down Domestic Violence Services? Erase Women in Need from Official Statistics' (The Independent 18 January 2016) <<http://www.independent.co.uk/voices/know-how-you-can-easily-shut-down-domestic-violence-services-erase-women-in-need-from-official-a6819761.html>> accessed 1 March 2016.

<sup>31</sup> See Rights of Women, 'Women's Access to Justice: A Research Report' (2011) 23; Women's Resource Centre, 'Hidden Value: Demonstrating the Extraordinary Impact of Women's Voluntary and Community Organisations' (2011) 18-19.

- 1) Whether, how, and why the intersectional gendered approach can constitute an appropriate criminological theoretical perspective to investigate the response of the CJS towards female IPA victims? (Chapter 2)
- 2) To what extent the governmental crime prevention strategies and the substantive criminal law have promoted the prevention of IPA and the protection of female victims by considering their diverse needs and attempting the transformation of the social perception towards IPA and its victims from 1997 to 2017? (Chapter 3)
- 3) To what extent the CJA (police, CPS, courts) have promoted in their policies and practice the prevention of IPA and the protection of female victims by considering their diverse needs and attempting the transformation of the social perception towards IPA and its victims from 1997 to 2017? (Chapter 4)
- 4) To what extent the governmental response (policies and practice) to IPA through social welfare mechanisms have promoted the prevention of IPA and the protection of female victims by considering their diverse needs and attempting the transformation of the social perception towards IPA and its victims from 1997 to 2017? (Chapter 5)
- 5) Whether the feminist theoretical and practical engagements of feminist activists and theorists have contributed to the discussed IPA developments? (Chapter 3, 4, 5)

## **1.2 Theoretical Framework**

The examination of the CJS response and the social welfare mechanisms influencing its response will be conducted based on the intersectional gendered approach. This approach is appropriate for the generation of critiques since IPA may occur in a range of different relationships including heterosexual and same-sex relationships<sup>32</sup> and can be manifested between individuals who have a current or former marital, dating or cohabiting relationship.<sup>33</sup> Moreover, it impacts individuals of any age, class, race, religion or gender.<sup>34</sup> Since IPA victims come from diverse backgrounds, they have diverse needs that need to be supported by the CJS and the social welfare system in order to help them been freed from abuse.

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<sup>32</sup> see HMIC, *Everyone's Business: Improving the Police Response to Domestic Abuse* (2014) 31.

<sup>33</sup> Hampton R, Oliver W and Magarian L, 'Domestic Violence in the African American Community-An Analysis of Social and Structural Factors' (2003) 9 (5) *Violence Against Women* 533, 534.

<sup>34</sup> Walby S and Allen J, 'Domestic Violence, Sexual Assault and Stalking: Findings from the British Crime Survey' (2004) 73-88.

Specifically, IPA victims, due to their backgrounds, can face barriers that affect their willingness to seek the CJS support. For example, victims from the LGBT community,<sup>35</sup> young women,<sup>36</sup> and Black, Asian and Minority Ethnic (BAME) women<sup>37</sup> may feel reluctant to report their abuse due to fear of discrimination and/or disbelief from their social environments and the CJS.

The intersectional gendered approach is developed in Chapter 2, which aims to frame a criminological theoretical perspective by examining whether, how, and why this can constitute an efficient theoretical approach for the improvement of the prevention of IPA and the protection of its victims. In order to achieve this aim, the intersectional gendered approach is built from various feminist theories developed in the areas of feminist criminology, sociology, and jurisprudence. The framing of the intersectional gendered approach from different feminist views aims to form an appropriate, contemporary, and holistic theoretical criminological perspective that can contribute to the improvement of the prevention of IPA and the protection of its victims.

The intersectional gendered approach adopts the gender inequality approach, which argues that IPA is a gender crime.<sup>38</sup> This inequality approach has been argued by feminist scholars who have asserted that male violence is caused by gender inequality in the formation of the family as a place of male dominance and control.<sup>39</sup> This approach can explain the statistics of why women constitute the majority of IPA victims.<sup>40</sup> The explanation, based on these feminist views, is that IPA is caused due to the gender inequality existing in society in

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<sup>35</sup> See Women's Resource Centre, 'In All Our Colours: Lesbian, Bisexual and Trans Women's Services in the UK' (2010) 14; see also Hester M, Williamson E, Regan L, Coulter M, Chantler K, Gangoli G, Davenport R and Green L, Exploring the Service and Support Needs of Male, Lesbian, Gay, Bi-sexual and Transgendered and Black and Other Minority Ethnic Victims of Domestic and Sexual Violence (Home Office 2012) 27-40.

<sup>36</sup> South East Wales Women's Aid Consortium, 'Domestic Abuse & Equality: Young Women' (2010) 7; see also Barter C, 'In the Name of Love: Partner Abuse and Violence in Teenage Relationships' (2009) 39 British Journal of Social Work 211, 220-221.

<sup>37</sup> Women's Resource Centre, 'Hidden Value: Demonstrating the Extraordinary Impact of Women's Voluntary and Community Organisations' (2011) 18-19.

<sup>38</sup> see Umberson D, Anderson K L, Williams K and Chen M D, 'Relationship Dynamics, Emotion State, and Domestic Violence: A Stress and Masculinities Perspective' (2004) 65 (1) Journal of Marriage and Family 233, 234.

<sup>39</sup> Dobash R E and Dobash R P, 'Violent Men and Violent Contexts' in Dobash R E and Dobash R P (eds), *Rethinking Violence Against Women* (Sage 1998) 141-168; Yllo K, 'Through a Feminist Lens: Gender, Power, and Violence' in Gelles R J and Loseke D L (eds), *Current Controversies on Family Violence* (Sage 1993) 47-62; Harris A P, 'Gender, Violence, Race, and Criminal Justice Prosecuting Violence: A Colloquy on Race, Community, and Justice' (2000) 52 Stanford Law Review 777, 789; Dobash R E and Dobash R P, 'Wives: The "Appropriate" Victims of Marital Violence' (1978) 2 Victimology 426, 438-439.

<sup>40</sup> Office for National Statistics, *Domestic Abuse, Sexual Assault and Stalking* (2017) 9.

general and in families specifically. For this reason, the intersectional gendered approach opposes gender-neutral theories since they do not focus on women and gender inequality.<sup>41</sup>

In addition, the intersectional gendered approach is based on intersectionality theories, according to which individuals have different identities such as gender, race, age, class, and sexuality whose intersection form different experiences of victimisation.<sup>42</sup> Since there are diverse types of intersectional approaches, the intersectional gendered approach adopts the asymmetric mutual shaping model.<sup>43</sup> This model is composed by two different models, the asymmetric and the mutual shaping. Asymmetric is a model that recognises one dominant identity and the others as secondary while the mutual shaping looks into the combined effect of the inequalities.<sup>44</sup> Hence, based on this approach gender is the dominant identity in the case of IPA because it is also the cause while the other identities are treated as secondary, whose combined effect in the victimisation experience of women is considered. For this reason, the theoretical framework is called the intersectional gendered approach because it stresses on the importance of gender in the context of IPA. Thus, the intersectional gendered approach supports that diverse identities such as race, ethnicity, age, sexuality, and class form diverse identities that need to be considered in the formation of policies and practice, so that substantial equality is promoted among women.

Further, the intersectional gendered approach is based on feminist post-structuralist views arguing that the power of the law is limited and that there is need to transform the social

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<sup>41</sup> See Murray E C, 'Controversy, Constraints, and Context: Understanding Family Violence through Family Systems Theory' (2006) 14 (3) *The Family Journal: Counseling and Therapy for Couples and Families* 234, 234-235; Straus M, 'Measuring Intrafamily Conflict and Violence: The Conflict Tactics (CT) Scale' (1979) 41 (1) *Journal of Marriage and the Family* 75, 77-85; Kalmuss D and Straus M, 'Wife's Marital Dependency and Wife Abuse' (1982) 44 (2) *Journal of Marriage and the Family* 277, 278; Anderson F J and Kras K, 'Revisiting Albert Bandura's Social Learning Theory to Better Understand and Assist Victims of Intimate Personal Violence' (2007) 17 (1) *Women & Criminal Justice* 99, 121; Sellers S C, Cochran K J and Branch A K, 'Social Learning Theory and Partner Violence: A Research Note' (2005) 26 (4) *Deviant Behaviour* 379, 391-393; Mihalic W S and Elliott D, 'A Social Learning Theory Model of Marital Violence' (1997) 12 (1) *Journal of Family Violence* 21, 28; Dutton D, *Rethinking Domestic Violence* (UBC Press 2006) 21; Bevan E and Higgins J D, 'Is Domestic Violence Learned? The Contribution of Five Forms of Child Maltreatment to Men's Violence and Adjustment' (2002) 17 *Journal of Family Violence* 223, 241.

<sup>42</sup> See Davis K, 'Intersectionality as Buzzword: A Sociology of Science Perspective on What Makes a Feminist Theory Successful' (2008) 9 (1) *Feminist Theory* 67, 68; Potter H, 'Intersectional Criminology: Interrogating Identity and Power in Criminological Research and Theory' (2013) 21 *Critical Criminology* 305, 305; Sokoloff N J and Dupont I, 'Domestic Violence at the Intersections of Race, Class and Gender: Challenges and Contributions to Understanding Violence against Marginalised Women in Diverse Communities' (2005) 11 *Violence against Women* 38, 45.

<sup>43</sup> Walby S, Armstrong J and Strid S, 'Intersectionality and the Quality of the Gender Equality Architecture' (2012) 19 (4) *Social Politics* 446, 474.

<sup>44</sup> *ibid* 452-453.

perception in order to achieve substantial change,<sup>45</sup> as there is an influential interaction between law and society.<sup>46</sup> For this reason, the prevention of IPA and the protection of its victims do not depend only on a CJS response but also the social welfare system contributes to the tackling of IPA.

### 1.3 The Response of the Criminal Justice System to Intimate Partner Abuse

The CJS response is addressed at a policy level through the governmental crime prevention strategies. Specifically, the Labour government introduced during its administration from 1997 to 2010<sup>47</sup> the following strategies: ‘Living without Fear: An Integrated Approach to Tackling Violence against Women’ in 1999,<sup>48</sup> the ‘Safety and Justice: The Government’s proposals on Domestic Violence’<sup>49</sup> in 2003, the ‘A National Report’<sup>50</sup> in 2005, and the ‘Together We Can End Violence Against Women and Girls: A Strategy’<sup>51</sup> in 2009. The Coalition government, during its administration from 2010 to 2015<sup>52</sup> introduced the ‘Call to End Violence against Women and Girls’<sup>53</sup> strategy in 2010. Furthermore, the Conservative government, during its administration from 2015 to 2017,<sup>54</sup> issued the ‘Ending Violence against Women and Girls Strategy 2016-2020’<sup>55</sup> in 2016. These strategies set the aims of the CJS response towards IPA but they also promote a whole-system response through the CJS and social welfare mechanisms in order to address the prevention of IPA and protection of victims with diverse needs. A whole-system response refers to a coordinated multi-agency approach at a national and local governmental level that involves all key criminal justice and

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<sup>45</sup> Smart C, *Feminism and the Power of Law* (Routledge 1989) 26-27.

<sup>46</sup> Conaghan J, *Law and Gender* (Oxford University Press 2013) 196-197; see also Gelsthorpe L and Morris A, *Feminist Perspectives in Criminology* (Open University Press 1994) 153-154.

<sup>47</sup> Matczak A, Hatzidimitriadou E and Lindsay J, ‘Review of Domestic Violence Policies in England and Wales’ (Kingston University and St George’s, University of London 2011) 3.

<sup>48</sup> Home Office and Women’s Unit, *Living without Fear: An Integrated Approach to Tackling Violence against Women* (1999) <<http://webarchive.nationalarchives.gov.uk/20010714051016/http://www.cabinet-office.gov.uk:80/womens-unit/fear/04.htm>> accessed 26 January 2017.

<sup>49</sup> Home Office, *Safety and Justice: The Government’s Proposals on Domestic Violence* (Cmd 5847, 2003).

<sup>50</sup> Home Office, *A National Report* (2005).

<sup>51</sup> HM Government, *Together We Can End Violence Against Women and Girls: A Strategy* (2009).

<sup>52</sup> Maer L and Gay O, *The 2010 Coalition Government at Westminster* (HC 2015) 3.

<sup>53</sup> HM Government, *Call to End Violence against Women and Girls* (2010);

<sup>54</sup> Hawkins O, Keen R and Nakatudde N, *General Election 2015* (HC 2015) 7; see also Conservative Party, *Forward, Together-Our Plan for a Stronger Britain and a Prosperous Future: The Conservative and Unionist Party Manifesto 2017* (2017) 4.

<sup>55</sup> HM Government, *Ending Violence against Women and Girls Strategy 2016 – 2020* (2016).

social welfare agencies.<sup>56</sup> The utilisation of such mechanisms is necessary because IPA victims face diverse problems such as inadequate protection from the CJS,<sup>57</sup> housing problems,<sup>58</sup> lack of legal aid support,<sup>59</sup> and prejudiced social perception.<sup>60</sup> As a result, they are reluctant to escape abuse and/or seek the support of the CJS<sup>61</sup> because the latter cannot satisfy all these diverse needs. Therefore, IPA could be more efficiently tackled through a whole-system response. For this reason, Chapter 3 examines the crime prevention strategies that form the governmental policy framework of the CJS and the whole-system response to IPA in order to show the policy development on IPA.

Further, the CJS response is determined by the substantive criminal law. For this reason, Chapter 3 examines the substantive criminal law on physical and emotional abuse developed from 1997 to 2017. Specifically, the offences examined are: the familial homicide offence of s.5 of the Domestic Violence, Crime, and Victims Act (DVCVA) 2004,<sup>62</sup> the familial physical harm of s.1 of Domestic Violence, Crime, and Victims Amendment (DVCVA) 2012,<sup>63</sup> and the coercive control offence of s.76 of Serious Crime Act (SCA) 2015.<sup>64</sup>

The analysis starts from 1997 because the Labour government introduced significant changes in the response of the CJS and the whole-system response on IPA. For example, during the administration of the Labour government, the whole-system response acquired statutory status through s.5-7 of the Crime and Disorder Act 1997 that established the multi-agency

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<sup>56</sup> See Women's Aid, 'Families without Fear: Women's Aid Agenda for Action on Domestic Violence: Recommendations for a National Strategy' (1998) <<http://web.archive.org/web/20071026000105/http://www.womensaid.org.uk/page.asp?section=0001000100900010001&itemTitle=Families+without+Fear>> accessed 15 October 2018.

<sup>57</sup> Women's Aid, 'Women's Aid Statement on Mustafa Bashir Sentence Review' (7 April 2017) <<https://www.womensaid.org.uk/womens-aid-statement-mustafa-bashir-sentence-review/>> accessed 15 October 2018.

<sup>58</sup> Women's Aid, 'Cuts in Refuge Services Putting Vulnerable Women and Children at Risk' (27 November 2012) <<https://www.webarchive.org.uk/wayback/archive/20121218230706/http://www.womensaid.org.uk//domestic-violence-press-information.asp?itemid=2944&itemTitle=Cuts+in+refuge+services+putting+vulnerable+women+and+children+at+risk&section=0001000100150001&sectionTitle=Press+releases>> accessed 11 March 2017.

<sup>59</sup> Rights of Women, 'Evidencing Domestic Violence: A Barrier to Family Law Legal Aid' (2013) 7-8.

<sup>60</sup> EAW, 'EAW Coalition Submission to the Leveson Inquiry' (2012) 5.

<sup>61</sup> See Rights of Women, 'Women's Access to Justice: A Research Report' (2011) 23; Women's Resource Centre, 'Hidden Value: Demonstrating the Extraordinary Impact of Women's Voluntary and Community Organisations' (2011) 18-19.

<sup>62</sup> Domestic Violence, Crime, and Victims Act (DVCVA) 2004 s. 5.

<sup>63</sup> Domestic Violence, Crime, and Victims Amendment 2012 s.1.

<sup>64</sup> Serious Crime Act 2015 s.76.

partnerships.<sup>65</sup> Moreover, the government introduced the first governmental crime prevention strategy ‘Living without Fear: An Integrated Approach to Tackling Violence against Women’<sup>66</sup> in 1999 in order to coordinate the whole-system response provided by the multi-agency partnerships. Additionally, the Labour government introduced the familial homicide offence<sup>67</sup> and strengthened the pro-arrest policy.<sup>68</sup> Furthermore, it promoted the prevention of IPA through a whole-system response with the establishment of the Specialist Domestic Violence Courts (SDVCs)<sup>69</sup> that attempted to provide a specialised response in magistrates courts and the Supporting People Programme (SPP) that aimed to provide adequate funding to specialist refuges.<sup>70</sup> Moreover, the Labour government promoted the early intervention to young people through education with the creation of the Sex and Relationship Education (SRE) programme, with which it attempted to address IPA in primary and secondary education.<sup>71</sup> Therefore, the administration of the Labour government starting from 1997 promoted significant changes in the area of IPA attempting to strengthen not only the CJS response but also the whole-system response.

The increased interest of the Labour government’s agenda on IPA could be attributed on the fact that the number of female MPs increased. Specifically, the Labour Party’s victory at the 1997 general election saw 120 women MPs elected to the HC, doubling the number of women MPs overnight. Women constituted 18 per cent of all MPs, from which 101 of the 120 women MPs in the 1997 Parliament were Labour, only 13 were Conservative, three were Liberal Democrat and two were Scottish Nationalists.<sup>72</sup> Regarding the Labour party, Vera Baird, a Labour party MP, stated that ‘In the 1997 General Election over a hundred women MPs were elected, most of them Labour. At least a handful had been actively involved in violence against women issues outside Parliament and they determined that more policy

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<sup>65</sup> Crime and Disorder Act 1997 s. 5-7.

<sup>66</sup> Home Office and Women’s Unit, *Living without Fear: An Integrated Approach to Tackling Violence against Women* (1999) <<http://webarchive.nationalarchives.gov.uk/20010714051016/http://www.cabinet-office.gov.uk:80/womens-unit/fear/04.htm>> accessed 26 January 2017.

<sup>67</sup> DVCVA 2004 s.5

<sup>68</sup> DVCVA 2004 s.10 (1)

<sup>69</sup> Home Office, *Safety and Justice: The Government’s Proposals on Domestic Violence* (Cmd 5847, 2003) 11.

<sup>70</sup> Local Government Act 2000 s.93

<sup>71</sup> See Department for Education and Employment and Qualifications and Curriculum Authority, *The National Curriculum Handbook for Primary Teachers in England* (1999) 138; see also Department for Education and Employment and Qualifications and Curriculum Authority, *The National Curriculum Handbook for Secondary Teachers in England* (1999) 135, 217.

<sup>72</sup> Childs S, *New Labour’s Women MPs: Women Representing Women* (Routledge 2004) 1-2.



progress would be made.<sup>73</sup> Childs also noted that seventy-three per cent of the new Labour women MPs identified themselves as feminists.<sup>74</sup> The feminist interest on IPA was promoted through the parliament with the contributions of MPs<sup>75</sup> but also at Cabinet level. For example, Harriet Harman, as the then Secretary of the Social Security, promoted the interests of women on issues such as family-friendly employment, childcare, and domestic violence.<sup>76</sup>

The second time frame of the thesis begins from the Coalition government's administration from 2010 to 2015 due to the important change of the policy framework with the new gender-based Violence Against Women and Girls (VAWG) strategy 'Call to End Violence against Women and Girls'<sup>77</sup> and the criminalisation of emotional abuse through the creation of the coercive control offence.<sup>78</sup> Moreover, the third time period begins with the administration of the Conservative government from 2015 to 2017 in order to show the most contemporary developments such as the implementation of the coercive control offence by the criminal justice agencies (CJA),<sup>79</sup> the funding of specialist refuges,<sup>80</sup> the new amendments in the legal aid regulations,<sup>81</sup> and the mandatory teaching of SRE.<sup>82</sup>

#### **1.4 The Response of the Criminal Justice Agencies to Intimate Partner Abuse**

In addition to the crime prevention strategies and the substantive criminal law, the CJS response is determined by the CJA response (policies and practice). The response of the police, CPS, and courts affect the victims' willingness to access the CJS and report their

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<sup>73</sup> Baird V, 'Has Feminism Influenced Policy on Violence against Women?' (Feminism in London Conference 2010) <<http://static.feminisminlondon.co.uk/index.php/about-fil-2010/speeches-2010/vera-baird-s-speech-2010/index.html>> accessed 30 October 2016.

<sup>74</sup> Childs S, *New Labour's Women MPs: Women Representing Women* (Routledge 2004) 94.

<sup>75</sup> For examples of MPs interest on IPA see HC Deb 24 November 1997 vol 301 col 624; HC Deb 23 March 1998 vol 309 cols 17-18; HC Deb 08 June 1998 vol 313 col 477W; HC Deb 10 May 1999 vol 331 col 44W.

<sup>76</sup> HC Deb 24 February 1998 vol 307 col 218W; HC Deb 08 June 1998 vol 313 col 474W; HC Deb 18 June 1997 vol 296 col 215W.

<sup>77</sup> HM Government, *Call to End Violence against Women and Girls* (2010).

<sup>78</sup> Serious Crime Act 2015 s.76 (1).

<sup>79</sup> See College of Policing, *New Training to Investigate Coercive Control*

<[http://www.college.police.uk/News/Newsletter/January\\_2016/Pages/coercive\\_control.aspx](http://www.college.police.uk/News/Newsletter/January_2016/Pages/coercive_control.aspx)> accessed 27 December 2016; CPS, *Guidance on Controlling or Coercive Behaviour in an Intimate or Family Relationship* <[http://www.cps.gov.uk/legal/a\\_to\\_c/controlling\\_or\\_coercive\\_behaviour/](http://www.cps.gov.uk/legal/a_to_c/controlling_or_coercive_behaviour/)> accessed 25 December 2016.

<sup>80</sup> See Department for Communities and Local Government, *2016/18 Fund for Specialist Accommodation Based Support and Service Reform to Meet the Priorities for Domestic Abuse Services* (2016) 4-5; Home Office, *Violence Against Women and Girls National Statement of Expectations* (2016) 4.

<sup>81</sup> Explanatory Memorandum to the Civil Legal Aid (Procedure) (Amendment) Regulations 2016 (2016) 3.

<sup>82</sup> Children and Social Work Act 2017 s. 34.

abuse.<sup>83</sup> For this reason, Chapter 4 examines the development of the CJA response (police, CPS, courts) in respect of their policies and practice in order to show the implementation of the substantive criminal laws in practice. Specifically, Chapter 4 focuses on specific topics that have been selected for discussion in order to provide examples of the development of the response of these CJA during the Labour, the Coalition, and the Conservative governments. The developments are discussed along with the contributions of feminist theorists and activists to the relevant issues.

#### **1.4.1 Attrition**

The examination of these three CJA response regarding their policies and practice is of crucial significance for the prevention of IPA and the protection of victims because the victims' willingness to seek their support is determined by the treatment they receive. Specifically, Cretney and Davis pointed that the conviction rate in IPA cases depends on the victims' ability or willingness to make a formal complaint or provide evidence.<sup>84</sup> Women can encounter IPA repetitively before seeking the support of the police since the average length of IPA is five years. Victims can be unwilling to collaborate with the police even during investigation.<sup>85</sup>

The under-reporting of IPA is caused due to attrition, which has been detected as a particular problem of the police investigation and prosecution of IPA cases.<sup>86</sup> Attrition means the dropping out of IPA cases from the legal process at different stages for different reasons.<sup>87</sup> For example, an increase in successful prosecutions represents only an increase in the percentage of charges resulting in convictions. However, this rate does not provide a representative image of the efficiency of the actual response of the CJS since it is not linked to the incidents occurring, arrests, charges or cautions.<sup>88</sup> Therefore, high level of attrition means that many cases fail to progress through the CJS, which can put victims to further risk especially when the offenders are not charged and can return to their home after their

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<sup>83</sup> See Ministry of Justice, *Satisfaction and Willingness to Engage with the Criminal Justice System: Findings from the Witness and Victim Experience Survey, 2009/10* (2012) 62.

<sup>84</sup> Cretney A and Davis G, *Punishing Violence* (2nd edn, Routledge 2002) 144.

<sup>85</sup> SafeLives, 'Getting It Right First Time' (2015) 2.

<sup>86</sup> see Hester M, 'Making It through the Criminal Justice System: Attrition and Domestic Violence' (2006) 5 (1) *Social Policy and Society* 79-90.

<sup>87</sup> The Police Foundation, *The Briefing: Policing Domestic Abuse* (2014) 11-12.

<sup>88</sup> Select Committee on Home Affairs, *Domestic Violence, Forced Marriage and 'Honour'-Based Violence* (HC 2007-08, 263-I) para 266.

release.<sup>89</sup> For this reason, since attrition can cause the victims to be reluctant to report IPA incidents to the police, the examination of the response provided by the police, prosecution, and courts is of crucial significance for the improvement of the CJS response.

#### **1.4.2 The Response of the Criminal Justice Agencies through the Single Equality Duty**

The CJA responses, developed during the Coalition government, are examined through the prism of the Single Equality Duty (SED), introduced by the Equality Act 2010<sup>90</sup> and implemented in 2011.<sup>91</sup> This Act replaced the Equality Act 2006,<sup>92</sup> according to which there were distinct equality duties such as the gender, race, and disability equality duties.<sup>93</sup> Under the Equality Act 2010, the equality duties have been unified to a SED. This includes race, sex/gender, disability, age, sexual orientation, religion or belief, pregnancy and maternity, gender reassignment and marriage and civil partnership as ‘protected characteristics’ by the CJA.<sup>94</sup> Individuals with these ‘protected characteristics’ are offered protection based on section 149 of the Act, which stated:

A public authority must, in the exercise of its functions, have due regard to the need to-(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.<sup>95</sup>

These duties mean that the CJA have to take measures to protect individuals with these characteristics and for this reason, it is important to show how the implementation of the SED by the CJA response can affect the application of the intersectional gendered approach.

Based on the SED, the CJA are required to have due regard to its aims when making decisions and setting policies.<sup>96</sup> Thus, policy-making and decision-making of the CJA can

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<sup>89</sup> Gilmore S and Glennon L, *Hayes & Williams’ Family Law* (4th edn, Oxford University Press 2014) 97.

<sup>90</sup> Equality Act 2010.

<sup>91</sup> ECHR, *A Guide to Regulation of the Public Sector Equality Duty in England, Scotland and Wales* (2015) 2.

<sup>92</sup> Equality Act 2006.

<sup>93</sup> Equality Act 2006 s.83-90.

<sup>94</sup> Government Equalities Office, *Equality Act 2010: What Do I Need to Know? A Summary Guide for Public Sector Organisations* (2010) 6.

<sup>95</sup> Equality Act 2010 s. 149 (1).

<sup>96</sup> Equality and Human Rights Commission, *Equality and Human Rights Commission Guidance: Meeting the Equality Duty in Policy and Decision-Making: England (and Non-devolved Public Authorities in Scotland and Wales)* (2012) 14.

have significant contribution in promoting substantial equality between genders and among women because:

The Act recognises that not everyone's needs or experiences are the same and that equality does not mean always treating everybody in exactly the same way. For everyone to have an equal opportunity to achieve their full potential, they need to be free from any artificial barriers, such as prejudice or a failure to respond to the specific needs of people with different protected characteristics.<sup>97</sup>

Therefore, the SED would provide to IPA victims protection based on their individual needs that refer to the protected characteristics. This in practice could mean that BAME women will be provided with a specialised female police officer that belongs to the BAME community or with specialised training on their experiences in order to support them through the criminal justice process.

In addition, the examination of the implementation of the SED by the CJA is important because the SED can promote equality among individuals with diverse identities and to transform the social perception regarding equality. This is supported because the Equality Act had to be implemented along with the government's strategy 'The Equality Strategy-Building a Fairer Britain',<sup>98</sup> which stated:

[T]his government [is] committed to work together to tear down the barriers to social mobility and equal opportunities in Britain, and build a fairer society. No one should be held back because of who they are or their background. But, equally, no-one should be defined simply by these characteristics. We want a society where people are recognised for who they are and what they achieve, not where they are from. ... And it sets out a new role for government, moving beyond simply introducing more legislation, to promoting equality through transparency and behaviour change.<sup>99</sup>

Applying this strategy to the case of IPA means that protection of its victims with diverse identities would be promoted with the transformation of the social perception regarding the concept of equality. This transformation can be promoted to society with a strong response from the CJA towards IPA but also from the society to the CJA by promoting equality among diverse victims, so that they have equal opportunity to access the CJA.

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<sup>97</sup> Equality and Human Rights Commission, *Equality Act: Technical Guidance on the Public Sector Equality Duty: England* (2014) 16.

<sup>98</sup> HM Government, *The Equality Strategy-Building a Fairer Britain* (2010).

<sup>99</sup> *ibid* 5.

## **1.5 The Response of Social Welfare Mechanisms to Intimate Partner Abuse**

The victims' willingness to access the CJS does not only depend by the CJS response but also from social welfare mechanisms that can promote the prevention of IPA and support victims with their diverse needs. Such mechanisms are the specialist refuges, the access to justice through legal aid, and the early intervention to young people through the SRE. For this reason, Chapter 5 aims to examine the governmental response through these social welfare mechanisms to IPA victims from 1997 to 2017. During the Labour government, the specialised domestic violence refuges and early intervention to young individuals through the SRE are examined as case studies. Moreover, during the Coalition and the Conservative governments, the specialised domestic violence refuges, legal aid, and the SRE are examined. These themes have been selected because they are main contemporary issues raised by feminist activists. Therefore, the feminist contributions on these issues are examined. Legal aid will not be discussed during the Labour government because it did not constitute a main issue of the feminist agenda at that time.

## **1.6 Methodology**

The methodology of the thesis is library-based and the analysis is based on primary (governmental reports, legislation, Hansard, cases, reports, briefings, and responses to consultations from women's organisations, women's organisations' websites) and secondary sources (books, journals). The critiques on the discussed issues are developed based on the feminist criminological perspective of the intersectional gendered approach, framed in Chapter 2, and from the views of feminist theorists who contribute to the discussions with their empirical and theoretical studies. Moreover, the critiques are formed based on the views of feminist activists, which are women's organisations such as Women's Aid, Refuge, Southall Black Sisters (SBS), Against Violence & Abuse (AVA), EVAW, Fawcett Society, Imkaan, and ROW. Hence, the overall examination is based on the intersectional gendered framework and the combined views of feminist activists and theorists. Thus, the whole-system response for female IPA victims is analysed through a feminist perspective.

### **1.6.1 Women's Organisations**

The examination of policies and practice of the CJS and how victims experience them will be informed by the views of Women's Aid, Refuge, EVAW, and AVA. Women's Aid is a

national charity working to end IPA against women<sup>100</sup> and is also known as the National Women's Aid Federation. It has created a national network with nearly 40 independent refuge services, which enabled female victims of IPA to find a place of safety. Women's Aid has campaigned for new laws and policies to increase legal protection for victims and has also raised public awareness on IPA and the sexism in society that leads to IPA.<sup>101</sup>

Furthermore, Refuge is an organisation that aims to empower women to rebuild their lives free from violence through various support services, advocacy for improving the IPA policy and practice, campaigning, training and research in order to raise awareness on IPA.<sup>102</sup> The EAW is a coalition of organisations and individuals, established in 2005, that aims through campaigning and lobbying to end all forms of VAWG and to challenge the cultural attitudes that preserve VAWG.<sup>103</sup> Moreover, AVA, formed in 2010, is a national second tier organisation that aims to challenge and assist agencies and communities and to identify problems and solutions for the prevention of VAWG.<sup>104</sup> These aims are forwarded by AVA, among others, with research, survivor consultation, training, creation of policy documents, and the production of written guidance.<sup>105</sup> Therefore, these organisations have the necessary experience to contribute to the critique of the CJS and the whole-system response to IPA.

Further, ROW is an equalities organisation working to address the social inequalities that women face.<sup>106</sup> Specifically, the aim of ROW's work can be summarised:

We work to ensure that women's voices are heard at the highest levels and to bring about real change in women's access to the law and justice. We work to influence law and policy change by undertaking original research, responding to Government and other consultations, briefing Parliamentarians and building the capacity of women's and other organisations to do the same.<sup>107</sup>

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<sup>100</sup> Women's Aid, 'About Us' <<https://www.womensaid.org.uk/about-us/>> accessed 15 December 2015.

<sup>101</sup> Women's Aid, 'Our History' <<https://www.womensaid.org.uk/about-us/history/>> accessed 15 December 2015.

<sup>102</sup> Refuge, 'Who We Are' <<http://www.refuge.org.uk/who-we-are/>> accessed 15 December 2015.

<sup>103</sup> End Violence Against Women, 'About the EAW Coalition' <<http://www.endviolenceagainstwomen.org.uk/about-the-evaw-coalition>> accessed 15 December 2015.

<sup>104</sup> AVA, 'About' <<http://www.avaproject.org.uk/about.aspx>> accessed 15 December 2015.

<sup>105</sup> AVA, 'Consultancy' <<http://www.avaproject.org.uk/what-we-do/consultancy.aspx>> accessed 15 December 2015.

<sup>106</sup> Rights of Women, 'Equalities' <<http://rightsofwomen.org.uk/about-us/who-are-we/equalities/>> accessed 15 December 2015.

<sup>107</sup> Rights of Women, 'Policy and Research' <<http://rightsofwomen.org.uk/policy-and-research/>> accessed 15 December 2015.

These attempts to bring real change in women's access to law and justice can be further reinforced with the views of the Fawcett Society, which is a charity organisation promoting gender equality and women's rights through campaigning, lobbying, and research.<sup>108</sup>

Additionally, the critiques of the CJS on BAME groups can be enriched by providing the experienced views of Imkaan, which is a UK based, second tier women's organisation dedicated to addressing violence against BAME women and girls.<sup>109</sup> Imkaan provides specialist VAWG support to BAME women through its activities such as advocacy to ensure that VAWG policy and practice considers their needs, and research in order to improve service delivery.<sup>110</sup> Moreover, the SBS is an organisation established in 1979 to support Asian and African-Caribbean women through its support services and campaigning.<sup>111</sup>

These women's organisations have been selected due to their extensive lobbying, campaigning activities, and work with IPA victims. Although these organisations operate at a national and local level, the national organisations produce reports and responses to consultations, in which they present the issues that victims face nationally. The views from local organisations could provide a more specific insight to the victims' needs from each community; however, they do not produce reports and responses to consultations. For this reason, the thesis provides a critique at an English and Welsh level and it does not focus on specific communities.

Additionally, since the theme of intersectionality is central in the thesis, these organisations can provide useful insight on the issues discussed because they have experience working with victims from diverse backgrounds such as the SBS and Imkaan which specialise on BAME groups. Furthermore, they provide specialised knowledge on the issues discussed because they have worked on various issues concerning IPA. For example, the ROW focuses on legal issues while the Fawcett Society focuses on equality issues. Therefore, these organisations provide insight on diverse issues concerning IPA and have experience with victims of diverse needs.

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<sup>108</sup> Fawcett Society, 'About Us' <<https://www.fawcettsociety.org.uk/about>> accessed 15 September 2017.

<sup>109</sup> Imkaan, *State of the Sector: Contextualising the Current Experiences of BME Ending Violence against Women and Girls Organisations* (2015) 1.

<sup>110</sup> Imkaan, 'Services' <<http://imkaan.org.uk/services>> accessed on 28 March 2017.

<sup>111</sup> Gupta R, 'Recurring Themes: Southall Black Sisters, 1979-2003-and Still Going Strong' in Gupta R (ed), *From Homebreakers to Jailbreakers: Southall Black Sisters* (Zed Books 2003) 1.

## **1.7 Contribution of the Thesis**

The thesis provides a feminist criminological critique on the CJS response to IPA. Although there is extensive feminist research on IPA, the thesis will originally contribute to the literature by providing an overall critique of the CJS and the social welfare mechanisms, especially of the current developments, based on the intersectional gendered approach. This means that it identifies to what extent the CJS developments promote the protection of female victims of diverse identities and prevent IPA. Moreover, it identifies to what extent the limited power of the law has been recognised by promoting initiatives that attempt to influence the transformation of the social perception to IPA and its victims. Feminist theorists and activists have provided critiques regarding the protection of victims with diverse identities from the whole-system response and the transformation of the social perception towards IPA. However, the thesis provides original analysis because it critiques the gap between policies and practice, based on the intersectional gendered approach, which adopts a combined intersectional model, namely the asymmetric and mutual shaping intersectional model. According to this model, there is a dominant identity to be considered while the other identities are secondary. The intersectional gendered approach argues that this dominant identity in the case of IPA is gender. Moreover, the intersectional gendered approach argues that the combined intersection of the additional identities to gender should be also considered (Chapter 2). Therefore, the examination of the whole-system provides original critiques and recommendations for further improvements. Furthermore, the thesis contributes to the literature by identifying feminist theoretical and practical engagements and influences to these developments.

An example of the original critiques produced is the analysis of s. 5 of the DVCVA 2004 in Chapter 3. Generally, the literature has focused on critiquing section 5 of the DVCVA in respect of child abuse cases. Therefore, the critique of s. 5 of the DVCVA based on the intersectional gendered approach contributes to the literature by identifying its significance to IPA victims of diverse identities and the message it sends to society against IPA. An additional example of original contribution produced in Chapter 4 is the investigation of the impact of the SED on implementing the intersectional gendered approach to the CJA response. In addition, Chapters 3, 4, and 5 contribute to the literature by investigating contemporary developments based on the intersectional gendered approach. Such



developments are the coercive control offence, its implementation by the CJA, and the developments in the area of legal aid, specialist refuges, and SRE.

## **Chapter 2. Theoretical Context: A Feminist Criminological Approach on Intimate Partner Abuse**

### **2.1 Introduction**

The purpose of this chapter is to frame a theoretical feminist criminological perspective, the intersectional gendered approach. This is achieved by investigating whether, why, and how this framework constitutes an appropriate theoretical perspective to shape the CJS response to IPA in England and Wales. This theoretical approach is based primarily on the theory of intersectionality but it also combines other feminist theories that have been developed in the areas of feminist criminology, sociology, and jurisprudence.

To achieve the above purpose, the analysis is focused on feminist criminology and shows the development of main feminist theories as they were developed during the second and third waves of feminism. Since intersectionality has been developed during the third wave of feminism, it is essential to show its development and origins, as feminist theories of the second wave played a role in the formation of this theory. Moreover, it focuses on showing the need of an intersectional approach in the CJS of England and Wales and on the framing of the intersectional gendered approach that can better prevent IPA and protect female victims with diverse identities.

This chapter has a significant role in the thesis as it forms the theoretical framework, based on which the critiques of laws, policies, and practice of the CJS will occur in the following Chapters. Hence, this chapter aims to argue that the intersectional gendered approach could become the theoretical basis for the formation of the IPA crime prevention policies and practice in order to improve the CJS and social welfare system responses. This would mean forming a response adequate to address the contemporary issues that female victims with diverse identities face. This is suggested because even if a gender-neutral approach aims to equally protect all individuals, it cannot be achieved when society is structured by the patriarchal principles and views towards women that cause bias to the treatment of female victims. In other words, because the gender-neutral approach tends to become gendered-biased by applying men's standards and disregarding women's needs, female victims could be provided with more attention by the CJS in order to balance the inequality and protect them more effectively.

Since each woman has different needs, which are formed by her various identities, the response of the CJS and the social welfare system need to take an intersectional approach, according to which they will address these specific needs. These will promote substantial equal treatment among the victims that will facilitate their access to the CJS and will contribute to the transformation of the social perception. Moreover, this chapter aims to argue that although the improvement of the legal response is essential for tackling IPA, the power of law is limited; therefore, substantial improvement in the prevention will be achieved if the social perception is transformed by raising public awareness regarding IPA to society and policy-makers. This is argued because of the influential interaction that occurs among society, policies, laws, and practice.

## **2.2 Feminist Criminology**

The intersectional gendered approach is a criminological approach because it aims to examine the CJS response to IPA female victims. According to Gelsthorpe and Morris, a standard definition for feminist criminology is not possible because it is a developing concept emerging from diverse feminist perspectives. However, core elements can be identified in the feminist perspectives, as in essence they are ‘critical of stereotypical images of women, and the question of women is central.’<sup>112</sup> Moreover, Thompson stated ‘There is little common agreement about what feminism means, even to the point where positions in stark contradiction to each other are equally argued in the name of “feminism”, with little hope of resolution’.<sup>113</sup> Despite this view, Thompson, by attempting to define feminism, she stated:

From the outset, it should be obvious that feminism is a social enterprise, a moral and political framework concerned with redressing social wrongs. It is an ethical stance in that it starts from and continually returns to questions of value, of good and evil, right and wrong, of what is worthwhile and significant and what is not. Feminism is centrally concerned with judgements of what ought and what ought not to be the case, with what constitutes right action and the good life and with what operates to prevent that, with the nature of the human conditions within which we want to live and those which must be resisted because they are morally wrong.<sup>114</sup>

Bryson added that feminism includes different theoretical views that ‘involve competing arguments and assumptions about the very nature of politics, the meaning of equality, the

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<sup>112</sup> Gelsthorpe L and Morris A, ‘Feminism and Criminology in Britain’ (1988) 28 (2) *British Journal of Criminology* 93, 97.

<sup>113</sup> Thompson D, *Radical Feminism Today* (Routledge Publications 2001) 5.

<sup>114</sup> *ibid* 7.

significance of sexual difference and the possibility of social and economic change'.<sup>115</sup> Due to the existence of diverse feminist theoretical views, feminist criminology is also formed by diverse views that debate the effective response to IPA.

Despite the differences among feminist theories, Mitchell pointed that 'feminism as a conscious, that is self-conscious, protest movement, ... had equality of mankind as its highest goal. The first expressions of feminism were endowed with the strengths of the concept of equality and circumscribed by its limitations.'<sup>116</sup> Since equality between genders is a goal of feminist theories, feminist criminology can promote the equal treatment of both genders by the CJS response and provide adequate critiques.

### **2.2.1 Gender-Neutral Theories**

Feminist criminology has opposed the family violence theories as being gender-neutral. Specifically, Lawson has categorised the theories on IPA in two broad strands:

[T]heories on partner violence tend to view intimate partner violence from either a feminist perspective or a general family violence perspective. Feminist theories treat the problem of partner violence as an issue fundamentally related to gender and specifically to the patriarchal domination of men over women. Family violence theories regard partner violence as just one aspect of the larger issue of family violence....<sup>117</sup>

The family violence theories examine IPA as behaviour within the broader picture of family violence. This perspective does not focus on the issue of why women constitute the majority of victims and are high risk victims.<sup>118</sup> This observation suggests that gender should be a central issue when discussing IPA.

One of the main theoretical strands of family violence theories is the family systems theory, which provides an interpersonal perspective and explains IPA within relationship conflict.<sup>119</sup> For example, Straus argued that women can be as violent as men and that violence occurs

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<sup>115</sup> Bryson V, *Feminist Debates: Issues of Theory and Political Practice* (New York University Press 1999) 5.

<sup>116</sup> Mitchell J, 'Women and Equality' in Phillips A (ed), *Feminism and Equality* (Blackwell 1987) 31.

<sup>117</sup> Lawson J, 'Sociological Theories of Intimate Partner Violence' (2012) 22 (5) *Journal of Human Behavior in the Social Environment* 572, 573.

<sup>118</sup> See Office for National Statistics, *Domestic Abuse, Sexual Assault and Stalking* (2017) 9; HMIC, *Increasingly Everyone's Business: A Progress Report on the Police Response to Domestic Abuse* (2015) 31.

<sup>119</sup> See Murray E C, 'Controversy, Constraints, and Context: Understanding Family Violence Through Family Systems Theory' (2006) 14 (3) *The Family Journal: Counseling and Therapy for Couples and Families* 234, 234-235.

due to conflict between partners.<sup>120</sup> Moreover, Straus and Maynard argued that IPA does not have a single cause but there are different factors that can lead to its causation such as poverty, stress, mental illness or psychopathology, being raised in a violent familial environment, and alcohol/drugs.<sup>121</sup> Since the systems theory is a multi-factorial approach to IPA, gender has been recognised as one of the factors that can lead to its causation. Specifically, Kalmuss and Straus identified that men's tendency for domination and women's dependency on their partners can lead to IPA.<sup>122</sup> Furthermore, Cho and Wilke claimed that male victims of IPA are victimised far less and receive fewer injuries than female victims.<sup>123</sup>

An additional main theoretical approach of the family violence theories is the social learning theories. According to Anderson and Kras, IPA is manifested to adults due to their early exposure to violence within the familial environment. This means that when children are exposed to persistent violence, which is manifested for the purpose of resolving conflict, they may adopt as adults this conflict resolution tactic in order to respond to similar situations.<sup>124</sup> Moreover, Mihalic and Elliott argued that violence is transmitted intergenerationally, namely male and female perpetrators exposed to violence by witnessing or experiencing violence during their childhood and adolescence can adopt this behaviour as adults.<sup>125</sup> The social learning model has been expanded by an ecological theoretical perspective on the causation of IPA, provided by Dutton, who argued a multi-factorial causation of IPA. Particularly, the manifestation of IPA can result from the combination of different factors such as a male with a need to dominate women and having violent role models and at the same time experiencing stress in his relationship and employment.<sup>126</sup> Although this theory considers gender as a

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<sup>120</sup> Straus M, 'Measuring Intrafamily Conflict and Violence: The Conflict Tactics (CT) Scale' (1979) 41 (1) *Journal of Marriage and the Family* 75, 77-85.

<sup>121</sup> Straus J R and Maynard E P, 'A Structural Family Systems Approach to Intervention in Cases of Family Violence' (1987) 36 (3) *Family Relations* 270, 270.

<sup>122</sup> Kalmuss D and Straus M, 'Wife's Marital Dependency and Wife Abuse' (1982) 44 (2) *Journal of Marriage and the Family* 277, 278.

<sup>123</sup> Cho H and Wilke D J, 'Gender Differences in the Nature of Intimate Partner Violence and Effects of Perpetrator Arrest on Revictimization' (2010) 25 *Journal of Family Violence* 393, 399.

<sup>124</sup> Anderson F J and Kras K, 'Revisiting Albert Bandura's Social Learning Theory to Better Understand and Assist Victims of Intimate Personal Violence' (2007) 17 (1) *Women & Criminal Justice* 99, 121; see also Sellersa S C, Cochran K J and Branch A K, 'Social Learning Theory and Partner Violence: A Research Note' (2005) 26 (4) *Deviant Behaviour* 379, 391-393.

<sup>125</sup> Mihalic W S and Elliott D, 'A Social Learning Theory Model of Marital Violence' (1997) 12 (1) *Journal of Family Violence* 21, 28.

<sup>126</sup> Dutton D, *Rethinking Domestic Violence* (UBC Press 2006) 21; see also Bevan E and Higgins J D, 'Is Domestic Violence Learned? The Contribution of Five Forms of Child Maltreatment to Men's Violence and Adjustment' (2002) 17 *Journal of Family Violence* 223, 241.

factor that can cause IPA, it does not recognise it as the cause or even the main cause of IPA. These theories are gender-neutral because gender inequality is not central in their views. The reason for this is that these gender-neutral theories support the gender symmetry, namely that women can equally commit IPA crimes as men.<sup>127</sup>

### **2.2.2 The Gendered Nature of IPA**

Feminist criminology challenged the above gender-neutral criminological theories on IPA because as Naffine argued, the dominating social group, namely men, does not exercise its power only through violent acts, political and economic control, but also by controlling knowledge. However, the control of knowledge from men could be limited if women belonging to different social groups were able to significantly contribute to criminology depending on their experiences.<sup>128</sup> Therefore, as Smart argued, feminism contributes to criminology by challenging its objectivity.<sup>129</sup>

Feminist theorists have argued that IPA is asymmetrical since men are more likely to use violence against their female partners,<sup>130</sup> and for this reason they promoted the gender inequality approach, according to which gender is the cause of IPA.<sup>131</sup> IPA is a result of gender inequality that the patriarchal structures of the state promote in the gender relations.<sup>132</sup> Patriarchy is a sex/gender system, in which women are dominated by men; and for this reason, what is considered masculine is more appreciated than what is considered feminine. Moreover, it is a system of social stratification, which means that it uses a wide array of

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<sup>127</sup> Allen M, 'Is There Gender Symmetry in Intimate Partner Violence?' (2011) 16 (3) *Child and Family Social Work* 245, 251; Chan L K, 'Gender Differences in Self-reports of Intimate Partner Violence: A Review' (2011) 16 (2) *Aggression and Violent Behavior* 167, 174; Straus A M, 'Thirty Years of Denying the Evidence on Gender Symmetry in Partner Violence: Implications for Prevention and Treatment' (2010) 1 (3) *Partner Abuse* 332, 337; Kar H, O'Leary L and Daniel K, 'Gender Symmetry or Asymmetry in Intimate Partner Victimization? Not an Either/Or Answer' (2010) 1 (2) *Partner Abuse* 152, 163.

<sup>128</sup> Naffine N, *Feminism & Criminology* (Blackwell 1997) 62.

<sup>129</sup> Smart C, *Law, Crime and Sexuality: Essays in Feminism* (2nd edn, Sage 1999) 41.

<sup>130</sup> Saunders G D, 'Are Physical Assaults by Wives and Girlfriends a Major Social Problem? A Review of the Literature' (2002) 8 (12) 1424, 1427; Johnson M P, 'Patriarchal Terrorism and Common Couple Violence: Two Forms of Violence against Women' (1995) 57 *Journal of Marriage and the Family* 283, 288-289; Yllo K A, 'Through a Feminist Lens: Gender, Power, and Violence' in Gelles R J and Loseke D R (eds), *Current Controversies on Family Violence* (Sage 1993) 47; Stark E, 'Commentary on Johnson's "Conflict and Control: Gender Symmetry and Asymmetry in Domestic Violence"' (2006) 12 (11) *Violence Against Women* 1019, 1024.

<sup>131</sup> see Umberson D, Anderson K L, Williams K and Chen M D, 'Relationship Dynamics, Emotion State, and Domestic Violence: A Stress and Masculinities Perspective' (2004) 65 (1) *Journal of Marriage and Family* 233, 234.

<sup>132</sup> Connell W R, 'The State, Gender, and Sexual Politics: Theory and Appraisal' (1990) 19 (5) *Theory and Society* 507, 527.

social control policies and practices to ratify male power and to keep females subordinate to males.<sup>133</sup> According to Lerner,

Patriarchy...means the manifestation and institutionalization of male dominance over women and children in the family and the extension of male dominance over women in society in general. It implies that men hold power in all the important institutions of society and that women are deprived of access to such power. It does not imply that women are either totally powerless or totally deprived of rights, influence, and resources.<sup>134</sup>

This institutionalisation of male dominance through patriarchy can be identified according to Ogle and Batton in social institutions of both the private/micro and public/macro levels such as the economy, politics, education, family, media, and the CJS.<sup>135</sup> Similarly, Hunnicutt argued for the institutionalisation of patriarchy through the government and the law.<sup>136</sup>

This inequality approach has been argued by feminist scholars who have asserted that male violence is caused by gender inequality in the formation of the family as a place of male dominance and control.<sup>137</sup> In particular, Harris claimed that law-abiding and peaceful men might commit violent criminal acts in private settings when women fail to submit to their patriarchal authority or threaten to leave them. This occurs because in such a situation a man can feel threatened of losing his masculinity, which can lead him into acting violently.<sup>138</sup> This view has been also supported by Dobash R E and Dobash R who argued that men batter women in an attempt to maintain their male dominance.<sup>139</sup> The male dominance of men over women is exercised based on a pattern of power and control because as Stark argued: 'men have devised coercive control to offset the erosion of sex-based privilege in the face of women's gains, filling the void created as institutional support for male domination is

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<sup>133</sup> Renzetti C and Curran D J, *Women, Men and Society* (Allyn & Bacon 1999) 3.

<sup>134</sup> Lerner G, *The Creation of Patriarchy* (Oxford University Press 1986) 239.

<sup>135</sup> Ogle S R and Batton C, 'Revisiting Patriarchy: Its Conceptualization and Operationalization in Criminology' (2009) 17 (3) *Critical Criminology* 159, 175.

<sup>136</sup> Hunnicutt G, 'Varieties of Patriarchy and Violence Against Women Resurrecting "Patriarchy" as a Theoretical Tool' (2009) 15 (5) *Violence Against Women* 553, 557.

<sup>137</sup> Dobash R E and Dobash R P, 'Violent Men and Violent Contexts' in Dobash R E and Dobash R P (eds), *Rethinking Violence Against Women* (Sage 1998) 141-168; see also, Yllo K, 'Through a Feminist Lens: Gender, Power, and Violence' in Gelles R J and Loseke D L (eds), *Current Controversies on Family Violence* (Sage 1993) 47-62; Stark E and Flitcraft A H, 'Spouse Abuse' in Rosenberg M L and Finley M A (eds), *Violence in America: A Public Health Approach* (Oxford University Press 1991) 123-157.

<sup>138</sup> Harris A P, 'Gender, Violence, Race, and Criminal Justice Prosecuting Violence: A Colloquy on Race, Community, and Justice' (2000) 52 *Stanford Law Review* 777, 789.

<sup>139</sup> Dobash R E and Dobash R P, 'Wives: The "Appropriate" Victims of Marital Violence' (1978) 2 *Victimology* 426, 438-439.

disassembled by installing patriarchal-like controls in personal life.’<sup>140</sup> Therefore, gender inequality is the cause of coercive control manifested in an intimate relationship.

A gender-neutral approach cannot be efficient in the case of IPA because as Davies asserted, asking the ‘woman question’ identified that women are victimised ‘almost exclusively from some forms of victimisation and disproportionately from others’.<sup>141</sup> As the statistics illustrated, women constitute the majority of IPA victims.<sup>142</sup> Therefore, since IPA victimisation has demonstrated a gendered pattern of risk, fear, and victimisation, the response against women’s victimisation cannot be addressed efficiently with a gender-neutral approach.<sup>143</sup> The importance of gender is also supported by Walkate, who argued that the response of women to victimisation depends on their rationality that is influenced by their gender features. For example, women do not consider as rational an act or behaviour in the same way that men do.<sup>144</sup> Lees has remarked on this issue that ‘It appears that there are different conceptions of rationality, which may be determined partly by the social and gendered background and experiences of individuals as well as the really different possibilities which exist between men and women.’<sup>145</sup> Thus, introducing women’s perspectives in the formation of the IPA crime prevention policies can contribute to the prevention of their victimisation.

Despite the importance of recognising gender inequality as the cause of IPA, one could argue that it is not the cause of all types of IPA. On this point, Johnson argued that IPA is categorised in four types: intimate terrorism, which involves the exercise of coercive control through a pattern of power and control and not a single incident; violent resistance, which is a violent incident, but not controlling, of an individual that reacts to intimate terrorism; situational couple violence, which is situationally provoked due to tensions or emotions and not to gain general control; and mutual violent control, which is when both partners are

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<sup>140</sup> Stark E, *Coercive Control: How Men Entrap Women in Personal Life* (Oxford University Press 2007) 172; see also Stark E, ‘Rethinking Coercive Control’ (2009) *Violence against Women* 1, 3; Horley S, *Power and Control: Why Charming Men Can Make Dangerous Lovers* (2nd edn, Vermilion 2000) 18-19.

<sup>141</sup> Davies P, ‘Lessons from the Gender Agenda’ in Walkate S (ed), *Handbook of Victims and Victimology* (Willan Publishing 2007) 182.

<sup>142</sup> Office for National Statistics, *Domestic Abuse, Sexual Assault and Stalking* (2017) 9.

<sup>143</sup> See Davies P, ‘Lessons from the Gender Agenda’ in Walkate S (ed), *Handbook of Victims and Victimology* (Willan Publishing 2007) 182.

<sup>144</sup> Walkate S, *Gender and Crime* (Harvester Wheatsheaf 1995) 63.

<sup>145</sup> Lees S, *Ruling Passion: Sexual Violence, Reputation and the Law* (Sage 1997) 139.



violently controlling.<sup>146</sup> From these types, the violent resistance and the situational couple violence are committed through single incidents while the intimate terrorism and the mutual violent control are manifested through a pattern of power and control. For this reason, gender-neutral theories cannot address the coercive control manifested in the types of intimate terrorism and mutual violent control. This is also demonstrated by Graham-Kevan and Archer who tested Johnson's typology in heterosexual relationships and reported that intimate terrorism is primarily committed by men (87%), violent resistance is conducted mainly by women (90%), and situational couple violence is almost symmetric (45% males and 55% females).<sup>147</sup>

These findings suggest that in heterosexual relationships coercive control is mainly perpetrated by men. This is observed not only from the high rate indicated for intimate terrorism but also from the high rate of violent resistance, in which women respond violently to prior experienced IPA. Due to the fact that the violent resistance type is committed as a reaction to coercive control, it is argued that gender inequality is the cause of this type as well. Moreover, the fact that women constitute the majority of IPA victims suggests that the gender of the victims has a central role in the commission of these crimes. For these reasons, gender inequality is the cause of IPA when occurring in heterosexual relationships in the intimate terrorism, the violent resistance, and the mutual violent control types.

### **2.2.3 Female Offenders**

As the study of Graham-Kevan and Archer identified, women commit the type of intimate terrorism against male partners.<sup>148</sup> Moreover, IPA is also manifested in same sex relationships through incidents and the coercive pattern of abuse.<sup>149</sup> For this reason, Baker and others wondered whether IPA is a gender-based crime due to the fact that it occurs in same sex intimate partners. Specifically, they stated:

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<sup>146</sup> Johnson M P, *A Typology of Domestic Violence: Intimate Terrorism, Violent Resistance, and Situational Couple Violence* (Northeastern University Press 2008) 7-9.

<sup>147</sup> Graham-Kevan N, Archer J and Graham-Kevan N, 'Intimate Terrorism and Common Couple Violence: A Test of Johnson's Predictions in Four British Samples' (2003) 18 (11) *Journal of Interpersonal Violence* 1247, 1255.

<sup>148</sup> *ibid*

<sup>149</sup> See Hester M and Donovan C, 'Researching Domestic Violence in Same-Sex Relationships-A Feminist Epistemological Approach to Survey Development' (2009) 13 (2) *Journal of Lesbian Studies* 161, 170-171; Donovan C, Barnes R and Nixon C, 'The Coral Project: Exploring Abusive Behaviours in Lesbian, Gay, Bisexual and/or Transgender Relationships' (2014) 41-42; Frankland A and Brown J, 'Coercive Control in Same-Sex Intimate Partner Violence' (2013) 29 (1) *Journal of Family Violence* 15, 20-21.

Viewing IPV [Intimate Partner Violence] through a same-sex lens removes gender-based assumptions about the manifestations of IPV, enabling us to see how other cultural and systemic factors may contribute to IPV. At the same time, incorporating the experience of same-sex couples facilitates viewing gender as a marker for variables requiring further study rather than as an explanation. When we change our focus of IPV in such a way, we discover it is a function of a complex interaction of culture, social structures, social status, and interpersonal dynamics.<sup>150</sup>

Since IPA occurs in same sex relationships and female violence against their male partners, this seems to oppose the argument that IPA is a gender crime.

However, such occurrences do not weaken the feminist arguments of the gendered nature of IPA because of the conceptual distinction of the terms 'sex' and 'gender' derived by the post-structuralist feminist theorists that analysed the social construction of gender. These theorists attempted to reconstruct the concept of gender. Specifically, West and Zimmerman defined that

Sex is a determination made through the application of socially agreed upon biological criteria for classifying persons as females or males.... Gender, in contrast, is the activity of managing situated conduct in light of normative conceptions of attitudes and activities appropriate for one's sex category.<sup>151</sup>

Hence, this definition suggests that gender promotes roles between men and women. This idea of gender roles was promoted by Butler, according to whom the gender of an individual is determined by her actions, namely by repeatedly engaging in 'feminising' and 'masculinising' acts.<sup>152</sup>

According to this view, stereotyped social expectations are created based on the gender of an individual. This causes power relationships between genders, as the patriarchal social structures promote the dominating position of men over women in their gender roles' expectations. This view is in agreement with Scott, who defined that 'gender is a constitutive element of social relationships based on perceived differences between the sexes, and gender

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<sup>150</sup> Baker N L, Buick J D, Kim S R, Moniz S and Nava K L, 'Lessons from Examining Same-Sex Intimate Partner Violence' (2013) 69 *Sex Roles* 182, 182.

<sup>151</sup> West C and Zimmerman H D, 'Doing Gender' (1987) 1 (2) *Gender & Society* 125, 127; see also Foster J, 'An Invitation to Dialogue: Clarifying the Position of Feminist Gender Theory in Relation to Sexual Difference Theory' (1999) 13 (4) *Gender & Society* 431, 433; Smart C, *Law, Crime and Sexuality: Essays in Feminism* (Sage 1995) 100-101.

<sup>152</sup> Butler J, *Gender Trouble* (2nd edn, Routledge 1999) 179; see also on the topic of sex and gender Butler J, *Gender Trouble: Feminism and the Subversion of Identity* (6th edn, Routledge 2010) 10-12.

is a primary way of signifying relationships of power'.<sup>153</sup> The adoption of an inferior social role from women can be explained by the traditional gender role stereotyping, which has portrayed women as being nonviolent, caretaking, and nurturing.<sup>154</sup> A social expectation of women's passive reaction towards violence can be identified in Goodey's comment that 'feminist research has done much to recast women outside the stereotype of passive victims of male aggression'.<sup>155</sup> Therefore, the intimate terrorism type of IPA is committed by men who adopt the dominating role while women who become victims assume the socially expected role of passivity, nurturing, and caretaking.

However, not all men are violent and abusive towards their partners. This means that not all men assume a domineering social role. On this point, Connell argued that men who become abusive assume the role of hegemonic masculinity, which is 'the configuration of gender practice which embodies the currently accepted answer to the problem of the legitimacy of patriarchy'.<sup>156</sup> On the other hand, women who become victims have assumed the type of emphasised femininity which reflects the type of women who comply with patriarchy.<sup>157</sup> Connell's views were theorised by Schippers from a feminist perspective, as she substituted the term of emphasised femininity with hegemonic femininity and she applied the concept of hegemonic masculinity to women by creating the concept of pariah femininities.<sup>158</sup> This term refers to practices that

[C]ontradict or deviate from practices defined as feminine, threaten men's exclusive possession of hegemonic masculine characteristics, and most importantly, constitute a refusal to embody the relationship between masculinity and femininity demanded by gender hegemony. ... Although pariah femininities are actually the quality content of hegemonic masculinity enacted by women, they are necessarily and compulsively constructed as feminine when enacted by women; they are not masculine.<sup>159</sup>

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<sup>153</sup> Scott J, 'Gender: A Useful Category of Historical Analysis' (1986) 91 *American Historical Review* 1053, 1067.

<sup>154</sup> Gilbert P, 'Discourses of Female Violence and Societal Gender Stereotypes' (2002) 8 *Violence Against Women* 1271, 1287; Girshick L, 'No Sugar, No Spice: Reflections on Woman-to-Woman Sexual Violence' (2002) 8 *Violence Against Women* 1500, 1502.

<sup>155</sup> Goodey J, *Victims and Victimology: Research, Policy and Practice* (Longman 2005) 83.

<sup>156</sup> Connell R W, *Masculinities* (University of California Press 1995) 77.

<sup>157</sup> See Connell R W and Messerschmidt W J, 'Hegemonic Masculinity: Rethinking the Concept' (2005) 19 (6) *Gender & Society* 829, 848.

<sup>158</sup> Schippers M, 'Recovering the Feminine Other: Masculinity, Femininity, and Gender Hegemony' (2007) 36 (1) *Theory and Society* 85, 94-95.

<sup>159</sup> *ibid*

Therefore, gender inequality is the cause of IPA crimes manifested through coercive control, even if committed by women in any type of relationships. IPA through coercive control is perpetrated from women against men or women when the female perpetrators adopt the pariah femininity role and enact an abusive behaviour to their partner in order to control him/her. In this case, the male victim adopts the role of pariah masculinity, as he deviates from practices identified as masculine, while the female victim adopts the role of emphasised femininity. In the case of mutual violent control where both partners are controlling with each other, these are cases where the partners have assumed respectively the roles of hegemonic masculinity and pariah femininity in heterosexual relationships. Moreover, in same sex relationships both female partners have assumed the role of pariah femininity, and for this reason, they become controlling to each other. Similarly, in male same sex relationships the abusive partner adopts the hegemonic masculinity role while the victim adopts the pariah masculinity role. Furthermore, when both male partners engage in mutual violent control, they both adopt the role of hegemonic masculinity.

This stereotyping in the case of IPA can impact victims, as their gender causes expectations of how they behave in their relationships and how they react to the abuse. For this reason, since these roles are promoted by the patriarchal structure, then IPA could be socially prevented if these behaviours were discouraged in society. According to Deutsch,

Gender must be continually socially reconstructed in light of “normative conceptions” of men and women. People act with the awareness that they will be judged according to what is deemed appropriate feminine or masculine behavior. These normative conceptions of men and women vary across time, ethnic group, and social situation, but the opportunity to behave as manly men or womanly women is ubiquitous. Thus, gender is an ongoing emergent aspect of social interaction.<sup>160</sup>

This view argued that individuals perform gender by what is socially perceived as masculine or feminine behaviour. Thus, female IPA victims are victimised because of the social expectation of women to behave in a certain way. Since feminine passivity and aggressiveness are adopted behaviours, then the occurrence of IPA from female perpetrators in same sex and heterosexual relationships need to be socially challenged.

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<sup>160</sup> Deutsch M F, ‘UnDoing Gender’ (2007) 21 (1) Gender & Society 106, 106-107.

## 2.3 Historical Background of Feminist Criminology

The above discussion argued that IPA is a gender crime; for this reason, the analysis in this section focuses on a brief presentation of the historical background of feminist criminology in order to show the theoretical evolution of intersectionality.

### 2.3.1 *Second Wave of Feminism*

Traditionally, feminism has been divided in three waves. According to Gillis and others, the first wave started in the nineteenth century with the women's movement, whose purpose was to oppose women's general exclusion from political, social, and economic life. The second wave of feminism was developed in the 1960s and 1970s and focused its attention to women's legal and political issues such as reproduction, sexual violence, sexuality, and domestic labour. The third wave of feminism was developed after the 1970s as a response to the issues raised regarding women's collective and unified identity.<sup>161</sup>

Feminist criminology has been a product of the second wave of feminism.<sup>162</sup> For this reason, the analysis starts from the development of feminist theories during this era. In the 1960s, the Women's Liberation Movement (WLM) emerged, which marked a new era in women's movement. The WLM aimed to achieve women's equality with men and transform the patriarchal social structures that were identified as the cause of women's subjugation.<sup>163</sup> A main concern of the WLM during this era was IPA and aimed to provide support of female victims through the creation of refuges.<sup>164</sup>

Feminist criminological theories of the second wave have been characterised as 'essentialist' because they treat women as a social group sharing one essence, namely their female gender.<sup>165</sup> As Mohanty stated, women belong to 'an already constituted, coherent group with

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<sup>161</sup> Gillis S, Howie G and Munford R, 'Introduction' in Gillis S, Howie G and Munford R (eds), *Third Wave Feminism: A Critical Exploration* (Palgrave MacMillan 2004) 1.

<sup>162</sup> Daly K and Chesney-Lind M, 'Feminism and Criminology' (1988) 5 (4) *Justice Quarterly* 497, 505-508.

<sup>163</sup> Smith H L, 'The Women's Movement, Politics and Citizenship, 1960s-2000' in Zweiniger-Bargielowska I (ed), *Women in Twentieth-Century Britain* (Pearson Education Limited 2001) 278.

<sup>164</sup> HC Deb 13 February 1976 vol 905 col 857; see also, Dobash E R and Dobash R P, 'The Politics and Policies of Responding to Violence against Women' in Hanmer J and Itzin C (eds), *Home Truths about Domestic Violence* (Routledge 2000) 199; Borkowski M, Murch M and Walker V, *Marital Violence: The Community Response* (Tavistock Publications Ltd 1983) 4; Gelb J, *Feminism and Politics: A Comparative Perspective* (University of California Press 1990) 119.

<sup>165</sup> Taylor J M, Gilligan C and Sullivan M A, *Between Voice and Silence: Women and Girls, Race and Relationship* (Harvard University Press 1995) 7.

identical interests and desires, regardless of class, ethnic or racial location'.<sup>166</sup> During the second wave of feminism, gender became an essential variable that explained power and control.<sup>167</sup> Due to this power and control that men exercised over women, women become victims of IPA due to their gender essence. Such an essentialist theory was the socialist feminist theory. According to Burgess-Proctor, socialist feminists gave importance to the individuals' class, which was a variable that was disregarded by the majority of feminist strains.<sup>168</sup> Socialist feminism does not focus on class or gender inequality but it focuses on how these two inequalities, caused by capitalism and patriarchy, jointly affect the victimisation of genders and the CJS response to them.<sup>169</sup> For example, Messerschmidt argued that the gendered division of labour at home and the workplace determines the types of crimes men commit.<sup>170</sup> Based on this approach, IPA is caused due to gender inequality that results from women's unequal participation in production.

An additional example of essentialist feminist theory is radical feminism, according to which IPA can be attributed to women's oppression due to patriarchy. According to Radford, 'Radical feminism offers a systematic analysis of the nature of women's oppression; including the ways it is sustained through law and criminal justice processes. Its aim is<sup>171</sup> not only to understand male dominance and control of women...but also to end it.'<sup>172</sup> For example, Dobash and Dobash supported the view of IPA being a result of patriarchy by arguing that IPA is caused when men exercise their authority over their partners in order to maintain their power.<sup>173</sup> For this reason, Kelly argued that IPA needs to be brought to the public attention in order to support victims.<sup>174</sup> Weedon pointed that radical feminists presumed the existence of 'an identifiable, bounded subject, woman, who is oppressed and

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<sup>166</sup> Mohanty T, 'Under Western Eyes: Feminist Scholarship and Colonial Discourses' in Mohanty C, Russo A and Torres L (eds), *Third World Women and the Politics of Feminism* (Indiana University Press 1991) 55.

<sup>167</sup> Hoyle C, 'Feminism, Victimology and Domestic Violence' in Walklate S (ed), *Handbook of Victims and Victimology* (Willan Publishing 2007) 152.

<sup>168</sup> Burgess-Proctor A, 'Intersections of Race, Class, Gender and Crime' (2006) 1 (1) *Feminist Criminology* 27, 28.

<sup>169</sup> Renzetti M C, *Feminist Criminology* (Routledge 2013) 42; see also Mies M, *Patriarchy and Accumulation on a World Scale* (2<sup>nd</sup> edn, Zed Books Ltd 1998) 38.

<sup>170</sup> Messerschmidt W J, *Capitalism, Patriarchy, and Crime: Toward a Socialist Feminist Criminology* (Rowman and Littlefield 1986) 157.

<sup>171</sup> Longino H E, 'Feminist Standpoint Theory and the Problems of Knowledge' (1993) 19 (1) *Signs* 201, 201.

<sup>172</sup> Radford J, 'Radical Feminism' in McLaughlin E and Munchie J (eds), *The Sage Dictionary of Criminology* (Sage 2001) 232.

<sup>173</sup> Dobash R E and Dobash R P, 'Violent Men and Violent Contexts' in Dobash R E and Dobash R P (eds), *Rethinking Violence Against Women* (Sage 1998) 153.

<sup>174</sup> Kelly A K, *Domestic Violence and the Politics to Privacy* (Cornell University Press 2003) 11.

who is fighting for liberation from this oppression'.<sup>175</sup> This oppressive reality that was common to many women led them to realise that their inferior position was not a result of 'their personal inadequacies and failings but to the social relations within which they lived'.<sup>176</sup> Hence, IPA victims could be empowered if IPA becomes a public issue and does not remain in the private sphere because it is a political matter caused from patriarchy.<sup>177</sup>

Although the idea that women were united in their struggle against their oppression was the main motivation of the emergence of the WLM, this approach started to change at the end of the 1970s due to women's acknowledgement of the differences existing among them.<sup>178</sup> According to Mohanty, this acknowledgement was instigated by debates concerning women's sexuality, race and ethnicity. These debates were caused because the WLM were based on a specific female identity, that of white, middle-class, young, highly educated, and heterosexual. Thus, the WLM goals were focused in improving the rights of women that belonged in this social category, excluding other types of women.<sup>179</sup>

### **2.3.2 Third Wave of Feminism**

Due to the exclusion of diverse types of women from feminist thought, feminists became increasingly aware that the existing scholarship left out not only women's voices but also the voices of many social groups.<sup>180</sup> As a result, the essentialist second wave theoretical approach of feminists was challenged by third wave feminists for assuming that women are a homogenous group that has common experiences and interests.<sup>181</sup> For this reason, third wave theories are characterised as 'anti-essentialist' because they opposed the idea of one essence

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<sup>175</sup> Weedon C, *Feminist Practice and Poststructuralist Theory* (Blackwell 1997) 21.

<sup>176</sup> Charles N, 'Feminist Practices: Identity Difference, Power' in Charles N and Hughes-Freeland F (eds), *Practising Feminism: Identity, Difference, Power* (2nd edn, Taylor & Francis 2003) 6.

<sup>177</sup> See Kelly A K, *Domestic Violence and the Politics of Privacy* (Cornell University Press 2003) 56; this view evolved from the public/private divide of the liberal feminist theory, developed during the first wave of feminism, pointing that women's role in society was restricted to the limits of the privacy of the home and the family and excluded from participating in the public sphere. Liberal feminists accepted this division of the public from the private sphere of life as valuable; however, they asserted that men and women should be equal in both spheres. On this issue see Wright S, 'Patriarchal Feminism and the Law of the Father' (1993) 1 *Feminist Legal Studies* 115; Pateman C, *The Disorder of Women* (Polity Press 1989) 120.

<sup>178</sup> Charles N, 'Feminist Practices: Identity Difference, Power' in Charles N and Hughes-Freeland F (eds), *Practising Feminism: Identity, Difference, Power* (2nd edn, Taylor & Francis 2003) 2.

<sup>179</sup> Mohanty C H, 'Feminist Encounters: Locating the Politics of Experience' in Barnett M and Phillips A (eds), *Destabilising Theory: Contemporary Feminist Debates* (Polity Press 1992) 74.

<sup>180</sup> Nicholson J L, 'Introduction' in Nicholson J L (ed), *Feminism/Postmodernism* (Routledge 1990) 1.

<sup>181</sup> See Hebert L A, 'Taking "Difference" Seriously: Feminisms and the "Man Question"' (2007) 16 (1) *Journal of Gender Studies* 31, 33.

and supported the idea of differences existing among women.<sup>182</sup> As IPA victims come from diverse social backgrounds,<sup>183</sup> the essentialist theoretical approach cannot represent the experiences of diverse IPA victims. Due to these differences among victims, additional movements to the WLM were developed such as the socialist national black women's organisation of Women of African and Asian Descent, the SBS,<sup>184</sup> and the Newham Asian Women's Project.<sup>185</sup>

As a result of this criticism, feminist criminology on IPA victimisation has evolved due to its influence from the third wave of feminism. In fact, Dean critiqued that the third wave of feminism caused a shift in the arguments presented by the second wave of feminism due to its involvement with the post/anti-feminist discussions.<sup>186</sup> Postfeminism is the 'conceptual shift within feminism from debates around equality to a focus on debates around difference'.<sup>187</sup> According to Yeatman, postfeminism characterises a body of theory and politics that represents pluralism and difference and reflects its relation with other philosophical and political movements.<sup>188</sup>

Such movement that influenced the feminist criminological thought on IPA was postmodernism regarding its views on womanhood and subjectivity.<sup>189</sup> According to Westmarland, postmodern feminism is 'A strand of feminism informed by post-modernism,...which rejects the notion of essentialist "woman" arguing the term is culturally constructed in relation and opposition to "man" and can be constructed and deconstructed due to its fluidity'.<sup>190</sup> Walby pointed that postmodern feminism was criticised as anti-feminist because it opposed the common opinion of the feminist theories that women shared a unified

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<sup>182</sup> Taylor J M, Gilligan C and Sullivan M A, *Between Voice and Silence: Women and Girls, Race and Relationship* (Harvard University Press 1995) 7.

<sup>183</sup> See Walby S and Allen J, 'Domestic Violence, Sexual Assault and Stalking: Findings from the British Crime Survey' (2004) 73-88.

<sup>184</sup> Storry M, 'Black Women's Movement' in Childs P and Storry M (eds), *Encyclopedia of Contemporary British Culture* (2nd edn, Routledge 2002) 66.

<sup>185</sup> Gill A and Rehman G, 'Empowerment through Activism: Responding to Domestic Violence in the South Asian Community in London' in Sweetman C (ed), *Gender, Development, and Diversity* (Oxfam 2004) 75-76.

<sup>186</sup> Dean J, 'Who is Afraid of Third Wave Feminism?' (2009) 11 (3) *International Feminist Journal of Politics* 334, 347.

<sup>187</sup> Brooks A, *Postfeminisms: Feminism, Cultural Theory and Cultural Forms* (Routledge 1997) 4.

<sup>188</sup> Yeatman A, *Postmodern Revisionings of the Political* (Routledge 1994) 49.

<sup>189</sup> See Dicker R and Peipmeier A, 'Introduction' in Dicker R and Peipmeier A (eds), *Catching a Wave: Reclaiming Feminism for the 21<sup>st</sup> Century* (Northwestern University Press 2003) 14.

<sup>190</sup> Westmarland L, 'Post-Modern Feminism' in McLaughlin E and Munchie J (eds), *The Sage Dictionary of Criminology* (Sage 2001) 215.



identity.<sup>191</sup> Moreover, Thornton characterised postmodern feminism as different from other feminist theories because it denies universality and objectivity.<sup>192</sup> This challenge of universality and objectivity can be identified in the postmodern discourse of ‘deconstruction’, namely that they seek to question beliefs concerning truth, knowledge, power, the self, and language.<sup>193</sup>

Deconstruction was argued by post-structural feminism, which attempted to attack and ‘deconstruct’ the ‘concept of the subject as having an essential identity and an authentic core that has been repressed by society’.<sup>194</sup> This post-structuralist view on deconstruction is beneficial for IPA victims as it addresses the differences among women. An example of feminist theory that promoted deconstruction was the Black feminist theory. This theory was developed in the early 1980s and challenged ‘white’ feminism arguing that it excluded from its theories the different experiences of women caused by their ethnicity and race.<sup>195</sup> The experiences of BAME women needed to contribute to the formation of feminist literature because as Bell Hooks noted that ‘living as we did-on the edge-we developed a particular way of seeing reality. We looked both from the outside and in from the inside out ... we understood both’.<sup>196</sup> Moreover, Patricia Collins, a black feminist theorist, argued:

Black women possess a unique standpoint on, or perspective of, their experiences and that there will be certain commonalities of perception shared by Black women as a group.....[W]hile living life as Black women may produce certain commonalities of outlook, the diversity of class, region, age, and sexual orientation shaping individual Black women's lives has resulted in different expressions of these common themes. Thus, universal themes included in the Black women's standpoint may be experienced and expressed differently by distinct groups of Afro-American women.<sup>197</sup>

This view deconstructs the idea that women have only one essence, namely their female gender. In the case of IPA, this means that Black women experience this victimisation differently based on the combination of additional identities such as class, age, and sexual

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<sup>191</sup> Walby S, *Theorizing Patriarchy* (Blackwell 1990) 16.

<sup>192</sup> Thornton M, ‘The Development of Feminist Jurisprudence’ (1998) 9 *Legal Educ. Rev.* 171, 178.

<sup>193</sup> Flax J, ‘Postmodernism and Gender Relations in Feminist Theory’ (1987) 12 (4) *Signs* 621, 624.

<sup>194</sup> Alcoff L, ‘Cultural Feminism versus Post-Structuralism: The Identity Crisis in Feminist Theory’ (1988) 13 (3) *Signs* 405, 415.

<sup>195</sup> Riley D, *Am I That Name? Feminism and the Category of ‘Women’ in History* (Macmillan 1988) 1-2.

<sup>196</sup> Hooks B, *Feminist Theory: From Margin to Center* (Sound End Press 1984) vii.

<sup>197</sup> Collins P, ‘Learning from the Outsider Within: The Sociological Significance of Black Feminist Thought’ (1986) 33 (6) *Social Problems* S14, S16.

orientation. Hence, Black feminist thought promoted the idea of the intersection of diverse identities causing different experiences of discrimination.

Black feminism adopted a multi-factorial approach to the causation of IPA. For example, Gill argued that multiple oppressions derived from identities such as gender, race, and class that simultaneously affect the victim. These identities should not be isolated from each other, as they cause unique experiences.<sup>198</sup> Moreover, Potter argued that race, ethnicity, gender, class, nationality, and sexuality are interconnected identities that cause social structural, cultural, and familial oppressions, which lead to women's victimisation by their intimate partners.<sup>199</sup> Therefore, the intersectional gendered approach needs to consider the experiences of women with diverse identities in order to provide an adequate theoretical perspective for all women's experiences of victimisation.

In addition, King extended the concept of intersectionality as promoted by black feminist theorists by developing the theory of multiple jeopardy. According to this, women experience oppressions based on their social identities such as their sex, race, class, and sexual orientation that overlap with each other causing a cumulative effect of oppression.<sup>200</sup> Based on this theory, Kanuha argued that IPA female victims that come from the BAME and LGBT communities face triple oppression due to sexism, racism, and homophobia. These multiple disadvantages can cause them to remain silent regarding their abuse due to their cumulative effect on the victim.<sup>201</sup> Since the victimisation experiences of IPA victims are cumulatively formed by their multiple identities that cause them oppression, this approach suggests a multi-factorial causation of IPA.

### **2.3.3 The Intersectional Approach on IPA**

Although the prior feminist theoretical strands generated the idea of the intersection of diverse identities, Crenshaw was the first to introduce the term of intersectionality in 1989.

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<sup>198</sup> Gill A, 'Voicing the Silent Fear: South Asian Women's Experiences of Domestic Violence' (2004) 43 (5) *The Howard Journal* 465, 466-467.

<sup>199</sup> Potter H, 'An Argument for Black Feminist Criminology Understanding African American Women's Experiences with Intimate Partner Abuse Using an Integrated Approach' (2006) 1 (2) *Feminist Criminology* 106, 113-114.

<sup>200</sup> King D K, 'Multiple Jeopardy, Multiple Consciousness: The Context of a Black Feminist Ideology' (1988) 14 (1) *Signs* 42, 42-72.

<sup>201</sup> Kanuha K V, 'Compounding the Triple Jeopardy: Battering in Lesbian of Color Relationships' in Sokoloff J N and Pratt C (eds), *Domestic Violence at the Margins: Readings on Race, Class, Gender, and Culture* (Rutgers University Press 2005) 71.

She argued that ‘Because the intersectional experience is greater than the sum of racism and sexism, any analysis that does not take intersectionality into account cannot sufficiently address the particular manner in which Black women are subordinated.’<sup>202</sup> On this point, Nash emphasized:

[I]ntersectionality is a product of black feminism, one method that black feminists have developed to study how black women experience identity, rather than the primary method black feminists can use to study identity. Intersectionality has usefully revealed particular ‘home truths’-namely, that race and gender collide in particular ways under particular conditions to mark the experiences of black women-and it has provided an intellectual and political “homeplace” for black feminists to organize and theorize.<sup>203</sup>

Based on this view, black women experience IPA differently than white women because of the intersection of their different racial experience with their gender. For this reason, Crenshaw promoted the term of ‘intersectionality’, namely that the identities of women are formed through the intersection of numerous features.<sup>204</sup>

The feminist criminological theory was influenced by these postmodern discourses, and disputed ‘the existence of any one “truth,” including women’s oppression’.<sup>205</sup> Consequently, feminist criminology was influenced by intersectionality, namely the intersection of identities such as race, class, gender, and age.<sup>206</sup> The inclusion of intersectionality in the criminological framework is beneficial for the examination of the CJS response since IPA impacts individuals of diverse social divisions.<sup>207</sup> On this issue, Davis asserted that ‘At this particular juncture in gender studies, any scholar who neglects difference runs the risk of having her work viewed as theoretically misguided, politically irrelevant, or simply fantastical’.<sup>208</sup> This occurs because

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<sup>202</sup> Crenshaw K, ‘Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory, and Antiracist Politics’ (1989) 140 *University of Chicago Legal Forum* 139, 140.

<sup>203</sup> Nash J C, ‘“Home Truths” on Intersectionality’ (2011) 23 *Yale Journal of Law and Feminism* 445, 470.

<sup>204</sup> Crenshaw K, ‘Intersectionality and Identity Politics: Learning from Violence against Women of Color’ in Shanley M and Narayan U (eds), *Reconstructing Political Theory: Feminist Theorize the Political* (Pennsylvania State University Press 1997) 190.

<sup>205</sup> See Burgess-Proctor A, ‘Intersections of Race, Class, Gender, and Crime: Future Directions for Feminist Criminology’ (2006) 1 (1) *Feminist Criminology* 27, 29.

<sup>206</sup> See Miller J and Mullins W C, ‘The Status of Feminist Theories in Criminology’ in Cullen T F, Wright J and Blevins K (eds), *Taking Stock: The Status of Criminological Theory* (3rd edn, Transaction Publishers 2011) 217.

<sup>207</sup> see Walby S and Allen J, ‘Domestic Violence, Sexual Assault and Stalking: Findings from the British Crime Survey’ (2004) 73-87.

<sup>208</sup> Davis K, ‘Intersectionality as Buzzword: A Sociology of Science Perspective on What Makes a Feminist Theory Successful’ (2008) 9 (1) *Feminist Theory* 67, 68.

Identities are socially constructed, fluid, and dynamic, and power—or the lack thereof—is situated differentially throughout the many social identities. Identities and power are relevant throughout all social aspects of human life, so they must also be considered within the contexts of criminality, victimization, and informal and formal responses to crime. The identities that garner the bulk of the attention in social science inquiries are race, ethnicity, gender, sexuality, nationality, culture, religion, age, and socioeconomic class; however, any identity/ies an individual holds should be considered for analysis in criminological research based on social forces that generate crime and the reactions to crime by victims, the government, and general society. The concept that captures the multiplicative social effects of an individual's identities has come to be known by the term 'intersectionality.'<sup>209</sup>

Based on this view, any social and personal characteristics forming the diverse identities of the victims shape their experiences and their reactions to IPA but they are also relevant to the CJS response to the victims.

The above view agrees with Sokoloff's argument that social factors such as social class, race, and sexuality intersect with gender oppression differently, causing women to have different experiences of abuse.<sup>210</sup> For this reason, abused women should not be considered a homogeneous group.<sup>211</sup> Therefore, the diverse identities of the victims should be considered while forming the crime prevention policies and practice in order for the CJS to be able to provide them with substantial equal protection. This view supports the idea that a gender-neutral approach is not appropriate towards IPA victims because it does not take into account the different experiences and identities of female victims; hence an intersectional approach can cover this gap and offer a better protection to IPA victims.

Despite this positive contribution that intersectionality can have on IPA, it has been criticised that emphasises on the differences among women. Thompson criticised this theory as distracting to the feminist goals since as she claimed, women cannot afford to give precedence to their politics of race or class and ignore males' domination.<sup>212</sup> Ehrenreich pointed that intersectionality splits social groups into subgroups based on their different identities until it reaches a point that there is not any coherent category other than a single

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<sup>209</sup> Potter H, 'Intersectional Criminology: Interrogating Identity and Power in Criminological Research and Theory' (2013) 21 *Critical Criminology* 305, 305.

<sup>210</sup> Sokoloff N J and Dupont I, 'Domestic Violence at the Intersections of Race, Class and Gender: Challenges and Contributions to Understanding Violence against Marginalised Women in Diverse Communities' (2005) 11 *Violence against Women* 38, 45.

<sup>211</sup> Kanuha V, 'Domestic Violence, Racism and the Battered Women's Movement in the United States' in Edelson J L and Eisikovits Z (eds), *Future Interventions with Battered Women and their Families* (Sage 1996) 40.

<sup>212</sup> Thompson D, *Radical Feminism Today* (Sage 2001) 93.

individual.<sup>213</sup> The identification of these differences results to numerous distinctions among women that cause problems for women in finding common ground.<sup>214</sup> Although the intersectionality theory leads to the splitting of social groups to a single individual, this does not mean that victims of a specific crime cannot have common ground due to a specific identity. For example, female IPA victims can find common ground on their gender since gender inequality is the cause of IPA. Thus, the CJS can shape its response based on the common ground of the gender while also take in consideration the other individual identities of the victims.

The question arising from the above discussions is which identities of the victims should be considered for the formation of the crime prevention response to IPA. On this point, Davis argued that it is not necessary that scholarship based on intersectionality be provided with ‘written-in-stone guidelines,’ but serves to ‘[stimulate] our creativity in looking for new and often unorthodox ways of doing feminist analysis’.<sup>215</sup> Similarly, Nash invited the continued creative theoretical innovation of intersectionality.<sup>216</sup> Such further development of intersectionality is promoted with the intersectional gendered approach by arguing that not only social characteristics but also personal characteristics should be considered as part of victims’ identities. Hence, personal characteristics such as marital status, alcohol or substance abuse, stress, culture, psychological state, and financial resources could be considered as victims’ identities. This argument is based on an intersectionality way of thinking promoted by Cho and others, who argued that

[W]hat makes an analysis intersectional—whatever terms it deploys, whatever its iteration, whatever its field or discipline—is its adoption of an intersectional way of thinking about the problem of sameness and difference and its relation to power. This framing—conceiving of categories not as distinct but as always permeated by other categories, fluid and changing, always in the process of creating and being created by dynamics of power—emphasizes what intersectionality does rather than what intersectionality is.<sup>217</sup>

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<sup>213</sup> Ehrenreich N, ‘Subordination and Symbiosis: Mechanisms of Mutual Support between Subordinating Systems’ (2002) 71 UMKC Law Review 251, 267.

<sup>214</sup> Thompson D, *Radical Feminism Today* (Sage 2001) 92.

<sup>215</sup> Davis K, ‘Intersectionality as Buzzword: A Sociology of Science Perspective on What Makes a Feminist Theory Successful’ (2008) 9 (1) *Feminist Theory* 67, 79; see also, MacDowell L E, ‘Theorizing from Particularity: Perpetrators and Intersectional Theory on Domestic Violence’ (2013) 16 (2) *Journal of Gender, Race & Justice* 531, 534.

<sup>216</sup> Nash J C, ‘“Home Truths” on Intersectionality’ (2011) 23 *Yale Journal of Law and Feminism* 445, 470.

<sup>217</sup> Cho S, Crenshaw W K and McCall L, ‘Toward a Field of Intersectionality Studies: Theory, Applications, and Praxis’ (2013) 38 (4) *Signs* 785, 795.

Accordingly, the crime prevention response needs to consider all relevant identities causing discrimination to IPA victims in order to achieve substantial equal protection to the victims by facilitating their access to the CJS.

To conclude, it was argued that feminist criminology can be used to improve the prevention of IPA and the protection of its victims because it focuses on women's interests. Moreover, although IPA is also committed by female offenders in same sex and heterosexual relations, it is a gender crime; for this reason, the views of women need to be utilised for the prevention of IPA. This can be achieved by using a feminist criminological framework that has been developed by an 'anti-essentialist' feminist approach, focusing on the differences among women. Although IPA results from gender inequality due to the patriarchal structure their victimisation experiences are formed based on their diverse identities. Therefore, the intersectional gendered approach is a framework based on intersectionality that explains IPA as a result of gender inequality due to patriarchy. The intersectional gendered approach aims to expand the use of intersectionality theory to all personal and social characteristics that influence the IPA victimisation experiences.

#### **2.4 The Implementation of the Intersectional Gendered Approach in the CJS Response**

After showing that an intersectional criminological approach is relevant to address the prevention of IPA, the aim of this section is to discuss how this intersectional approach can provide a more efficient response. The formation of the intersectional gendered approach is based on different disciplines. Although sociological theories constitute a basis of criminology, criminology is interdisciplinary drawing from other disciplines such as political science, public policy, and law.<sup>218</sup> For this reason, this framework is built based on feminist theories from the areas of criminology, sociology, and jurisprudence. According to Farnworth, 'Theory integration is defined as the combination of two or more pre-existing theories, selected on the basis of their perceived commonalities, into a single reformulated theoretical model with greater comprehensiveness and explanatory value than any one of its component theories'.<sup>219</sup> For this reason, the framing of the intersectional gendered approach

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<sup>218</sup> Gennaro F V and Maahs R J, *Criminology: Theory, Research, and Policy* (3rd edn, Jones & Bartlett Learning 2012) 5.

<sup>219</sup> Farnworth M, 'Theory Integration Versus Model Building' in Messner S F, Krohn M D and Liska A (eds), *Theoretical Integration in the Study of Deviance and Crime: Problems and Prospects* (State University of New York 1989) 95.

from theoretical views from different disciplinary areas aims to provide an appropriate and holistic theoretical criminological perspective for the prevention of IPA and the protection of female victims.

#### **2.4.1 *The Intersectional Gendered Approach in the English and Welsh Context***

The intersectional gendered approach is a theoretical framework that can be applied in the current context of the English and Welsh society because firstly, although both men and women can be victimised by IPA, women constitute the majority of victims and are more likely to experience high-risk abuse.<sup>220</sup> Moreover, different social groups of women are affected by IPA. For example, Imkaan reported that ‘a large number of BAMER [Black, Asian, Minority Ethnic and Refugee] women...are remaining within violence for long periods of time before they leave.... BAMER women and in particular young women face multiple forms of violence and abuse and are often trapped in abusive situations for a number of years....’<sup>221</sup> Such example of BAME group are women that belong in the Muslim religion. These victims might be more hesitant to leave their partners, obtain divorce or take legal action. Based on the Islamic law, a marriage can be resolved if the husband agrees with the divorce. For this reason, sometimes a woman is still married under her religion, although she has obtained a legal divorce.<sup>222</sup> Furthermore, ethnic groups such as Sudanese women, due to language and cultural difficulties, congregate in their own communities and are often hesitant to access general public services, which often do not address the specific social and cultural needs of Sudanese women.<sup>223</sup>

Additionally, ethnic minority women such as Pakistani and Bangladeshi women, who are more likely to be caring for their families instead of being employed due to their social and

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<sup>220</sup> HMIC, *Increasingly Everyone’s Business: A Progress Report on the Police Response to Domestic Abuse* (2015) 31.

<sup>221</sup> Imkaan, ‘Vital Statistics: The Experiences of Black, Asian, Minority Ethnic and Refugee Women & Children Facing Violence & Abuse’ (2010) 7; see also Smee S and Moosa Z, ‘Realising Rights: Increasing Ethnic Minority Women’s Access to Justice’ (Fawcett Society 2010) 8; Siddiqui H and Patel M, ‘Safe and Sane’ (Southall Black Sisters 2010) 12-15; Women’s Resource Centre, ‘Hidden Value: Demonstrating the Extraordinary Impact of Women’s Voluntary and Community Organisations’ (2011) 18-19; Izzidien S, ‘Domestic Abuse within South Asian Communities: The Specific Needs of Women, Children and Young People’ (NSPCC 2008) 6.

<sup>222</sup> Home Office, *Tackling Domestic Violence: Providing Advocacy and Support to Survivors from Black and Other Minority Ethnic Communities* (2005) 4.

<sup>223</sup> Women’s Resource Centre, ‘South Sudan Women’s Skills Development: Inner Potentials’ (2011) 6.

cultural needs, do not receive financial support by the government.<sup>224</sup> As it is examined in Chapter 5, such limited governmental support to victims, who have no financial means to escape abuse, is legal aid.<sup>225</sup> For this reason, women from BAME communities might feel reluctant to access the CJS because of the family law implications that this can have in their lives such as obtaining parental responsibility of their children.<sup>226</sup>

Further, women can face barriers to report their victimisation due to their diverse sexualities. Particularly, individuals from the LGBT community can experience alienation and fear to report their abuse due to their exclusion from heterosexual society. This fear is used to control their reaction to physical violence and emotional abuse.<sup>227</sup> Similarly, young women may choose not to reveal their victimisation experience due to fear that their revelation could cause a more intense violent response, or that their claims may not be believed, or being criticised.<sup>228</sup>

In addition, IPA victims can belong to a different class because as Refuge reported, women's financial experience varied while living with their abusive partners. A technique that abusive men sometimes use to control their partners is to keep them financially dependent by stopping them from employment access.<sup>229</sup> Women with low or no financial means when fleeing abusive relationships can face distressing circumstances such as needing emergency accommodation, housing benefit to cover the expenses for safe accommodation, and income support for their living expenses.<sup>230</sup> Such cases can be exacerbated by additional

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<sup>224</sup> Moosa Z and Woodroffe J, 'Poverty Pathways: Ethnic Minority Women's Livelihoods' (The Fawcett Society and Oxfam 2009) 31.

<sup>225</sup> See Rights of Women, 'Rights of Women's Evidence to the Justice Select Committee on the Impact of Changes to Civil Legal Aid under the Legal Aid, Sentencing and Punishment of Offenders Act 2012' (2014) 3.

<sup>226</sup> See Rights of Women, 'Women's Access to Justice: A Research Report' (2011) 23.

<sup>227</sup> See Browne K, 'Domestic Violence & Abuse Additional Findings Report: Count Me in Too-LGBT Lives in Brighton & Hove' (2007) 18; see also, Women's Resource Centre, 'In All Our Colours: Lesbian, Bisexual and Trans Women's Services in the UK' (2010) 14; see also Hester M, Williamson E, Regan L, Coulter M, Chantler K, Gangoli G, Davenport R and Green L, 'Exploring the Service and Support Needs of Male, Lesbian, Gay, Bisexual and Transgendered and Black and Other Minority Ethnic Victims of Domestic and Sexual Violence' (2012) 27-40.

<sup>228</sup> South East Wales Women's Aid Consortium, 'Domestic Abuse & Equality: Young Women' (2010) 7; see also Barter C, 'In the Name of Love: Partner Abuse and Violence in Teenage Relationships' (2009) 39 *British Journal of Social Work* 211, 220-221.

<sup>229</sup> Refuge, 'Addressing the Financial Needs of Women and Children Experiencing Domestic Violence' (2005) 2.

<sup>230</sup> See Amnesty International and Southall Black Sisters, "'No Recourse' No Safety: The Government's Failure to Protect Women from Violence' (2008) 6.



circumstances pointed by AVA, which reported that IPA victims of different ages can experience mental health and substance abuse problems.<sup>231</sup>

IPA victims that may combine more than one of these personal and social characteristics can face multiple barriers from accessing the CJS due to the combined effect of discrimination caused by their identities such as ethnicity, sexuality, age, financial status, mental problems, and substance abuse. For the above reasons, the intersectional gendered approach can be beneficial for the formation of the CJS response in order to support victims with diverse needs that belong in the English and Welsh society. The intersectional gendered approach should apply not only to the crime prevention policies implemented by the CJS but also by the social welfare system in order to provide a whole-system support and facilitate the victims' access to the CJS.

The adoption of the intersectional gendered approach in the CJS and social welfare system responses is also needed because of the gender stereotypes that exist in the social perception and promote gender inequality. Particularly, the EVAW argued that the prejudicial attitudes and stereotypes associated with women and VAWG can influence the CJS and contribute to immunity for offenders.<sup>232</sup> For this reason, the gendered nature of IPA could be attributed to the social perception towards IPA and women because as the Fawcett Society reported:

[M]edia and cultural representations of women have a huge impact on how girls and women are viewed and view themselves and on public attitudes to women and women's equality. Government and schools have a duty to use education to tackle all forms of prejudice and discrimination in generations to come.<sup>233</sup>

The use of media and education can contribute to the decrease of gender inequality, so that IPA victims are not partially blamed and society does not consider IPA as a normal and tolerated behaviour.<sup>234</sup> Hence, implementing the intersectional gendered approach on the social policies in order to influence the social perception towards IPA and female victims is a crucial part of improving the response of the CJS.

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<sup>231</sup> AVA, 'Practice Guidance: Engaging with Young Women Experiencing Domestic and Sexual Violence Who Have Substance Use and Mental Health Problems' (2013) 1.

<sup>232</sup> EVAW, 'EVAW Coalition Submission to the Leveson Inquiry' (2012) 5.

<sup>233</sup> Fawcett Society, 'What About Women? Key Questions for Parliamentarians Concerned with Advancing Women's Equality and Human Rights in the UK' (2013) 27.

<sup>234</sup> see UK Feminista, 'End Violence Against Women and Girls' (2012) 5.

#### **2.4.2 The Difference of a Gender-based from an Intersectional Approach**

Adopting a gender-based approach in the formation of the crime prevention policies, according to Beckwith, would mean to 'gender' the discussions, so that women's status is emphasised for the purpose of improving it. Gendering a debate is a technique that turns the focus on how women and men are treated during the discussions of a policy and by the policy itself.<sup>235</sup> Marshall argued that 'where gender has not been insisted upon as a category of analysis, gender-blindness is the result'.<sup>236</sup> On gender-blindness, Schulhofer pointed that 'although we want women to be treated the same as men, sometimes equality cannot be achieved by treating two groups of people the same way.'<sup>237</sup> Based on this, a gender-neutral approach cannot provide an effective protection to female victims because it does not challenge gender inequality which causes IPA. Moreover, it cannot achieve substantial equality because the patriarchal social structures will continue to influence the response of the CJS.

On the other hand, Hankivsky and Christoffersen identified that '[t]he support for a more expansive agenda is based on the acknowledgment that gender is not always the primary category affecting identity or experiences of inequality and moreover, that gender should not be conflated with women or their particular experiences of discrimination.'<sup>238</sup> Furthermore, Hankivsky argued that

Within a [gender mainstreaming] GM framework, where gender is dominant, [identities'] dynamics and their consequences may be marginalized or completely invisible. In the context of diversity mainstreaming, however, the mapping of multiple forms of discrimination allows for the understanding of gender relations in their specific context, and in particular, their relationship to other structures of inequality such as class, ethnicity, nationality and sexual orientation, among others. Using this approach can contribute to furthering the variability of discrimination and oppression.<sup>239</sup>

This view argues against a gender-based approach and promotes the idea of inequality formed by the intersection of different identities such as gender, class, ethnicity, race, and

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<sup>235</sup> Beckwith K, 'A Common Language of Gender?' (2005) 1 (1) *Gender and Politics* 128, 133.

<sup>236</sup> Marshall B L, *Configuring Gender: Explorations in Theory and Politics* (Broadview Press 2000) 67.

<sup>237</sup> Schulhofer J S, 'The Feminist Challenge in Criminal Law' (1995) 143 (6) *University of Pennsylvania Law Review* 2151, 2151.

<sup>238</sup> Hankivsky O and Christoffersen A, 'Gender Mainstreaming in the United Kingdom: Current Issues and Future Challenges' (2011) 6 (1) *British Politics* 30, 39.

<sup>239</sup> Hankivsky O, 'Gender vs. Diversity Mainstreaming: A Preliminary Examination of the Role and Transformative Potential of Feminist Theory' (2005) 38 (4) *Canadian Journal of Political Science* 977, 993-994.

sexual orientation. This diversity intersectional approach suggests that these identities are equally important to gender, and for this reason, they should be equally considered in policy formation for providing substantial equality among IPA victims.

The gender-based approach promotes the ideas of essentialist feminists because it adopts the view that women are determined by their gender, which is their only essence. However, the diversity intersectional approach promotes the intersectionality theories argued by the anti-essentialist feminist theorists, namely that women are characterised not only by their gender but by the intersection of their multiple identities. The diversity intersectional approach cannot address effectively IPA because although there are multiple inequalities in society that are equally important, gender is the primary factor to be considered in the context of IPA. Therefore, based on the diversity intersectional approach, when policy-making on IPA occurs, the attention of policy-makers would not focus on gender.

Similarly, Strid, Walby and Armstrong stated that

There needs to be recognition of the implications of gendering and degendering. When policy is degendered, intersectionality may weaken the gender equality project by further reducing the visibility of gender itself. The hierarchal positioning and unequal power of women and men can both be rendered invisible. Violence against women cannot be efficiently combated when policy is degendered to the point where gender becomes invisible.<sup>240</sup>

Moreover, according to Hearn and others,

When policy is degendered, and gender is downplayed or absent, a focus on intersectionality may paradoxically weaken the gender equality project, especially if it reduces the visibility of gender itself. This 'degendered intersectionality' ...can obscure the absences of other intersectional groups, such as lesbian women and women living in poverty. In contrast to such degendered policy, the visibility of a more comprehensive range of interrelations and intersections of multiple, and indeed gendered, inequalities increases the quality of policy on violence against women. This facilitates the making and implementation of policy that concretely targets specific causes and effects of different forms of violence against women.<sup>241</sup>

Squires agrees with the above views because as she identified, 'When evaluating the potential for recognizing intersectionality, it is worth noting that...[a] potential...interaction between the separate equality strands... [is the] competing (where separate strands vie against one

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<sup>240</sup> Strid S, Walby S and Armstrong J, 'Intersectionality and Multiple Inequalities: Visibility in British Policy on Violence against Women' (2013) 20 (4) Social Politics 558, 559.

<sup>241</sup> Hearn J, Strid S, Husu L and Verloo M, 'Interrogating Violence against Women and State Violence Policy: Gendered Intersectionalities and the Quality of Policy in the Netherlands, Sweden and the UK' (2016) Current Sociology 1, 13.

another)...'.<sup>242</sup> Based on this view, following a diversity intersectional approach could weaken the relevant policies from addressing gender inequality as the cause of IPA. For example, if gender is equally important in the context of IPA as religion and ethnicity, then IPA victims of BAME communities could receive less supportive treatment by the CJA because protecting female victims against their violent partners would be disrespectful of their religious beliefs. Therefore, the diversity intersectional approach is not supported in the context of IPA as an effective perspective to promote the prevention of IPA and the protection of the victims.

Additionally, in the case of IPA, the gender-based approach is not an appropriate framework to form the crime prevention policies because it focuses only on gender and disregards the additional identities of victims that form their victimisation experiences. Moreover, the intersectional diversity approach is not suitable because it treats all identities as equal and does not prioritise gender inequality. Since gender inequality is the cause of IPA, there is need of an intersectional framework that prioritises gender but it also takes into account the other identities of the victims. This suggested framework is the intersectional gendered approach because it can avoid any competing interests among equalities to be manifested in the formation of the policies.

#### ***2.4.3 The Intersectional Gendered Approach in the IPA Crime Prevention Policies***

Lombardo and Verloo have claimed that adopting an intersectional approach in policy-making could potentially promote better quality policies.<sup>243</sup> This is argued because

Gender equality is not about treating men and women the same; it is about recognizing different needs and experiences, removing barriers and achieving systemic change by delivering equality of outcome....This approach recognises that some inequalities are so persistent, durable and institutionalised (in both formal and informal structures and social, political and economic processes) that to treat men and women in the same way may simply be to reproduce disadvantage, thus perpetuating discrimination. The achievement of

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<sup>242</sup> Squires J, 'Intersecting Inequalities' (2009) 11 (4) *International Feminist Journal of Politics* 496, 507.

<sup>243</sup> Lombardo E and Verloo M, 'Stretching Gender Equality to Other Inequalities: Political Intersectionality in European Gender Equality Policies' in Lombardo E, Meier P and Verloo M (eds), *The Discursive Politics of Gender Equality: Stretching, Bending and Policy-Making* (Routledge 2009) 67-84.

substantive equality requires taking account of differences in the needs, experiences, learning and relationship styles, and life circumstances, of women and men.<sup>244</sup>

Based on this view, equality of outcome can be obtained in the context of IPA if female victims are treated from the CJS depending on their specific needs.

In the case of IPA, equality of outcome can be achieved if minority and marginalised women do not remain invisible in policy.<sup>245</sup> This argument triggers the question of how the diverse identities intersect with gender. In particular, Ferree argued that intersectionality warns against creating policies that privilege one inequality over another.<sup>246</sup> According to Bredstrom, the recognition of multiple inequalities could result to favouring some inequalities over others, which can negatively influence the efficiency of policy.<sup>247</sup> For example, the impact of neglecting class and race in the context of IPA can be to exclude minoritised women from accessing support services.<sup>248</sup> On this point, Verloo argued that intersectionality can improve policy if developed to be practically applicable by recognising the different bases of oppression.<sup>249</sup>

The intersectional gendered approach supports the view that in the case of IPA gender is the primary equality that needs to be promoted in the policies while the additional identities need to be given equal consideration among them. This can have important implications in practice since, for example, if ethnicity and sexual orientation are not considered equal factors, victims from BAME communities would be prioritised over victims from the LGBT community. Squires identified that intersectionality of separate equality strands can be identified as interacting in a cumulative manner, namely ‘separate strands are understood to overlap’.<sup>250</sup> Considering diverse identities, other than gender, to overlap means that the

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<sup>244</sup> Burman M, Johnstone J, Haan H and MacLeod J, ‘Responding to Gender-based Violence in Scotland: The Scope of the Gender Equality Duty to Drive Cultural and Practical Change’ (Equality and Human Rights Commission 2010) 6.

<sup>245</sup> Yuval-Davis N, ‘Intersectionality and Feminist Politics’ (2006) 13 (3) *European Journal of Women’s Studies* 193, 198.

<sup>246</sup> Ferree M M, ‘Inequality, Intersectionality and the Politics of Discourse: Framing Feminist Alliances’ in Lombardo E, Meier P and Verloo M (eds), *The Discursive Politics of Gender Equality: Stretching, Bending and Policy-making* (Routledge 2009) 86.

<sup>247</sup> Bredstrom A, ‘Intersectionality: A Challenge for Feminist HIV/AIDS Research?’ (2006) 13 (3) *European Journal of Women’s Studies* 229, 235.

<sup>248</sup> Burman E, Smailes S and Chantler K, ‘Culture as a Barrier to Service Provision and Delivery: Domestic Violence Services for Minoritized Women’ (2004) 24 (3) *Critical Social Policy* 332, 341.

<sup>249</sup> Verloo M, ‘Multiple Inequalities, Intersectionality and the European Union’ (2006) 13 (3) *European Journal of Women’s Studies* 211, 222.

<sup>250</sup> Squires J, ‘Intersecting Inequalities’ (2009) 11 (4) *International Feminist Journal of Politics* 496, 497.

experiences of female victims are formed by adding discriminations occurring from each identity to the gender discrimination. The successful implementation of this view in practice seems to be difficult, as it would require the formation of policies that attack each discrimination separately and promote the respective needs of each identity in order to dismantle the overall experience of female victims.

On the other hand, Conaghan and others argued that ‘intersectional discrimination exists where the discrimination is the combined rather than cumulative product of two or more discriminatory grounds, yielding an experience which is qualitatively distinct from the sum of its discriminatory parts’.<sup>251</sup> The combined intersection of the diverse identities means that the experiences of female victims are formed by the combining effect of the respective discriminations. This in practice would require the formation of policies that attack, not separately each discrimination, but the overall combined effect of these discriminations. An example of practical implication of the combined intersectionality is to create highly advanced specialised services for victims.

The chapter argues that a combined approach among the diverse identities should be promoted as it reflects the victims’ real experiences by the mix of their discriminations and disadvantages. Overall, the intersectional gendered approach falls within the asymmetric mutual shaping model of intersectionality.<sup>252</sup> The asymmetric model supports that in cases where one inequality is dominant, the others are not totally disregarded but they are treated as secondary. The mutual shaping model suggests that while the consequences of one inequality on other inequalities may be recognised, the separate systems of inequality remain.<sup>253</sup> Thus, the intersectional gendered approach is a combination of these two models because gender inequality is treated as dominant in the IPA case while the other inequalities arising from the diverse identities are treated as secondary but equal among them. Moreover, the mutual shaping informs the intersectional gendered approach because the combination of the inequalities mutually shape the victims’ experiences.

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<sup>251</sup> Conaghan J, Hunter R and Cooper D, ‘Response to the Discrimination Law Review’s Consultation Paper: A Framework for Fairness: Proposals for a Single Equality Bill for Great Britain’ (AHRC Research Institute Centre for Law, Gender and Sexuality 2007) 6.

<sup>252</sup> See Walby S, Armstrong J and Strid S, ‘Intersectionality and the Quality of the Gender Equality Architecture’ (2012) 19 (4) *Social Politics* 446, 474.

<sup>253</sup> Walby S, Armstrong J and Strid S, ‘Intersectionality and the Quality of the Gender Equality Architecture’ (2012) 19 (4) *Social Politics* 446, 452-453.

However, the question arising from the mutual shaping approach is how these identities are combined to cause discrimination to victims. Based on Anthias,

[F]orms of social distinction and inequality are produced in complex combinatories of social location in its broadest sense, forged through multiple sites. Hierarchical relations linked to social divisions are emergent and subject to historical contingencies depending on different constellations of power in different time/space frameworks. This means that social categorisations are not equally positioned or salient at all times. One or other of the divisions does not always matter in particular contexts or some may matter more than others.<sup>254</sup>

This means that identities interact in a dynamic and continuously shifting manner based on the influence they receive by the political systems of a specific location at a specific time and the victims' perceptions about their identities.<sup>255</sup> Similarly, Bedolla argued that the order of identities is not a natural but a political product.<sup>256</sup> For this reason, the contribution of each identity to the combined effect of the discrimination experience is a matter of a specific location and time in order to determine which identities and to what extent make a difference to the IPA victimisation experiences. This is supported by Tomlinson, who noted that 'If critics think intersectionality is a matter of identity rather than power, they cannot see which differences make a difference. Yet it is exactly our analyses of power that reveal which differences carry significance'.<sup>257</sup> Therefore, since the aim of the thesis is not to establish how identities interact with each other in the British political system or how victims specifically experience their identities, the combined intersection of additional identities to gender does not need to be specified.

#### **2.4.4 The SED and the Intersectional Gendered Approach**

The implementation of the intersectional gendered approach by the CJS can be affected by the application of the equality framework promoted by the SED of the Equality Act 2010.<sup>258</sup> Specifically, the SED by giving equal importance to all strands of equality, which are recognised as protected characteristics, is an example of the British equality policy

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<sup>254</sup> Anthias F, 'Intersectional What? Social Divisions, Intersectionality and Levels of Analysis' (2013) 13 (1) *Ethnicities* 3, 13-14.

<sup>255</sup> See Dhamoon R K, 'Considerations on Mainstreaming Intersectionality' (2011) 64 (1) *Political Research Quarterly* 230, 236-238; Bilge S, 'Recent Feminist Outlooks on Intersectionality' (2010) 57 (1) *Diogenes* 58, 65.

<sup>256</sup> Bedolla L G, 'Intersections of Inequality: Understanding Marginalization and Privilege in the Post-civil Rights Era' (2007) 3 *Politics & Gender* 232, 240.

<sup>257</sup> Tomlinson B, 'To Tell the Truth and Not Get Trapped: Desire, Distance, and Intersectionality at the Scene of Argument' (2013) 38 (4) *Signs* 993, 1012.

<sup>258</sup> See Equality Act 2010 s. 149 (1).

recognising multiple discriminations. Fredman pointed that ‘Britain has manifested a growing concern with diversity and the adoption of an integrated approach to multiple-equality strands’.<sup>259</sup> Although the diversity of discrimination exists in society, in the case of IPA gender inequality is the reason that these types of crimes occur. For example, a BAME woman abused by her intimate partner is not victimised because of her ethnicity or race but because of her gender. Her ethnicity is one of the factors that can contribute to her experience of victimisation such as keeping her silent of the abuse and constraining her to remain in the abusive environment. Therefore, in the case of IPA recognising multiple discriminations as equal is not an effective measure to challenge gender inequality because it can cause two protected characteristics such as gender and religion to conflict in the context of IPA leaving women of some ethnic groups unprotected.

This in practice would mean that although all equality strands should be acknowledged as equal, each strand should be considered as more important in comparison to the others when it applied to a specific result of inequality such as IPA. On this point, Women’s National Commission (WNC), which was an independent advisory body providing women’s views to the government, argued that ‘the... gender duty must not be lost under the Single Equality Duty. The Single Equality Duty needs to focus on *equality of outcome*, otherwise it will result in a gender-neutral approach that actually disadvantages women. A differentiated/personalised approach to meeting different needs would achieve this.’<sup>260</sup> Based on this view, equality of outcome is argued to be achieved if the CJA, when applying the rhetoric of the SED, took in consideration the outcome of the formation of a policy in the context of IPA. Therefore, in order to achieve protection from IPA, the relevant policies need to recognise the protected characteristic of gender as dominant; otherwise, it risks to be marginalised among the other equality strands. On this issue, Women’s Aid voiced their concern that the SED does ‘not address discrimination against women, because [it]... fails to set out the context within which gender inequality occurs and also fails to address gender-based violence, as a consequence of this discrimination.’<sup>261</sup> Moreover, ROW stated that

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<sup>259</sup> Fredman S, ‘The Future of Equality in Britain’ (Equal Opportunities Commission 2003) 8.

<sup>260</sup> Women’s National Commission, ‘Equality Bill Position Paper’ (Committee Stage, House of Lords 2010) 6.

<sup>261</sup> Women’s Aid, *Consultation Response: Advancing Equality for Men and Women* (2006) <<https://web.archive.org/web/20101203094020/http://www.womensaid.org.uk/domestic-violence-articles.asp?itemid=1193&itemTitle=Consultation+response%3A+advancing+equality+for+men+and+women&section=00010001002200260001&sectionTitle=Articles%3A+consultations>> accessed 10 October 2017.



We are concerned that without the GED [Gender Equality Duty] gender will not be prioritised in practice and that key equality issues, such as tackling violence against women, will continue to be marginalised. We are concerned that this may be the case if a single public sector duty covering all strands is implemented.<sup>262</sup>

This occurrence in combination that ‘public bodies are not required to develop equality objectives for each protected characteristic...may mean that adequate objectives on gender will not be forthcoming.’<sup>263</sup> Accordingly, policies of the CJA, aiming to apply the SED, are at risk to address IPA within a gender-neutral approach.

Such example of a public body following a gender-neutral approach, due to the influence of the SED, is the Office of National Statistics (ONS). Walby and others have illustrated that even the ONS statistics are gender-neutral and do not represent the real numbers of IPA committed against women. Specifically, they argued that ‘The findings challenge the gender neutrality of crime statistics by demonstrating the relevance of gender for violent crime, it demonstrates the need for ONS to gender disaggregate official statistics, including crime statistics, on a routine basis.’<sup>264</sup> Consequently, the influence of gender inequality to the commission of violent crimes is not mirrored in the ONS forming this way an unrepresentative image for IPA crimes.

In addition, the SED does not address cumulative and combined intersectionality, excluding this way to consider the combined or cumulative effect that the intersection of additional identities can cause to women’s victimisation. The rhetoric of the Equality Act 2010 aimed to provide such protection with section 14 (1) of the Act, which introduced the dual discrimination in the equality legislation by stating that ‘A person (A) discriminates against another (B) if, because of a combination of two relevant protected characteristics, A treats B less favourably than A treats or would treat a person who does not share either of those characteristics.’<sup>265</sup> However, this section has not been implemented in practice.<sup>266</sup>

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<sup>262</sup> Rights of Women, *Rights of Women Response: Discrimination Law Review* (2007) 3.

<sup>263</sup> Fawcett Society, *The Fawcett Society’s Policy Submission to the Review of the Public Sector Equality Duty* (2013) 5.

<sup>264</sup> Walby S, Towers J and Francis B, ‘Is Violent Crime Increasing or Decreasing? A New Methodology to Measure Repeat Attacks Making Visible the Significance of Gender and Domestic Relations’ (2015) *British Journal of Criminology* 1, 25.

<sup>265</sup> Equality Act 2010 s.14.

<sup>266</sup> EHRC, *What Is the Equality Act?* (2015) <<http://www.equalityhumanrights.com/legal-and-policy/legislation/equality-act-2010/what-equality-act>> accessed 15 May 2016.

The implementation of the dual discrimination would have been an improvement for the protection of IPA victims, as their experiences from the combined intersectional discrimination would have contributed to the formation of the CJA policies and practice.<sup>267</sup> However, even such improvement would be limited because it was restricted only on two diverse identities while women's experiences are formed by multiple inequalities. The necessity of such an improvement is argued based on EVAW's statement:

Women are not a homogenous group - they come from many different backgrounds and cultures. Women often experience multiple layers of discrimination based on race, disability, faith, sexual orientation etc - all impacting on and creating barriers to equality. It is therefore crucial that the gender, race and disability equality duties are implemented in an integrated way. This can ensure appropriate responses to women from minority and marginalised communities, that all women have equal access to support, intervention and justice, and that all perpetrators are held equally accountable for their actions.<sup>268</sup>

Therefore, even if the implementation of the dual discrimination occurred, this protection would have been limited in comparison to the intersectional gendered approach, which does not extend only to a limited list of protected characteristics but to a wider list of individuals' identities. As there are IPA victims with diverse needs of protection from the CJS due to their social and personal characteristics,<sup>269</sup> these characteristics should be considered as additional identities whose combination causes diverse experiences of victimisation.

## **2.5 The Intersectional Gendered Approach on IPA Laws**

The influence of the intersectional gendered approach in the formation of the crime prevention policies is important as it impacts on the formation of laws derived from these policies. In order to critique the law, the intersectional gendered approach draws theoretical perspectives from the area of feminist jurisprudence, which aims to critique the law through women's experiences.<sup>270</sup> The influence of the intersectional gendered approach in criminal law has an important contribution for the prevention of IPA in two ways. First, although the

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<sup>267</sup> Women's Resource Centre, 'Equality Act 2010 Briefing' (2011) 15.

<sup>268</sup> EVAW, *End Violence Against Women Coalition Response to Advancing Equality for Men and Women: Government Proposals to Introduce a Public Sector Duty to Promote Gender Equality* (2006) 4; see also, Refuge, *Refuge Response to 'Advancing Equality for Men and Women'* (2006) 2; Rights of Women, *Rights of Women Response: Discrimination Law Review* (2007) 5; Squires J, 'Intersecting Inequalities' (2009) 11 (4) *International Feminist Journal of Politics* 496, 508.

<sup>269</sup> see for the example that the government decided not to implement the socio-economic duty, for this reason, female victims with a disadvantaged socio-economic status cannot benefit from the protection of the Equality Act, see HC Deb 1 Feb 2011 vol 522 c676W.

<sup>270</sup> See Wishik H, 'To Question Everything: The Inquiries of Feminist Jurisprudence' (1986) 1 *Berkeley Women's Law Journal* 64, 67-68.

law is gender-neutral, its influence by the intersectional gendered approach can lead to legal reforms, which involve creating new gender-neutral laws and/or strengthening existing laws that aim to increase the protection of IPA female victims with diverse identities. Such criminal laws are section 5 of the DVCVA<sup>271</sup> 2004 and section 76 of the SCA 2015<sup>272</sup> that are analysed in Chapter 3. Moreover, although laws are gender-neutral, their implementation in the practice of the CJA should adopt the intersectional gendered approach because as Wells argued, the law ‘sits in a framework that ...is sustained by webs of practices and beliefs that perpetuate micro cultures’.<sup>273</sup> Therefore, when the law is implemented in practice, it risks favouring men, due to the patriarchal influence.

### **2.5.1 Legal Reform**

The patriarchal state did not treat IPA as a criminal law issue effectively because, according to Mossman, the realities of women’s experience are often considered irrelevant to law.<sup>274</sup> On this point, Naffine noted that men have used their dominating position to keep control of the public sphere. For example, in the past, men had women excluded from participating in the courts, parliament, and other influential positions. For this reason, feminists initially aimed in overcoming these difficulties and extending these legal rights to women in order to expand women’s role from the private sphere to the public as well.<sup>275</sup> The increased participation of women from diverse social backgrounds in the public life can promote the intersectional gendered approach in the crime prevention policies, as they could contribute with their experiences to the tackling of IPA by promoting female views on the legal response. Thus, the creation of criminal laws against IPA can be reinforced with the participation of women from diverse backgrounds in the public sphere, so that female views on IPA are brought out to the public.

Further, a criminal law against IPA promotes the equal protection between women and men and among women when it considers the specific needs of diverse women, which are significantly disadvantaged from IPA. On this point, Rhode argued that ‘gender is mediated

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<sup>271</sup> Domestic Violence, Crime and Victims Act 2004 s.5.

<sup>272</sup> Serious Crime Act 2015 s.76

<sup>273</sup> Wells C, ‘The Impact of Feminist Thinking on Criminal Law and Justice: Contradiction, Complexity, Conviction and Connection’ (2004) *Criminal Law Review* 503, 508.

<sup>274</sup> Mossman M J, ‘Feminism and Legal Method: The Difference It Makes’ (1987) 3 *Wisconsin Women’s Law Journal* 147, 160–161; 164.

<sup>275</sup> Naffine N, *Law and the Sexes* (Allen and Unwin 1990) 3-4.

by other patterns of inequality, involving race, class, age, ethnicity, and sexual orientation.... [N]o theory adequate to challenge gender subordination can avoid addressing the other forms of inequality with which it intersects.<sup>276</sup> For this reason, the law needs to protect equally men and women by considering their diverse identities in the construction of law. As Cain stated,

I do not mean to ignore the importance of our commonalities. It is valuable to identify the similarities among all women. When we identify what we have in common, we begin to build bridges and connections because any connection that fails to recognize differences is not a connection to the whole of the other self. A normative principle that honors only what I have in common with each of you fails to respect each of for the individual woman that you are.<sup>277</sup>

Based on this view, similarities and differences between victims need to be considered in the reform and implementation of the law. The similarity of the victims is that they experience different types of IPA such as emotional abuse due to gender inequality. However, the victimisation experiences of emotionally abused women differ due to their additional identities. Thus, the influence of the intersectional gendered approach in the law means the creation of a law such as s.76 of the SCA 2015 that challenges gender inequality by criminalising emotional abuse. Moreover, the legal protection of victims with diverse identities such as sexuality and marital status can be achieved by criminalising IPA crimes that are perpetrated by same sex or former partners.

Regarding the creation of efficient laws for diverse victims, Coker argued:

Law and policy that is based on the experiences of poor women, and especially of poor women of color, is likely to result in reforms that benefit all battered women. But law and policy that is developed from the experiences of a generic category 'battered women', is likely to reflect the needs and experiences of more economically advantaged women and white women, and is unlikely to meet the needs of poor women and women of color.<sup>278</sup>

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<sup>276</sup> Rhode L D, *Justice and Gender: Sex Discrimination and the Law* (3rd edn, Harvard University 2009) 83, 83-84; see also Harris P A, 'Race and Essentialism in Feminist Legal Theory' (1990) 42 *Stanford Law Review* 581, 585; Cornell D, *Beyond Accommodation: Ethical Feminism, Deconstruction, and the Law* (2nd edn, Rowman & Littlefield 1999) 4-6; Hunter R, 'Deconstructing the Subjects of Feminism: The Essentialism Debate in Feminist Theory and Practice' (1996) 6 *Australian Feminist Law Journal* 135, 149.

<sup>277</sup> Cain A P, 'Feminist Jurisprudence: Grounding the Theories' (2013) 4 (2) *Berkeley Journal of Gender, Law & Justice* 191, 206.

<sup>278</sup> Coker D, 'Crime Control and Feminist Law Reform in Domestic Violence Law: A Critical Review' (2001) 4 (2) *Buffalo Criminal Law Review* 801, 811-812.

Based on this view, the influence of the intersectional gendered approach would be achieved if the views of marginalised women were incorporated in the legal response because this way both the hegemonic group of victims but also marginalised groups would be protected.

### **2.5.2 Implementation of the Law in the CJS Practice**

In addition to creating laws that promote the equal protection between genders and among women, these laws, due to their gender-neutral nature, need to be implemented in the practice of the CJA by adopting the intersectional gendered approach. This is necessary because the implementation of a gender-neutral law by the patriarchal state that promotes men's interests would mean that a gender-biased approach favouring men would be applied in practice. An example of the law's gender-biased implementation can be illustrated in the 'reasonable person' standard. According to Allen, the concept of the 'reasonable person' is gender-neutral because it applies in the same way for both genders. This gender blindness of the criminal law was criticised by Allen, who believed that it is problematic since it does not consider the different experiences of men and women.<sup>279</sup> A feminist argument on criminal law is that women and men should be treated differently in regards to the actus reus and men's rea since the two genders have differences in their mental capacities of reason, understanding, and self-control. For this reason, the criminal law has been criticised as having a masculinist approach regarding the standard model of responsible behaviour.<sup>280</sup>

This masculine gender-biased approach could be attributed to the belief that males' standard mental status is rational and objective while women's is subjective and emotional; therefore, their actions resulted by their respective mentalities.<sup>281</sup> Based on Cousins, this approach towards women is patriarchal since it treats them as possession, unreasonable, and emotional.<sup>282</sup> This view is also supported by Nicolson who stated that the proper approach is to inquire what is reasonable to anticipate from specific defendants 'in the light of their

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<sup>279</sup> Allen H, *Justice Unbalanced* (OU Press 1987) 28-31.

<sup>280</sup> Lacey N, 'General Principles of Criminal Law? A Feminist View' in Bibbings L and Nicolson D (eds), *Feminist Perspectives on Criminal Law* (Cavendish Publishing 2000) 96-97; see also Cousins M, 'Mens Rea: A Note on Sexual Difference, Criminology and the Law' in Carlen P and Collison M (eds), *Radical Issues in Criminology* (Martin Robertson 1980) 120; Rollinson M, 'Re-Reading Criminal Law: Gendering the Mental Element' in Bibbings L and Nicolson D (eds), *Feminist Perspectives on Criminal Law* (Cavendish Publishing 2000) 104.

<sup>281</sup> Duncan S, 'The Mirror Tells its Tale: Constructions of Gender in Criminal Law' in Bottomley A (ed), *Feminist Perspectives on the Foundational Subjects of Law* (Cavendish Publications 1996) 174.

<sup>282</sup> Cousins M, 'Mens Rea: A Note on Sexual Difference, Criminology and the Law' in Carlen P and Collison M (eds), *Radical Issues in Criminology* (Martin Robertson 1980) 120.

history, circumstances and so on'.<sup>283</sup> In order to achieve equality between and within genders, the implementation of the criminal law by the CJA needs to interpret the term 'reasonable person' based on the victims' specific features and experiences.

These feminist critiques suggest that the gender-blind nature of the criminal law and of the law in general is implemented in practice with a gender-biased approach favouring men due to its influence by the patriarchal state and social structure. This is also evident from the fact that the 'mens rea' of a crime is established based on men's standards of 'a reasonable person'. Even the term 'men's rea' includes the word 'men', which could suggest that this standard of a 'reasonable person' was created by men and for men. Finley stated that

[L]egal language is a male language because it is principally informed by men's experiences and because it derives from the powerful social situation of men, relative to women. Universal and objective thinking is male language because intellectually, economically, and politically privileged men have had the power to ignore other perspectives and thus to come to think of their situation as the norm, their reality as reality, and their views as objective.<sup>284</sup>

However, the use of language needs to convey the different experiences of women and articulate multiple voices.<sup>285</sup>

For this reason, the adoption of the intersectional gendered approach in the implementation of the law would mean that the abstract concepts of the law will be applied based on the differences between genders and among women by protecting their individual needs. In order to achieve substantial equality in the case of IPA, the implementation of the law needs to favour female victims in order to balance the inequality, but also treat them depending on their individual needs.

### **2.5.3 A Legal and Social Response to IPA**

The influence of the intersectional gendered approach in the legal reform and the response of the CJA can be also theoretically based on feminist post-structuralist theories concerning the power of the law. Particularly, Lewis and others distinguished that there are two feminist theoretical groups: the 'abstentionists' who claimed that the law cannot tackle patriarchal

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<sup>283</sup> Nicolson D and Sanghvi R, 'Battered Women and Provocation: The Implications of R v Ahluwalia' (1993) *Criminal Law Review* 728, 738.

<sup>284</sup> Finley M L, 'Breaking Women's Silence in Law: The Dilemma of the Gendered Nature of Legal Reasoning' (1989) 64 *Notre Dame Law Review* 886, 893.

<sup>285</sup> See Howe A, *Sex, Violence and Crime: Foucault and the 'Man' Question* (Routledge-Cavendish 2008) 179.

oppression because it is formed based on the patriarchal beliefs, structures and methods, and the sceptical legal reformers who supported that the law through reforms can benefit women despite its prior failings.<sup>286</sup>

‘Abstentionists’ views on the power of the law have been influenced by Foucault’s approach<sup>287</sup> to law.<sup>288</sup> Such an example of ‘abstentionist’ theorist is Carol Smart, who argued the theory of phallogocentric sexuality, according to which a culture of masculinism exists in the conscience of the individuals determining their beliefs and perceptions. Thus, even if IPA victims were encouraged to use the legal measures of the CJS, this would not substantially improve their treatment if the phallogocentric approach that exists in the justice system is not eradicated. For this reason, feminists should focus into the transformation of the social perception on women’s position in order to achieve substantial legal changes.<sup>289</sup> The transformation of the social perception towards IPA and female victims would promote legal reforms against IPA that would strengthen the legal position of victims but also it would influence the practice of policy-makers such as legislators, the government, and the professionals of the CJA.

The above view of de-centring the law has been also promoted by Snider who asserted that the ‘effective social control of aberrant behaviour must be sought outside criminal justice institutions, and that the feminist and progressive focus should shift towards examining how to create less violent people (particularly men), families, communities and societies.’<sup>290</sup> According to Naffine, men have created a legal system based on their own standards that neglected to consider women’s views of human interdependence, human compassion and human need. Since law is made by men, the embodiment of the males’ perspective in law and men’s social domination are facts; hence, there is no point to try to resolve women’s

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<sup>286</sup> Lewis R, Dobash E R, Dobash P R and Cavanagh K, ‘Law’s Progressive Potential: The Value of Engagement with the Law for Domestic Violence’ (2001) 10 (1) *Social Legal Studies* 105, 112.

<sup>287</sup> See Foucault M, *Power/Knowledge: Selected Interviews and Other Writings, 1972-1977* (Pantheon Books, 1980) 102.

<sup>288</sup> See Munro E V, ‘Legal Feminism and Foucault: A Critique of the Expulsion of Law’ (2001) 28 (4) *Journal of Law and Society* 546, 558; see also Hunt A, ‘Foucault’s Expulsion of Law: Toward a Retrieval’ (1992) 17 (1) *Law & Social Inquiry* 1, 7-8.

<sup>289</sup> Smart C, *Feminism and the Power of Law* (Routledge 1989) 26-27.

<sup>290</sup> Snider L, ‘Towards Safer Societies: Punishment, Masculinities and Violence against Women’ (1998) 38 (1) *The British Journal of Criminology* 1, 1.

inequality through this masculine legal system but through social revolution.<sup>291</sup> Moreover, Auchmuty observed that a wholesale social transformation is more preferable than relying in the protection of the law. Specifically, she argued:

Protection is not the best way forward for women; what we need is a world where they never find themselves in this kind of predicament in the first place.... [E]mpowerment through education and opportunities for financial independence are a better way forward for women than 'protection' through...law.<sup>292</sup>

Based on these views, it is argued that the power of the law is limited because the patriarchal legal system can influence the shaping of laws on IPA but also influence the implementation of the law from the CJA.

On the other hand, based on the sceptical reformers, IPA should be addressed within the law. Specifically, Howe criticised abstentionism, 'as perpetuating women's exclusion and disempowerment'.<sup>293</sup> Furthermore, Henderson stated, 'As skeptical as social science may be of law's ability to change behaviours or stop criminality, it would be morally irresponsible to stop trying to make law listen and respond to female human beings.'<sup>294</sup> On this point, Thornton argued that there is a small space in law for feminists to interfere, and for this reason, they should take this opportunity to change its bias from the masculinist influence.<sup>295</sup> Such approach can be deemed as necessary in the case of IPA because as Gelsthorpe and Morris argued, the lack of protection for IPA victims by the legal system facilitates this crime and reinforces its social acceptance.<sup>296</sup> Douglas identified the benefit of the legal reform by arguing that although the process of criminal prosecution can be traumatising for victims, it can have a valuable impact on them because through their engagement with the legal system they come in contact with feminist organisations. These can help them to leave their abusers by decentring the law. This occurs because victims can find the criminal justice process an

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<sup>291</sup> Naffine N, *Law and the Sexes* (Allen and Unwin 1990) 7-8; see also, Schneider E, 'Particularity and Generality: Challenges of Feminist Theory and Practice in Work on Woman-Abuse' (1992) 67 *New York University Law Review* 520, 568.

<sup>292</sup> Auchmuty R, 'Law and the Power of Feminism: How Marriage Lost its Power to Oppress Women' (2012) 20 (2) *Feminist Legal Studies* 71, 84.

<sup>293</sup> Howe A, "'Social Injury' Revisited: Towards a Feminist Theory of Social Justice' (1987) 15 *International Journal of the Sociology of Law* 423, 431.

<sup>294</sup> Henderson L, 'Law's Patriarchy' (1991) 25 (2) *Law and Society Review* 411, 438; see also Matsuda M J, 'When the First Quail Calls: Multiple Consciousness as Jurisprudential Method' (1989) 11 (1) *Women's Rights Law Reporter* 7, 8.

<sup>295</sup> Thornton M, 'Feminism and the Contradictions of Law Reform' (1991) 19 *International Journal of the Sociology of Law* 453, 457.

<sup>296</sup> Gelsthorpe L and Morris A, *Feminist Perspectives in Criminology* (Open University Press 1994) 153-154.



emancipatory experience despite the result of the prosecution of their cases.<sup>297</sup> Based on these views, the law and its implementation by the CJA practice influences the transformation of the social perception towards IPA and diverse victims.

Both approaches can be beneficial to the intersectional gendered approach. Therefore, it is suggested that the promotion of the intersectional gendered approach in the CJS is not sufficient to resolve the IPA problem but it needs to be also promoted through social policies and practice which can raise public awareness towards IPA. Since victims might feel reluctant to access the CJS due to a non-supportive social perception towards them, raising public awareness through the social policies and the CJS can provide a more holistic approach to the protection of female victims and the prevention of IPA. This could be achieved, for example, through the training of the CJA professionals and the education of young people, which are examined in Chapters 4 and 5 respectively, in order to influence their social perception towards IPA and the diverse needs of the victims.

This view is also based on the feminist argument that ‘the public/private distinction is an ideological construct which confines important aspects of the subordination of women to the domain of the “private”, and allows some of the most violent manifestations of the power of men over women to go unrecognised and unchecked.’<sup>298</sup> For this reason, it opposed the dichotomy of the private from the public sphere claiming that the wrongs done to women in the private sphere can be corrected if brought out in the public for debate.<sup>299</sup> Similarly, Burton argued that

Law can never be the complete solution to domestic violence, but it can reduce the role it plays in contributing to the problem when it reinforces patriarchal attitudes. ... [A]lthough cultural attitudes are hard to change, they are worth trying to change. It is only by doing so that the nature of domestic violence as a societal problem will be ‘unmasked’, made visible as a gender problem and one worthy of appropriate state intervention.<sup>300</sup>

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<sup>297</sup> Douglas H, ‘Battered Women’s Experiences of the Criminal Justice System: Decentering the Law’ (2012) 20 (2) *Feminist Legal Studies* 121, 132.

<sup>298</sup> Thompson D, *Radical Feminism Today* (Sage 2001) 7

<sup>299</sup> See Higgins E T, ‘Reviving the Public/Private Distinction in Feminist Theorizing’ (1999-2000) 75 *Chi.-Kent L. Rev.* 847, 867; Gavison R, ‘Feminism and the Public/Private Distinction’ (1992) 45 (1) *Stanford Law Review* 1, 43; Pateman C, ‘Feminist Critiques of the Public/Private Dichotomy’ in Benn S I and Gaus G F (eds), *Public and Private in Social Life* (Croom Helm 1983) 281.

<sup>300</sup> Burton M, ‘The Legal Construction of Domestic Violence: “Unmasking” a Private Problem’ in Jones J, Gear A, Renton R A and Stevenson K (eds), *Gender, Sexualities and Law* (Routledge 2011) 161, 170.

This view is furthered by Conaghan who argued that law affects the shaping of society but it is also influenced by society. Specifically, law does not only mirror the existing social order between genders but it also has a role in its construction and preservation. Furthermore, he argued that the extent of respect that law receives by society, affects its influence in the social construction.<sup>301</sup> Based on this view, there is an influential interaction between law and society, therefore, the intersectional gendered approach needs to be promoted both in the criminal justice and the social welfare systems by recognising and promoting changes that will protect female IPA victims based on their diverse identities.

#### ***2.5.4 Practical Implications of the Intersectional Gendered Approach***

Since the social attitudes towards women and IPA influence the formation of the policies and the implementation of the laws in the CJA practice, patriarchy and gender inequality can affect the approach of the police, prosecutors, and judges. Regarding the influence of patriarchy to the CJS, Barnett pointed that the patriarchal beliefs affect the CJS response towards abused women.<sup>302</sup> However, the CJS response is not only affected by patriarchal beliefs but also as Hunnicutt stated ‘Although gender hierarchies are the central organizing feature of patriarchal systems, age, race, class, sexuality, religion, historical location, and nationality mediate gender statuses, assigning males and females varying amounts of social value, privilege, and power.’<sup>303</sup> Thus, the CJS response varies to IPA victims based on their diverse identities and not only their gender.

Regarding the influence of patriarchy on policing, the actions of police officers are influenced by many variables such as their personal beliefs, attitudes, gender, and the situational circumstances.<sup>304</sup> These can form a police culture influenced by negative stereotypes about women<sup>305</sup> that affects the police work such as responding to a report or

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<sup>301</sup> Conaghan J, *Law and Gender* (Oxford University Press 2013) 196-197.

<sup>302</sup> Barnett W O, ‘Why Battered Women Do Not Leave, Part 1: External Inhibiting Factors within Society’ (2000) 1 (4) *Trauma, Violence, & Abuse* 343, 350.

<sup>303</sup> Hunnicutt G, ‘Varieties of Patriarchy and Violence Against Women Resurrecting “Patriarchy” as a Theoretical Tool’ (2009) 15 (5) *Violence Against Women* 553, 557-558.

<sup>304</sup> DeJong C, ‘Policing Styles, Officer Gender and Decision Making’ in Renzetti S, Miller S L and Gover A R (eds), *International Handbook of Crime and Gender Studies* (Routledge 2013) 249 citing Miller S L, ‘Gender and Community Policing: Walking the Talk’ (Northeastern University Press 1999).

<sup>305</sup> Dick P and Jankowicz D, ‘A Social Constructionist Account of Police Culture and Its Influence on the Representation and Progression of Female Officers’ (2001) 24 *Policing: An International Journal of Police Strategies & Management* 181, 181-199; see also Rabe-Hemp C, ‘Surviving the “All Boys Club”’: Policewomen

complaint, conducting arrests and investigations.<sup>306</sup> Hence, promoting the intersectional gendered approach in the police training could contribute to the transformation of the social perception of police officers towards IPA. This is argued because education is central to consciousness raising and ensuring change, and restructuring courses taught at police colleges/academies. Different experiences and perspectives should be integrated into the core curricula, so that ‘knowledge’ of policing is the product of combined diverse perspectives, rather than the voice of a few white males.<sup>307</sup>

In addition to the example of policing, the social attitudes influence the prosecutions and courts’ decisions on IPA cases. Dempsey suggested that when prosecutors exercise strongly their discretion and prosecute IPA cases, patriarchy can be condemned.<sup>308</sup> Moreover, the examination of the legal reasoning produced in legal cases and the evidence required in the prosecution of a case, as well as looking who is prosecuted, for what offences, and how witnesses are treated in court<sup>309</sup> can provide insight on how female victims of diverse identities are treated by the practice of the CJA. For example, the legal reasoning produced by judges in IPA cases should reflect the intersectional gendered approach, namely promoting equal protection to victims based on their differences. Such an example of reconstructing legal reasoning provides the Feminist Judgments Project that was developed by a group of feminist legal scholars who wrote alternative feminist judgments to significant cases.<sup>310</sup> Hunter argued that this project is based on the idea that the law is to a certain extent unspecified and for this reason judges have to choose between conflicting interpretations of the law. Therefore, this project aimed to bring a feminist philosophy into the interpretation of the law.<sup>311</sup> This philosophical approach to the interpretation means that ‘The legal knowledge

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and Their Struggle for Acceptance’ (2007) 31 (2) *Policing: An International Journal of Police Strategies & Management* 251, 251-270.

<sup>306</sup> Groves N and Thomas T, *Domestic Violence and Criminal Justice* (Routledge 2014) 64.

<sup>307</sup> Corsianos M, *Policing and Gendered Justice: Examining the Possibilities* (University of Toronto Press Incorporated 2009) 87; see also Marcia V and McManimon P, *Gendered Justice: Intimate Partner Violence and the Criminal Justice System* (Rowman & Littlefield Publishers 2011) 87; Silvestri M and Dowey C C, *Gender and Crime* (Sage 2008) 137.

<sup>308</sup> Dempsey M M, ‘Toward a Feminist State: What Does ‘Effective’ Prosecution of Domestic Violence Mean?’ (2007) 70 *The Modern Law Review* 908, 917; 927.

<sup>309</sup> Lacey N, ‘General Principles of Criminal Law? A Feminist View’ in Bibbings L and Nicolson D (eds), *Feminist Perspectives on Criminal Law* (Cavendish Publishing 2000) 98.

<sup>310</sup> Hunter R, McGlynn C and Rackley E, ‘Introduction and Overview’ in Hunter R, McGlynn C and Rackley E (eds), *Feminist Judgments: From Theory to Practice* (Hart Publishing 2010) 2.

<sup>311</sup> Hunter R, ‘An Account of Feminist Judging’ in Hunter R, McGlynn C and Rackley E (eds), *Feminist Judgments: From Theory to Practice* (Hart Publishing 2010) 302.

generated by feminist judges must remain contingent, contextualised, diverse, debated, open to critical scrutiny, and above all a collective enterprise.... And judicial authority and legal decision-making must continue to be deconstructed.<sup>312</sup> This deconstruction of legal reasoning can lead, as argued in the Australian Feminist Judgments, to adopt a practice which does not necessarily mean that the decision of the court will be different but that it can reach the same decision by following a feminist reasoning.<sup>313</sup>

The Feminist Judgment project argues that law has its own discourse independently from any social discourses, and for this reason its focus should be on its own construction.<sup>314</sup> This view is opposed by the argument that the interpretation of the law can be affected by the gender and the diverse identities of the judge. In practice, gender plays a role in the decision-making of the judges since women judges might follow a different approach in their judging from male judges due to their different life experiences.<sup>315</sup> For this reason, Rackley argued of the need for diversity in the judicial body, which includes individuals of different gender, ethnicity, and sexuality in order to bring their diverse experiences in their judging role.<sup>316</sup> She specifically stated that diversity ‘acts as a catalyst for disruption; impacting upon legal monotony, destabilising its taken-for-granted assumptions and uncovering alternative ways of seeing, understanding and judging’.<sup>317</sup> Hence, promoting diversity in the judicial body and training to judges that promotes awareness of the diverse needs of IPA victims can influence the formation of legal reasoning of the courts.

These discussions show that there is an influential interaction among policies, practice, and society, as social beliefs contribute to the shaping of the policies and laws but also to their application into practice. Thus, adopting the intersectional gendered approach consistently in the social and criminal justice policies could improve the practice of the CJA and ensure that the rhetoric of the policies is reflected in practice, and vice versa. This approach is identified in the argument of Smart who promoted the concept of ‘praxis’, which is a methodology that

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<sup>312</sup> Hunter R, ‘The Power of Feminist Judgments?’ (2012) 20 (2) *Feminist Legal Studies* 135, 147.

<sup>313</sup> Douglas H, Bartlett F, Luker T, Hunter R, ‘Introduction: Righting Australian Law’ in Douglas H, Bartlett F, Luker T and Hunter R (eds), *Australian Feminist Judgments: Righting and Rewriting Law* (Hart 2014) 9.

<sup>314</sup> Hunter R, McGlynn C and Rackley E, ‘Introduction and Overview’ in Hunter R, McGlynn C and Rackley E (eds), *Feminist Judgments: From Theory to Practice* (Hart Publishing 2010) 9.

<sup>315</sup> Resnik J, ‘On the Bias: Feminist Reconsiderations of the Aspirations for Our Judges’ (1988) 61 *Southern California Law Review* 1877, 1907-1908.

<sup>316</sup> Rackley E, *Women, Judging and the Judiciary: From Difference to Diversity* (Routledge 2013) 28-29.

<sup>317</sup> Rackley E, ‘What a Difference Difference Makes: Gendered Harms and Judicial Diversity’ in Schultz U and Shaw G (eds), *Women in the Judiciary* (Routledge 2012) 37.

combines theory with practice. Based on 'praxis', theory is mirrored in the practice and vice versa. This idea rejects the creation of abstract theories that cannot be applied to real situations. Hence, the idea of praxis introduces a methodology, according to which theory will be formed based on practice, and practice will be influenced by the theory.<sup>318</sup>

Overall, it was discussed how the intersectional gendered approach is formed. Specifically, it is an approach lying within the asymmetric mutual shaping models of intersectionality. This means that gender is dominant in the context of IPA because it is the cause of IPA; however, the additional identities contributing to the formation of the victimisation experiences are considered in a combined manner. The intersectional gendered approach is an effective framework to satisfy the contemporary needs of the English and Welsh society because women constitute the majority of IPA victims and there are victims facing the combined effects of multiple discriminations. The framing of the intersectional gendered approach contributes to the feminist criminological debates on IPA, as it combines diverse feminist views in a manner that the contemporary developments in England and Wales are addressed in a theoretical level. An attempt of the government to consider multiple inequalities has been made through the SED; however, the SED does not provide a protection to the intersectional discrimination while it also treats all equality strands as equal and for this reason, gender inequality is not prioritised by the CJA practice. Moreover, the formation of crime prevention policies based on the intersectional gendered approach can lead to legal reforms that strengthen the position of IPA victims but also implement the law in practice by considering the diverse needs of the victims.

## **2.6 Conclusion**

The chapter aimed to show whether and why the intersectional gendered approach constitutes an adequate theoretical framework to influence the formation of the CJS response. This was demonstrated by arguing that gender inequality is the cause of IPA and by showing the development of feminist criminology. For this reason, since the aim of feminist criminology is to promote the interests of female victims, a theoretical framework can be effective to address IPA if an intersectional approach is adopted in order to promote the protection of female victims with diverse identities.

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<sup>318</sup> Smart C, *Feminism and the Power of Law* (Routledge 1989) 69-70.

Further, this chapter aimed to show how the intersectional gendered approach can be formed in order to appropriately address the needs of the victims. The analysis shaped a criminological framework that can provide efficient theoretical suggestions to the contemporary problems of IPA victims in England and Wales. For this reason, examples were presented of how diverse social groups are affected by IPA and argued for the appropriateness of the intersectional gendered approach to apply in these cases. In order to achieve this, it drew from intersectionality theories since this contemporary theoretical approach can address more appropriately contemporary issues of diversity. This intersectional approach is needed because female victims have additional identities to their gender such as race, class, ethnicity, sexual orientation, and age that can cause them discriminations. Therefore, the combined effect of these discriminations affects their gendered victimisation causing them to face additional barriers from accessing the CJS. This means that a woman which is victimised by IPA because of her gender can be reluctant to seek the support of the CJS due to fear of facing discrimination. Furthermore, this victimisation, although dominant in the case of IPA, can be deteriorated because of her additional identities such as sexuality and race. Thus, a woman can become further reluctant to seek the support of the CJS because of bias against her race and sexuality.

For the above reasons, the intersectional gendered approach argued that an asymmetric mutual shaping intersectional framework is needed for the formation of policies, laws, and practice of the CJS. Based on this model, gender remains dominant while the additional identities are treated as secondary to gender but equal among them. Moreover, a combined consideration of the effects of the additional identities to the IPA experience will avoid any competing interests between identities to oppose each other and it will provide an overall protection to their needs. Furthermore, it was argued that the equality framework provided by SED can restrict the implementation of the intersectional gendered approach in the practice of CJA concerning IPA. Based on this argument, the response of the CJA will be examined in Chapter4.

Additionally, the chapter argued that policy, legal, practical, and social aspects of IPA need to be addressed based on the intersectional gender-based approach, and not from a gender-neutral or a gender-based approach. This is suggested because the first although it proclaims to provide an equal protection to all individuals, it does not provide substantial equality based

on gender differences and tends to become gender-biased favouring males due to the patriarchal influence. Moreover, a gender-based approach does not provide substantial equality because it does not take into account the differences of the victims. Based on the intersectional gendered approach, it is suggested that each female victim needs a favouring treatment based on her individual identities. This chapter also supported the view that although the CJS response has a significant impact on the protection of female victims, its reform is not sufficient but also social policies need to be transformed by adopting this intersectional gendered approach. This is essential because social policies influence the social perception, which also influences the shaping of policies, law, and the practice of the CJS. Therefore, a whole-system response, through the CJS and the social welfare system is necessary in order to combat IPA more holistically. Finally, the intersectional gendered approach is applied in the following chapters in order to examine the crime prevention policies, laws, and practice of the CJS and social welfare mechanisms.

## **Chapter 3. The Intimate Partner Abuse Policy and Legislative Frameworks**

### **3.1 Introduction**

The purpose of this chapter is to examine the development of the crime prevention strategies on IPA and the substantive criminal laws that shape the protection of diverse female victims and the prevention of IPA from 1997 to 2017. This examination aims to produce critiques based on the intersectional gendered approach framed in Chapter 2. To produce these critiques, the analysis will examine to what extent the CJS has promoted the prevention of IPA and the protection of female victims by considering their diverse needs and attempting the transformation of the social perception towards IPA and its victims. During this investigation, the engagements of feminist activists and theorists are identified in order to show the reforms they have attempted to forward.

The chapter starts the discussion from 1997 due to the significant shift that the policies have had since that year with the involvement of the Labour government. Specifically, since 1997, during the first administration of the Labour government, crime prevention strategies were developed in order to co-ordinate a whole-system response to IPA through a collaboration of the CJS and the social welfare system. For this reason, the chapter focuses on the crime prevention strategies developed during the Labour, the Coalition, and the Conservative governments. Furthermore, the chapter focuses on the familial homicide offence of the DVCVA 2004 developed during the Labour government, the DVCV Amendment of 2012 and the coercive control offence of the SCA 2015 developed during the Coalition government.

The chapter will argue that despite the arguments of feminist activists promoting the creation of a gender-based strategy, the Labour government adopted a gender-neutral approach in its policy framework until the creation of the VAWG strategy in 2009. Nevertheless, it recognised through all of its strategies the barriers that some victims face due to their diverse needs. Moreover, the Labour government aimed to promote a whole-system response, namely a coordinated response provided by the CJS and the social welfare system, which promoted public awareness against IPA; however, the ‘Domestic Violence: A National Report’ did not successfully mirror this whole-system response since it focused more on a CJS response. Additionally, the Coalition government adopted a gender-based approach in its



strategy and recognised the diverse barriers of the victims. However, its implementation was undermined through the Big Society Plan and the funding cuts caused by the austerity measures. Furthermore, the Conservative government continued to promote a gender-based approach that recognised the differences among victims but it did not specify the prioritisation of tackling gender inequality from the other inequalities that victims experience. The response of the substantive criminal law has improved significantly with the creation of the coercive control offence. This law mirrors the views of feminist activists and theorists who asserted the criminalisation of coercive control in order for the law to capture the essence of IPA.

### **3.2 The Whole-System Response of the Labour Government**

The Labour government pledged through its manifesto to be ‘tough on crime, tough on the causes of crime’.<sup>319</sup> Moreover, it stated that ‘We will place a new responsibility on local authorities to develop statutory partnerships to help prevent crime and disorder in their area.’<sup>320</sup> Based on this commitment, the Labour government aimed to give statutory status to the inter-agency collaborations established by the Conservative government in 1984 through its ‘Crime Prevention, Circular 8/84’.<sup>321</sup> These inter-agency collaborations promoted a whole-system response because they were based on the view that ‘Every individual citizen and all those agencies whose policies and practices can influence the extent of crime should make their contribution. Preventing crime is a task for the whole community’.<sup>322</sup> The Labour government in order to provide a statutory status to the inter-agency collaboration launched in 1997 the consultation ‘Getting to Grips with Crime: A New Framework for Local Action’.<sup>323</sup> This consultation considered the concept of ‘community safety’ of the ‘Morgan Report’,<sup>324</sup> published by the Conservative government in 1991, in which it was suggested:

The term ‘crime prevention’ is often narrowly interpreted and this reinforces the view that it is solely the responsibility of the police. On the other hand, the term ‘community safety’ is

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<sup>319</sup> Labour Party, ‘Labour Party Manifesto: New Labour Because Britain Deserves Better’ (1997) <<http://labourmanifesto.com/1997/1997-labour-manifesto.shtml>> accessed 25 April 2017.

<sup>320</sup> *ibid*

<sup>321</sup> See Home Office, *Crime Prevention, Circular 8/84* (1984) 1.

<sup>322</sup> Home Office, *Crime Prevention, Circular 8/84* (1984) 1.

<sup>323</sup> Home Office, *Getting to Grips with Crime: A New Framework for Local Action* (1997).

<sup>324</sup> Home Office and Standing Conference on Crime Prevention, *Safer Communities: The Local Delivery of Crime Prevention through the Partnership Approach* (1991).

open to wider interpretation and could encourage greater participation from all sections of the community in the fight against crime.<sup>325</sup>

The 'Morgan Report' introduced the concept of community safety which meant that crime prevention should involve the collaboration of the entire community such as statutory and voluntary agencies in order to provide a whole-system support to the needs of the victims.

This approach led to the enactment of sections 5-7 of the Crime and Disorder Act 1998<sup>326</sup> that established the Crime and Disorder Reduction Partnerships (CDRPs). This Act placed a statutory requirement on local authorities to monitor IPA in their communities and create partnerships for the better prevention and protection of these crimes.<sup>327</sup> This partnership approach was based on the idea that a single agency cannot deal alone with complex community safety and crime problems. This approach can be described 'as a cooperative relationship between two or more organisations to achieve a common goal.'<sup>328</sup> The aim of this multi-agency response can be illustrated in the statement of Alun Michael, the then Secretary of State,

The provisions of the Crime and Disorder Bill will place a statutory duty on local authorities and the police service to develop local crime and disorder reduction partnerships with other agencies. These will assess local crime problems, develop a strategy for tackling them and publish crime reduction targets. In areas where the local crime audits identify domestic violence as a problem, the local crime and disorder reduction strategy should address it.<sup>329</sup>

Based on this statement, it is identified that the CDRPs would aim to provide a whole-system response to the victims of IPA based on their local needs. As in each community, IPA victims can experience different barriers influencing their victimisation and their access to the CJS, there are different needs to be met in each community.

The close collaboration of partnerships is important for encouraging IPA victims to access the CJS because as Jackie Ballard, an MP of the Liberal Democrat party, stated:

[W]e must be able to guarantee that the professionals involved have a co-ordinated response. The last thing that a person who has plucked up the courage to come forward needs is to be

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<sup>325</sup> *ibid* 3.

<sup>326</sup> Crime and Disorder Act 1998 s.5-7.

<sup>327</sup> See Radford L and Gill A, 'Losing the Plot? Researching Community Safety Partnership Work against Domestic Violence' (2006) 45 (4) *Howard Journal of Criminal Justice* 369, 371-372.

<sup>328</sup> Berry G, Briggs P, Erol R and Van Staden L, 'The Effectiveness of Partnership Working in a Crime and Disorder Context: A Rapid Evidence Assessment' (Home Office 2011) 1.

<sup>329</sup> HC Deb 09 February 1998 vol 306 col 27W.

passed from agency to agency, with the feeling that those agencies are not even talking to one another. We know that properly co-ordinated inter-agency work can achieve a great deal. It can enable effective intervention, as well as challenge and change inappropriate attitudes to domestic violence. No single agency, whether the police, social services or any other, knows all that there is to know about the subject or can tackle it alone, but when a range of agencies work closely together, domestic violence can be reduced and prevented.<sup>330</sup>

This multi-agency collaboration promotes a proactive response through community involvement that can be beneficial not only in supporting IPA victims to engage with the CJS but also to raise awareness against IPA and on the specific needs of the victims.

The CDRPs brought together the representatives of statutory and voluntary agencies, which deal with crime reduction,<sup>331</sup> by taking the form of domestic violence forums that brought together all the relevant agencies in a locality such as the Women's Aid, the police, housing authorities, and women's groups.<sup>332</sup> Such an example of domestic violence forum is the Newcastle Domestic Violence and Abuse Partnership, which is part of Safe Newcastle, the CDRP in Newcastle upon Tyne. The Newcastle Domestic Violence and Abuse Partnership aims to deliver through strategic and pro-active partnership working, a coherent and effective response to domestic violence.<sup>333</sup> Some of the activities that this CDRP runs are to provide outreach services, refuge accommodation for female IPA victims and specialist support for BAME women and women with drug or alcohol problems.<sup>334</sup> Thus, this example indicates that IPA victims are provided with support to specific needs that occur due to their identities such as ethnicity and addiction in order to help them overcome barriers that affect their access to the CJS.

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<sup>330</sup> HC Deb 08 November 2000 vol 356 col 55WH.

<sup>331</sup> Home Office, *Developing Domestic Violence Strategies-A Guide for Partnerships* (Violent Crime Unit 2004) 3; see also James-Hanman D, 'Enhancing Multi-agency Work' in Hanmer J and Itzin C (eds), *Home Truths about Domestic Violence: Feminist Influences on Policy and Practice A Reader* (Routledge 2000) 269; Hague G, 'Smoke Screen or Leap Forward: Interagency Initiatives as a Response to Domestic Violence' (1997) 17 (53) *Critical Social Policy* 93, 93.

<sup>332</sup> Hague G and Malos E, 'Inter-agency Initiatives as a Response to Domestic Violence' (1997) 70 *Police Journal* 37, 39.

<sup>333</sup> Supporting People: Communities and Local Government, 'Domestic Violence Forums' <[https://community2.newcastle.gov.uk/core.nsf/a/msp\\_groups\\_domesticviolence#DomesticViolencePartnership](https://community2.newcastle.gov.uk/core.nsf/a/msp_groups_domesticviolence#DomesticViolencePartnership)> accessed 5 March 2017.

<sup>334</sup> SafeNewcastle, 'Domestic Violence and Sexual Violence' <<http://www.safenewcastle.org.uk/what-we-do/domestic-violence-and-sexual-violence>> accessed 5 March 2017.

### 3.2.1 *The Feminist Contribution to the Domestic Violence Forums*

The shaping of the multiagency collaborative response was influenced by the Domestic Abuse Intervention Project (DAIP) developed in Duluth, Minnesota.<sup>335</sup> The DAIP derived from the women's movement and was developed based on the feminist views of control and power in relationships between men and women.<sup>336</sup> The DAIP was 'an interagency effort utilizing law enforcement, criminal justice and human service agencies in Duluth to intervene consistently and actively in domestic assault cases in an attempt to prevent further acts of violence.'<sup>337</sup> In the British context, human service agencies or voluntary agencies involved with the multi-agency work, according to Hague, are women's organisations that have attempted to influence the formation of its response.<sup>338</sup> These agencies are involved with the criminal justice and include service providers and advocacy/campaigns that focus on supporting victims that come in contact with the CJS.<sup>339</sup> Such specialist services for victims are provided in England and Wales by feminist organisations such as Women's Aid and Refuge. For example, Women's Aid worked in local communities to tackle domestic violence by providing helplines, outreach services, over 430 refuge houses that offered safe accommodation, practical and emotional support, as well as help with legal and welfare rights.<sup>340</sup> Similarly, Refuge supported victims through campaigning and raising awareness on IPA, and through services provided by trained staff such as safe accommodation in refuges, including safe houses for African Caribbean and Asian women, counselling, and outreach services to BAME victims.<sup>341</sup> Moreover, the SBS has contributed to the multi-agency response by providing outreach services for BAME women who have experienced IPA or

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<sup>335</sup> See Holder R, 'Pick'n Mix or Replication: The Politics and Process of Adaptation' in Shepard M F and Pence E L (eds), *Coordinating Community Responses to Domestic Violence: Lessons from Duluth and Beyond* (Sage 1999) 258.

<sup>336</sup> Hague G, 'Interagency Work and Domestic Violence in the UK' (1998) 21 (4) *Women's Studies International Forum* 441, 441.

<sup>337</sup> Pence E, 'The Duluth Domestic Abuse Intervention Project' (1983) 6 *Hamline Law Review* 247, 255.

<sup>338</sup> Hague G, 'Interagency Work and Domestic Violence in the UK' (1998) 21 (4) *Women's Studies International Forum* 441, 447.

<sup>339</sup> Hucklesby A and Corcoran M, 'Introduction' in Hucklesby A and Corcoran M (eds), *The Voluntary Sector and Criminal Justice* (Palgrave Macmillan 2016) 3-4.

<sup>340</sup> Women's Aid, 'Directory of Domestic Violence Multi-Agency Fora 2000 England & Wales' <<https://web.archive.org/web/20000601120709/http://www.womensaid.org.uk:80/dvforum/foramain1.htm>> accessed 4 June 2017.

<sup>341</sup> Refuge, 'About Refuge' <<https://web.archive.org/web/20031202151048/http://www.refuge.org.uk:80/about.htm>> accessed 4 June 2017.

more specific cultural forms of violence and inter-related issues such as homelessness, racism, matrimonial and child custody issues, depression, suicide and self-harm.<sup>342</sup>

The feminist contribution to the multi-agency response can be further argued based on Harwin and Barron, who noted that Women's Aid attempted to establish interagency cooperation for the purpose of improving the response of statutory agencies to victims.<sup>343</sup> In fact, Women's Aid argued that the government needed to issue specific detailed guidance for the police and local authorities on suitable mechanisms to conduct crime audits on IPA, due to its private and hidden nature.<sup>344</sup> Moreover, Women's Aid suggested the creation of a cross-governmental collaboration through a group that would be composed of all relevant governmental departments with the participation of principal statutory and voluntary agencies including Women's Aid. The work of this collaboration would be to coordinate and implement a national strategy.<sup>345</sup> These feminist suggestions promoted the idea of creating a strategy that would coordinate a whole-system response adequate to diverse victims.

### ***3.2.2 The Gender-Neutral Policy Framework of the Labour Government***

The whole-system response was not promoted by the Labour government only through the CDRPs but also through a strategy that shaped the policy framework on IPA. In fact, the government began reviewing the existing IPA policies in order to form a strategy against IPA, as it can be attested by the statement of the then Secretary of State, Alun Michael:

The Government are committed to tackling domestic violence on every front. We are currently examining the policies operating in this area, with a view to ensuring that we have

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<sup>342</sup> Southall Black Sisters, 'Services'

<<https://web.archive.org/web/20040606212519/http://www.southallblacksisters.org.uk:80/services.html>> accessed 4 June 2017; see also Jihal A, 'Struggle Not Submission: Domestic Violence in the 1990s' in Gupta R (ed), *From Homebreakers to Jailbreakers: Southall Black Sisters* (Zed Books 2003) 29.

<sup>343</sup> Harwin N and Barron J, 'Domestic Violence and Social Policy: Perspectives from Women's Aid' in Hanmer J and Itzin C (eds), *Home Truths about Domestic Violence: Feminist Influences on Policy and Practice-A Reader* (Routledge 2000) 221.

<sup>344</sup> Women's Aid, 'More Detailed Recommendations on Key Policy Areas'

<<http://web.archive.org/web/20071108041346/http://www.womensaid.org.uk/page.asp?section=000100010009000100010001>> accessed 29 March 2017.

<sup>345</sup> Women's Aid, 'Families without Fear: Women's Aid Agenda for Action on Domestic Violence: Recommendations for a National Strategy'

<<http://web.archive.org/web/20071026083221/http://www.womensaid.org.uk/page.asp?section=00010001000900010001>> accessed 29 March 2017.

an effective strategy against domestic...violence. This strategy will take full account of our commitments to...promoting equality and opportunity for women.<sup>346</sup>

This statement indicates that the Labour government intended to form a strategy that would provide a whole-system response to IPA.

Women's Aid attempted to influence the shaping of this strategy with its 'Families without Fear' campaign launched in 1998 that included the 'Families without Fear, the Women's Agenda for Action on Domestic Violence'.<sup>347</sup> In this Agenda, Women's Aid expressed the view that a national strategy against domestic violence must 'ensure the prevention of interpersonal and gender-based violence in the short and long-term through public awareness and education of children and the general public, as well as through an effective legal framework'.<sup>348</sup> Based on this view, IPA should be recognised as gender-based violence and a whole-system response should be promoted through legal interventions but also through public awareness and early intervention initiatives that could transform the social perception towards IPA.

The Agenda of the campaign informed the governmental strategy 'Living without Fear: An Integrated Approach to Tackling Violence Against Women',<sup>349</sup> as it recognised the need to provide support to victims based on their diverse needs. Specifically, it promoted a whole system response through the support of the CJS and initiatives such as supporting refuges and promoting early intervention through the education of young people.<sup>350</sup> However, Itzin observed that this document used a gender-neutral language since it referred to women as victims but it did not refer to men as perpetrators of IPA.<sup>351</sup> Hence, it is argued that this strategy improved the IPA policy framework because it promoted a coordinated whole-system response, which could better support victims of diverse identities; however, its lack to acknowledge IPA as gender-based crime illustrates that gender inequality was not recognised

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<sup>346</sup> HC Deb 16 July 1997 vol 298 col 171W.

<sup>347</sup> Women's Aid, 'Families without Fear, the Women's Agenda for Action on Domestic Violence' (1998) <<http://www.webarchive.org.uk/wayback/archive/20080618205810/http://www.womensaid.org.uk/page.asp?section=00010001000900010001>> accessed 30 October 2016.

<sup>348</sup> *ibid*

<sup>349</sup> Home Office and Cabinet Office, *Living Without Fear: An Integrated Approach to Tackling Violence against Women* (1999) 4-5.

<sup>350</sup> *ibid*

<sup>351</sup> Itzin C, 'Gendering Domestic Violence: The Influence of Feminism on Policy and Practice' in Hanmer J and Itzin C (eds), *Home Truths about Domestic Violence: Feminist Influences on Policy and Practice-A Reader* (Routledge 2000) 376.

as the cause of IPA. This could weaken the whole-system response because it could fail to target gender inequality.

Further, the feminist argument to create guidance for the multi-agency work is mirrored in the governmental response. Particularly, the government issued in 2000 the ‘Domestic Violence: Multi-Agency Guidance for Addressing Domestic Violence’.<sup>352</sup> In this document, the government instructed that ‘the agencies must be aware of the needs of women from ethnic minorities, those with disabilities, elderly people, those with drug or alcohol dependency, people with mental health problems and those in same sex relationships.’<sup>353</sup> Therefore, the acknowledgement of the diverse needs of the victims without recognising the gendered nature of IPA suggests that a gender-neutral approach was adopted by the government. On this point, Ballinger criticised the Labour government for dealing with IPA in a de-gendered way.<sup>354</sup> For this reason, it is argued that gender was not considered the dominant identity of the victims to be protected since gender inequality was not even recognised as the cause of IPA. This gender-neutral policy framework can influence the CJA and the whole-system practice through the initiatives launched to implement it.

### ***3.2.3 The ‘Safety and Justice: The Government’s Proposals on Domestic Violence’ 2003 Strategy***

The Labour party for the 2001 election undertook the commitment in its manifesto:

Our ten-year goal of reducing crime depends on reform of the criminal justice system at every level, from police to courts ... to put crime reduction centre stage. ... Our purpose is simple: to create a Britain that is democratic, decentralised and diverse, with decisions always taken as close to the people as is consistent with efficiency and equity. Our ten-year goal is a new settlement with local government – over finance, structures and services.<sup>355</sup>

Based on this commitment, the Labour government aimed to reform the CJS and to promote crime reduction measures with decentralisation that would strengthen local authorities’ power through finances, structures, and services to fight crime. In the context of IPA, this meant that local domestic violence forums would have been provided with the necessary means to support the diverse needs of the victims through the CJS and the social welfare system.

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<sup>352</sup> Home Office, *Domestic Violence: Break the Chain Multi-Agency Guidance for Addressing Domestic Violence* (2000).

<sup>353</sup> *ibid* 6.

<sup>354</sup> Ballinger A, ‘Lessons for the Coalition’ (2011) 85 (1) *Criminal Justice Matters* 16, 17.

<sup>355</sup> Labour Party, ‘Labour’s Manifesto 2001: Ambitions for Britain’ (2001) 31.

Since tackling IPA requires a coordinated effort among different mechanisms, the government attempted to improve its whole-system response, according to Harriet Harman, the then Solicitor General, who stated:

The work needed to address domestic violence issues extends far wider than any one Department's remit. This is why I have established with ministerial colleagues a Ministerial Committee on domestic violence. We are working closely with colleagues across government to draw up a national strategy addressing domestic violence issues that relate not just to the civil and criminal courts, but also to matters of ... education, ... refuges and housing.<sup>356</sup>

Therefore, the government aimed to create a coordinated effort through a ministerial committee that would attempt to tackle IPA not only through the CJS and the civil legal system but also through refuges and education. This initiative suggests an effort to tackle IPA not only through the law but also through social policies that can provide substantial support to victims with diverse needs. Moreover, these measures can contribute to the transformation of the perception among victims and society regarding IPA and the needs of its victims.

In fact, the government issued the White Paper 'Justice for All',<sup>357</sup> in 2002 to promote changes in the CJS in order to reduce crime, including IPA. Regarding IPA, it recognised that the majority of these crimes are perpetrated by men against women in a repetitive manner.<sup>358</sup> Women's Aid welcomed this acknowledgement as recognition of the gendered nature of IPA; however, it recommended that more emphasis should be given on IPA being a gendered crime and on its greater impact for women such as practical consequences in terms of accommodation, finances, and childcare responsibilities.<sup>359</sup> Particularly, the recognition that men constitute the majority of perpetrators committing IPA crimes does not explicitly refer to IPA as gender crime. Recognising IPA as gender crime would cause the expectation that female victims should be provided with additional support in order to counter balance the injustice imposed on them by IPA and gender inequality.

Further to the 'Justice for All', in 2003 the government issued the 'Safety and Justice: The Government's Proposals on Domestic Violence',<sup>360</sup> which stated that 'figures show that it is

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<sup>356</sup> HC Deb 07 February 2002 vol 379 col 1051-2W.

<sup>357</sup> Home Office, *Justice for All* (Cmd 5563, 2002).

<sup>358</sup> *ibid* 131.

<sup>359</sup> Women's Aid, *Response to the 2002 Criminal Justice White Paper: 'Justice for All'* (2002) 13.

<sup>360</sup> Home Office, *Safety and Justice: The Government's Proposals on Domestic Violence* (Cmd 5847, 2003).



predominantly violence by men against women'.<sup>361</sup> This document placed IPA within the context of crime and identified it as a criminal justice issue.<sup>362</sup> However, the governmental policy, as expressed in the strategy, adopted a gender-neutral approach since it did not recognise IPA as a gender crime.<sup>363</sup> This gender-neutral approach was adopted despite the fact that in the relevant period the 81% of victims of domestic violence were women.<sup>364</sup> This gender-neutral policy approach was opposed by the ROW, which stated that 'We believe that the gendered nature of domestic violence should be made clearer by the consultation paper.'<sup>365</sup> Moreover, on this matter Women's Aid recommended that a national strategy should recognise the gendered nature of domestic violence because 'domestic violence is gender specific (i.e. most commonly experienced by women and perpetrated by men) and that any woman can experience domestic violence regardless of race, ethnic or religious group, class, sexuality, disability or lifestyle.'<sup>366</sup> Therefore, based on these critiques, the IPA policy framework has adopted a gender-neutral approach. If gender inequality is not recognised as the cause of IPA, this can be detrimental for the formation of the IPA response as it would not tackle the problem on its root.

Such an example of the influence that a gender-neutral policy framework can promote to the IPA response is the domestic violence definition. Particularly, the 'Safety and Justice: The Government's Proposals on Domestic Violence' led to the creation of a common definition, according to which domestic violence is 'Any violence between current and former partners in an intimate relationship, wherever and whenever the violence occurs. The violence may include physical...[and] emotional ... abuse'.<sup>367</sup> In this definition, there is not any mention to the gendered nature of IPA. Since the creation of this definition aimed to coordinate the

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<sup>361</sup> *ibid* para 10.

<sup>362</sup> Ball W and Charles N, 'Feminist Social Movements and Policy Change: Devolution, Childcare and Domestic Violence Policies in Wales' (2006) 29 *Women's Studies and International Forum* 172, 179.

<sup>363</sup> MacKay F and Breitenbach E, 'Feminist Politics in Scotland from the 1970s to 2000s: Engaging with the Changing State' in Breitenbach, E and Thane P (eds), *Women and Citizenship in Britain and Ireland in the 20th Century: What Difference Did the Vote Make?* (Continuum 2010) 153, 214.

<sup>364</sup> Home Office, *Crime in England and Wales 2001/2002* (2002) 56.

<sup>365</sup> Women's Rights, *Response to the Home Office Consultation Paper Safety and Justice* (2003) 2.

<sup>366</sup> Butler E, *Women's Aid Consultation Response: Safety and Justice, the Government Consultation Paper on Domestic Violence* (2003)

<<http://web.archive.org/web/20071030195050/http://www.womensaid.org.uk/page.asp?section=000100010009000300040006>> accessed 27 April 2017.

<sup>367</sup> Home Office, *Safety and Justice: The Government's Proposals on Domestic Violence* (Cmd 5847, 2003) 8.

whole-system response on IPA, its gender-neutral approach could have affected and de-gendered the CJA response, which is examined in Chapter 4.

The adoption of a gender-neutral approach was not the only problem, as the diverse identities of the victims were also omitted in the definition. On this issue, Refuge commented that:

We must acknowledge that gender based discrimination often interfaces with other forms of discrimination such as race/ethnicity, class, sexual orientation, age, disability and religion, creating even greater difficulties for many women.... For this reason, the definition may need to be broader.<sup>368</sup>

Refuge's view suggests that gender inequality intersects with other discriminations that contribute to the IPA victims' experiences; for this reason, these identities should have been included to the definition. Although the diverse identities needed to be included in the domestic violence definition, it is argued that gender inequality should have been identified as the cause of IPA when manifested through coercive control against women of diverse identities. Recognising gender inequality as the cause of IPA despite of being committed against diverse victims implies that the gender of the victims is the central identity in comparison to the other identities.

### **3.2.4 Domestic Violence: A National Report 2005**

In 2005, the Labour government, in its effort to reduce IPA and increase the protection of its victims, published the 'Domestic Violence: A National Report',<sup>369</sup> with which reformed its strategic aims to IPA. In this report, the government aimed to the prevention of IPA and support of the victims with early identification and intervention through different initiatives such as raising awareness with campaigning and police development with training.<sup>370</sup> However, it did not mention any measures promoted for early intervention to young people through education. Moreover, it aimed to the protection and justice through the CJS response such as the implementation of the DVCVA 2004 and the SDVCs.<sup>371</sup>

Feminist activists continued to raise concerns regarding the strategy adopting a gender-neutral approach. Specifically, Women's Aid critiqued that 'Domestic violence is gendered

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<sup>368</sup> Refuge, *Response to Safety and Justice Government Consultation Paper* (2003) 5.

<sup>369</sup> Home Office, *A National Report* (2005) 9.

<sup>370</sup> *ibid* 12-13.

<sup>371</sup> *ibid* 16-19.

and this must be recognised in any National Plan to reduce and prevent domestic violence.’<sup>372</sup> This gender-neutrality of the policy framework continued to be attested in the ‘National Domestic Violence Delivery Plan: Progress Report 2005/06’.<sup>373</sup> Women’s Aid view was furthered by Refuge, when critiqued the annual progress report by stating that ‘Refuge continues to be concerned that the plan does not specifically acknowledge the gendered aspect of domestic violence and does not sit within a wider national government strategy that tackles all violence against women’.<sup>374</sup> This view suggested the recognition of the gendered nature of IPA and the creation of a Violence against Women (VAW) policy framework. This means that crimes whose cause is gender inequality would have been placed under a common strategy.

Despite this gap, in the 2005/06 annual report the government announced its focus on understanding the needs of BAME groups, the LGBT communities, and the disabled.<sup>375</sup> This commitment suggests that the government considered some diverse identities; however, these should be expanded by including an indicative list of identities that can cause barriers to the victims in escaping abuse, and for this reason, needing additional support. These additional identities to gender should be considered as equal among them suggesting that all victims despite of their identities should be provided with proper support to their needs. This recognition in the strategy would have promoted the commitment to structure a whole-system response that promotes in practice the equal protection and support of all victims.

Further, Refuge was concerned that the government focused on a criminal justice response and not to an integrative approach, which would mean increasing the provision of services, undertaking preventative work, and implementing protective mechanisms.<sup>376</sup> This was further evidenced by the Sixth Home Affairs Select Committee Report on Domestic Violence, which was issued in 2008 as a result of the broad-ranging inquiry launched for domestic violence. Specifically, this report argued that policy was disproportionately focused on criminal justice responses at the expense of effective prevention and early intervention. For this reason, it

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<sup>372</sup> Women’s Aid, ‘Briefing: Domestic Violence-A National Report’ (2005).

<sup>373</sup> HM Government, *National Domestic Violence Delivery Plan: Progress Report 2005/06* (2006) 10.

<sup>374</sup> Refuge, *Response to the Government’s 2005/6 Progress Report on the National Domestic Violence Delivery Plan* (2006) 1.

<sup>375</sup> HM Government, *National Domestic Violence Delivery Plan: Progress Report 2005/06* (2006) 10.

<sup>376</sup> Refuge, *Response to the Government’s 2006/7 Progress Report on the National Domestic Violence Delivery Plan* (2007) 1-2.

called for a more direct focus on VAW more generally and an increased emphasis on prevention.<sup>377</sup> Hence, the governmental policy was problematic in terms of successfully promoting a whole-system framework, as prevention through early intervention was limited. For example, the Home Affairs Select Committee, regarding the domestic violence definition, argued:

We heard of concerning attitudes and abuse between young people in intimate relationships. However, 16–18 year olds are excluded from the current government definition of Domestic Violence, there has been little research on the needs of teenage victims ... of domestic violence, and there is little support for under-18s in abusive relationships.<sup>378</sup>

The exclusion of young people from the domestic violence definition and their limited practical support illustrates that the governmental response regarding prevention through early intervention was problematic. Moreover, as argued in Chapter 2, the additional identities intersecting with gender should be equal among them. The fact that the age of victims was not considered suggests that there was an unequal treatment among the additional identities to gender. Thus, the limited consideration of prevention through early intervention could be attributed to this unequal treatment of the additional identities.

### **3.2.5 The ‘Together We Can End Violence Against Women and Girls: A Strategy’ 2009**

In 2008, the EVAW in an effort to address the above issues launched the campaign ‘Realising Rights, Fulfilling Obligations’, in which it called the government, in collaboration with women’s organisations, to develop an integrated strategy to VAW.<sup>379</sup> In 2009, the government launched the consultation ‘Together We Can End Violence Against Women and Girls: A Consultation Paper’,<sup>380</sup> in which it placed IPA under a VAWG policy framework. On this point, Refuge responded that ‘It should ... have specific measures on gender equality, including how gender intersects with race, age, ethnicity, sexuality, disability, socio-economic background and geographical location...’<sup>381</sup> Similarly, ROW stated:

Government must mainstream a gender perspective in its policies related to violence against

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<sup>377</sup> Select Committee on Home Affairs, *Domestic Violence, Forced Marriage and Honour-Based Violence* (HC 2007-08, 263-I) para 418.

<sup>378</sup> *ibid* para 76.

<sup>379</sup> EVAW, ‘Realising Rights, Fulfilling Obligations: A Template for an Integrated Strategy on Violence Against Women for the UK’ (2008) 14.

<sup>380</sup> HM Government, *Together We Can End Violence Against Women and Girls: A Consultation Paper* (2009) 3-4.

<sup>381</sup> Refuge, *Together We Can End Violence against Women and Girls A Consultation Paper* (2009) 43.

women so that all those responsible for implementing the programmes ... understand the causes, consequences and mechanisms of violence against women. The gendered nature of violence against women must be an integral part of the strategy; it is gender based discrimination.... It must also take into account the 'intersectionality' of gender with other diversity strands, such as disability, religion, age, sexuality, immigration status and how this contributes to unique experiences of oppression and privilege and also how this affects the remedies that women can access. Mainstreaming a gender perspective will ensure that women are not re-victimised by gender insensitive laws or judicial or enforcement practices.<sup>382</sup>

These views promoted the VAWG strategy, based on which IPA would have been placed under the overarching policy framework of VAWG. Moreover, ROW argued that additional identities contribute to the victimisation experiences, and for this reason they should be taken into account while Refuge pointed that the government needed to clarify how gender intersects with the other identities. These feminist organisations raised the issue regarding the intersection of gender with other identities; however, they did not specifically suggest how the intersection of gender with the other identities should be considered. As argued in Chapter 2, in the context of IPA, the equal consideration of gender with the additional identities would promote the adoption of the diversity intersectional approach that can lead to the de-gendering of policies. For this reason, it is argued that the gender should be considered as dominant while the additional identities as secondary but equal among them.

As a result of the above consultation, the VAWG governmental strategy 'Together We Can End Violence Against Women and Girls: A Strategy'<sup>383</sup> was issued. In this strategy, the government set three aims: a) protection, which meant delivering an effective CJS through investigation, prosecution, victim support and protection, and perpetrator programmes, b) provision, which entailed the support of women and girls to continue with their lives through effective provision of services, advice and support; emergency and acute services; refuges and safe accommodation, and c) prevention, namely changing attitudes and preventing violence through awareness-raising campaigns, safeguarding and educating children and young people, early identification/intervention and training.<sup>384</sup> The achievement of these aims requires a whole-system response delivered by the CJA and social welfare mechanisms such as refuges and education. The implementation of these policy aims is examined in respect to

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<sup>382</sup> Rights of Women, *Rights of Women's Response to HM Government's Consultation Paper: Together We Can End Violence against Women and Girls* (2009) 12.

<sup>383</sup> HM Government, *Together We Can End Violence Against Women and Girls: A Strategy* (2009).

<sup>384</sup> *ibid* 5.

the CJA in Chapter 4 while to the social welfare mechanisms of refuges and education of young people in Chapter 5.

### **3.3 The Whole-system Crime Prevention Strategy of the Coalition Government**

In May 2010, there was a change in the administration with the Conservative and Liberal Democrat parties forming a Coalition.<sup>385</sup> The views of the Conservative party on crime prevention can be identified in its manifesto, in which it stated that ‘We will fight back against the crime... that blights our communities. We will take steps to reduce the causes of crime...’.<sup>386</sup> Moreover, the Liberal Democrats emphasised their commitment to ‘fairness’ and promised to initiate ‘change that works for you’.<sup>387</sup> Specifically, it stated that ‘We want every community to be safe and fair, and offer opportunities to people of every background.’<sup>388</sup> Based on these statements, IPA prevention could have been achieved by reducing gender inequality and promoting changes that consider the diverse needs of individuals of each community.

In order for the two parties to form the Coalition government they produced their governmental programme, which was composed by their political views.<sup>389</sup> Specifically, it stated that ‘The Government’s approach to fighting crime involves a radical shift in power from Whitehall to local communities.’<sup>390</sup> This statement indicates the Coalition government’s aim to promote decentralisation, which was also endorsed prior to the 1997 administration of the Labour government with the interagency initiatives and the ‘Morgan Report’.<sup>391</sup> Since the Labour government aimed to decentralise power through the CDRPs, this statement suggests that the Coalition government would push the decentralisation initiative further.

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<sup>385</sup> Maer L and Gay O, ‘The 2010 Coalition Government at Westminster’ (HC 2015) 3.

<sup>386</sup> Conservative Party, ‘Invitation to Join the Government of Britain, The Conservative Manifesto 2010’ (Conservative Party 2010) 55.

<sup>387</sup> Roberts R and Silvestri A, ‘May 2010-April 2011: Political Promises and Policy Narratives’ in Silvestri A (ed), *Critical Reflections: Social and Criminal Justice in the First Year of Coalition Government* (Centre for Crime and Justice Studies 2012) 6.

<sup>388</sup> Liberal Democrat Party, ‘Manifesto 2010’ (2010) 71.

<sup>389</sup> See HM Government, *The Coalition: Our Programme for Government* (Cabinet Office 2010) 7-8.

<sup>390</sup> Home Office, *A New Approach to Fighting Crime* (2011) 5.

<sup>391</sup> See Home Office and Standing Conference on Crime Prevention, *Safer Communities: The Local Delivery of Crime Prevention through the Partnership Approach* (1991).

The decentralisation agenda of the Coalition government was promoted through the Big Society plan.<sup>392</sup> Regarding Big Society, Teresa May in her speech to the Women's Aid conference clarified that

People ask what the Government means by the Big Society – well as far as I'm concerned you are the Big Society. You are the ones who run the refuges; who empower the frightened and the abused; who protect the vulnerable.... It is about challenging assumptions and changing attitudes on every level of society. Change is often most powerful when it comes from the bottom up.... The vision of this government is to build a society where we all come together to solve problems; where we don't just ask what government can do, but what people can do; where we all pull together and work together, because we are all in this together.... And it means everyone working together to achieve the cultural change we need to tackle this problem.<sup>393</sup>

Based on this statement, the prevention of IPA would be promoted at a local community level aiming to achieve cultural change on women's equality issues and on the perception towards IPA. In fact, the government enacted the Localism Act 2011<sup>394</sup> which 'contains a wide range of measures to devolve more powers to councils and neighbourhoods and give local communities greater control over local decisions...'<sup>395</sup> For example, section 1 of the Act includes a 'general power of competence',<sup>396</sup> which gives to local authorities the power and duty to promote creative and innovative initiatives to meet the needs of their communities.<sup>397</sup>

This change promoted in theory the increased contribution of women's organisations in the formation of IPA response. This is argued based on Women's Resource Centre, a national umbrella organisation for the women's sector based on feminist principles, which stated:

[T]he Women's voluntary organisations and projects are embedded within communities and have a comprehensive understanding of the issues occurring at a grassroots level. Organisations led 'by and for' minority groups have the greatest understanding of their communities' needs. Women's organisations have a unique reach in communities and work with some of the most marginalised and vulnerable women in society. Through the decentralisation process women's organisations provide a vital opportunity for local politicians and public services to connect with the needs of women, and as the government seeks to empower communities by devolving powers to local areas. It is essential that the

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<sup>392</sup> See HM Government, *The Coalition: Our Programme for Government* (2010) 7-8 and section 27; Cabinet Office, *Building the Big Society* (2010) 2-3.

<sup>393</sup> Women's Aid, '36th Annual Women's Aid National Conference 2010-Theresa May MP's Speech' <<http://www.webarchive.org.uk/wayback/archive/20110618201117/http://www.womensaid.org.uk/page.asp?section=000100010015000800040002&sectionTitle=Theresa+May%27s+Speech>> accessed 4 October 2016.

<sup>394</sup> The Localism Act 2011.

<sup>395</sup> Explanatory Notes to The Localism Act 2011, para 3.

<sup>396</sup> The Localism Act 2011 s.1.

<sup>397</sup> Department for Communities and Local Government, *A Plain English Guide to the Localism Act* (2011) 4.

expertise available in women's organisations is harnessed and used in decision-making processes.<sup>398</sup>

Although women's organisations, due to their expertise, can be beneficial for the formation of IPA policy, in reality this was compromised by the governmental practice. Particularly, the government announced in 2010 its budget plan to reduce expenditure in order to face the austerity that has impacted Britain.<sup>399</sup> The government introduced an unparalleled level of public spending cuts influencing women through the substantial cuts of £5bn to local authorities across the country that impacted on the voluntary sector funding.<sup>400</sup>

Further, the commissioning process, which involved payment by participatory budgeting that was decided in Local Strategic Partnerships (LSPs), aggravated the difficulties of women's organisations. Specifically, an LSP is a single body bringing together at a local level the public sector, the private, business, community and voluntary sectors in order to form strategic decisions and coordinate the different initiatives and services provided in a community.<sup>401</sup> Women's Resource Centre reported that only 1.8% of representatives of the voluntary sector were from women's organisations participating in LSPs.<sup>402</sup> Thus, women's organisations did not have a strong voice in the LSPs in order to equally compete with other competitors for their funding. Moreover, women's organisations funding was exacerbated with the payment by results, which provides funding to organisations when they have achieved specific results. This detrimental effect occurred because most women's organisations are small and have to compete for contracts with large and well-resourced generic voluntary and community organisations, statutory organisations, companies from the private sector, and other women's organisations.<sup>403</sup> On this point, Ishkanian observed that the cost-saving concern caused by austerity led voluntary organisations of domestic violence to reduce, if not completely abandon, their gender equality focus and replaced it with a cost

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<sup>398</sup> Women's Resource Centre, 'How to...Engage with the Localism Agenda: A Guide for Women's Voluntary Organisations' (2012) 5-6.

<sup>399</sup> HM Treasury, *Budget 2010* (2010) 1.

<sup>400</sup> Women's Resource Centre, 'Surviving the Crisis: The Impact of Public Spending Cuts on Women's Voluntary and Community Organisations' (2013) 8.

<sup>401</sup> Department of the Environment, *Transport and the Regions, Local Strategic Partnerships Government Guidance Summary: Guidance 09* (2009) 1.

<sup>402</sup> Women's Resource Centre, 'Engaging the Women's Voluntary and Community Sector: A Guide for Public Bodies' (2011) 3.

<sup>403</sup> Women's Resource Centre, 'The Impact of Public Spending Cuts on Women's Voluntary and Community Organisations in London' (2013) 6.



savings focus.<sup>404</sup> Due to these funding barriers for women's organisations, the Big Society plan weakened women's organisations which can significantly contribute to the prevention of IPA and the protection of victims with diverse needs.

This gender-neutral practice can influence the implementation of its VAWG crime prevention policy framework introduced with the strategy 'Call to End Violence against Women and Girls'.<sup>405</sup> In this strategy, the Coalition government set out its approach for tackling IPA through four key aims:

Prevent such violence from happening by challenging the attitudes and behaviours which foster it and intervening early where possible to prevent it; Provide adequate levels of support where violence does occur; Work in partnership to obtain the best outcome for victims and their families; and Take action to reduce the risk to women and girls who are victims of these crimes and ensure that perpetrators are brought to justice.<sup>406</sup>

The government planned to achieve these aims by taking measures through the CJS, the social policies, and the legal system.<sup>407</sup> Therefore, a whole system response was promoted at a policy level in order to achieve the prevention of IPA and the protection of victims by supporting victims of diverse needs and by transforming the social perception to IPA and its victims.

The Coalition government recognised in its strategy the gendered nature of IPA by framing it under an overarching VAWG strategy. This was not a new development in the policy response to IPA, as the prior Labour government introduced as well a VAWG policy framework.<sup>408</sup> However, in the Coalition government's strategy, there was an additional recognition of the gendered nature of IPA by explicitly stating that '[VAWG] is a gender-based crime which requires a focused and robust cross-government approach...'.<sup>409</sup>

Moreover, it recognised that 'The gendered pattern of violence against women and girls need to be understood and acknowledged.'<sup>410</sup> Therefore, this was an improvement in the language of the policy document.

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<sup>404</sup> Ishkanian A, 'Neoliberalism and Violence: The Big Society and the Changing Politics of Domestic Violence in England' (2014) 34 (3) *Critical Social Policy* 333, 341.

<sup>405</sup> HM Government, *Call to End Violence against Women and Girls* (2010).

<sup>406</sup> *ibid* 5.

<sup>407</sup> See HM Government, *Call to End Violence against Women and Girls: Action Plan* (2011).

<sup>408</sup> See HM Government, *Together We Can End Violence Against Women and Girls: A Strategy* (2009).

<sup>409</sup> HM Government, *Call to End Violence against Women and Girls* (2010) 5.

<sup>410</sup> *ibid*

### 3.3.1 *The IPA Definition*

A new domestic violence definition resulted from the government's strategy, in which it stated 'Violence against women and girls is a gender-based crime which requires a focused and robust cross-government approach underpinned by a single agreed definition.'<sup>411</sup> This statement suggests that the government aimed to create a single domestic violence definition in order to coordinate the cross-governmental response to IPA. As a result, the government launched in 2011 the 'Cross-government Definition of Domestic Violence-A Consultation'.<sup>412</sup> This document clarified that domestic violence does not have a statutory or legal definition and cannot cause any change in the law; thus, this definition was created for widening the cross-government definition and ensuring that it is consistently applied across government.<sup>413</sup>

Although the government acknowledged IPA as a gendered crime in its strategy, it did not aim to recognise this on the domestic violence definition. Specifically, it stated that 'We have always been clear in our definition that domestic violence is gender neutral and applies to both men and women.'<sup>414</sup> Although IPA occurs against male victims and between same sex partners, gender inequality is still the cause of IPA; hence, the definition could have recognised IPA as gender-based crime. Women's Aid also supported that 'the Government should adopt a gender-based definition of domestic violence/abuse'<sup>415</sup> and 'recognises and addresses it as part of a wider agenda on violence against women. That this definition then influences the commissioning and development of domestic violence services.'<sup>416</sup> This view argued for the necessity of a gender-based definition that addresses domestic violence as a type of VAWG and coordinates accordingly the whole-system response promoted by the VAWG strategy.

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<sup>411</sup> *ibid*

<sup>412</sup> Home Office, *Cross Government Definition of Domestic Violence – A Consultation* (2011).

<sup>413</sup> *ibid* 3.

<sup>414</sup> Home Office, *Cross Government Definition of Domestic Violence – A Consultation: Summary of Responses* (2012) 18.

<sup>415</sup> Select Committee on Home Affairs, 'Memorandum Submitted by Women's Aid Federation of England' <<https://www.publications.parliament.uk/pa/cm200708/cmselect/cmhaff/263/263we33.htm>> accessed 30 April 2017.

<sup>416</sup> Select Committee on Home Affairs, 'Women's Aid Federation of England Briefing on Safeguarding Survivors and Services' <<https://www.publications.parliament.uk/pa/cm200708/cmselect/cmhaff/263/263we35.htm>> accessed 30 April 2017.

Feminist theorists Kelly and Westmarland argued on the definition that ‘we... need recognition and definition of each specific form of violence and the contexts in which they occur.’<sup>417</sup> Based on this view, IPA needs its own definition since a domestic violence definition is broad, as it encompasses different types of familial abuse. Thus, the domestic violence definition cannot adopt a gender-based definition because it includes other types of domestic abuse. For this reason, an IPA definition is needed that would adopt a gender-based approach and it would be included in the VAWG strategy in order to coordinate the whole-system response to IPA.

A significant improvement in the domestic violence definition was the inclusion of coercive control, which is ‘an act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten their victim.’<sup>418</sup> According to Stark, ‘coercive control typically complements frequent, but often minor, assaults with tactics to intimidate, isolate, humiliate, exploit, regulate, and micromanage women’s enactment of everyday life.’<sup>419</sup> The inclusion of coercive control is important because it has been identified ‘as a complex pattern of overlapping and repeated abuse perpetrated within a context of power and control.’<sup>420</sup> On this point, AVA identified in its response, which was approved by Imkaan, ROW, and Women’s Aid:<sup>421</sup>

Because physical abuse is typically repeated and directed against a single victim, the harms it causes are cumulative rather than specific to a given incident. An appropriate definition would recognise that the psychological and behavioural responses of victims to a particular incident reflect all that has come before in this relationship and not merely the results of a particular incident.<sup>422</sup>

Due to this improvement, the gendered nature of IPA is implied in the definition because it captures the repetitive pattern of IPA crimes committed by the perpetrators in an effort to

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<sup>417</sup> Kelly L and Westmarland N, ‘Time for a Rethink—Why the Current Government Definition of Domestic Violence Is a Problem’ *Trouble & Strife* (12 April 2014) <[www.troubleandstrife.org/2014/04/time-for-a-rethink-why-the-current-government-definition-of-domestic-violence-is-a-problem/](http://www.troubleandstrife.org/2014/04/time-for-a-rethink-why-the-current-government-definition-of-domestic-violence-is-a-problem/)> accessed 12 October 2016.

<sup>418</sup> HM Government, *Circular: New Government Domestic Violence and Abuse Definition* <[www.gov.uk/government/publications/new-government-domestic-violence-and-abuse-definition](http://www.gov.uk/government/publications/new-government-domestic-violence-and-abuse-definition)> accessed 10 October 2016.

<sup>419</sup> Stark E, *Coercive Control: How Men Entrap Women in Personal Life* (Oxford University Press 2007) 172; see also Stark E, ‘Rethinking Coercive Control’ (2009) *Violence against Women* 1, 3; Horley S, *Power and Control: Why Charming Men Can Make Dangerous Lovers* (2nd edn, Vermilion 2000) 18-19.

<sup>420</sup> Home Office, *Information for Local Areas on the Change to the Definition of Domestic Violence and Abuse (2013)* 2.

<sup>421</sup> See AVA, *AVA’s Response to: Cross Government Definition of Domestic Violence: A Consultation* (2012) 1.

<sup>422</sup> *ibid* 2.

control their partners. Therefore, the definition recognises that the pattern of power and control manifested through physical violence and/or emotional abuse is caused due to gender inequality beliefs.

Based on Johnson's typology,<sup>423</sup> one could argue that the domestic violence definition needs to be gender-neutral because only intimate terrorism and the mutual violent control are the IPA forms that capture the coercive pattern caused by gender inequality. However, as argued in Chapter 2, the type of violent resistance is also caused due to gender inequality. Moreover, since women constitute the majority of victims,<sup>424</sup> it is argued that a gender-based definition is needed in order to balance the injustice caused to these victims and provide them with increased support.

The inclusion of coercive behaviour in the definition is important because as Kelly and Westmarland stated: 'If domestic violence is quintessentially a course of conduct, measuring it as "incidents" of crime fails to capture its heart and reality: what is measured counts, and not counting means the everydayness of violence is again hidden, minimised and trivialised.'<sup>425</sup> Although the recognition of the repetitive pattern of IPA is necessary in order to efficiently address IPA, the inclusion of incidental IPA can be also beneficial. This is argued based on Dutton and Goodman, who asserted:

The dispensing of threatened negative consequences can serve to set the stage for later coercive acts to be successful, that is, to result in compliance. ... Since coercive threats often involve various acts of IPV, when actually delivered, they contribute to the cumulative pattern of intimate partner violence and abuse in the relationship.<sup>426</sup>

Therefore, the recognition of incidental IPA is crucial for the prevention of IPA, as it would facilitate an intervention at an early stage of victimisation before it becomes a pattern of behaviour. Moreover, the inclusion of incidents of IPA in the definition is important in order to include the situational couple violence type of IPA.

In addition, the inclusion of coercive control committed through different types of IPA such

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<sup>423</sup> See Johnson M P, *A Typology of Domestic Violence: Intimate Terrorism, Violent Resistance, and Situational Couple Violence* (Northeastern University Press 2008) 7-9.

<sup>424</sup> Office for National Statistics, *Domestic Abuse, Sexual Assault and Stalking* (2017) 9.

<sup>425</sup> Kelly L and Westmarland N, 'Naming and Defining "Domestic Violence": Lessons from Research with Violent Men' (2016) 112 *Feminist Review* 113, 126.

<sup>426</sup> Dutton A M and Goodman A L, 'Coercion in Intimate Partner Violence: Toward a New Conceptualization' (2005) 52 (11/12) *Sex Roles* 743, 750.

as emotional abuse does not only imply the recognition of the gendered nature of IPA but it also provides its protection to victims of diverse identities. According to Johnson and others:

Male control over female partners is made possible, broadly practiced, and socially acceptable in contexts where physical violence may be unacceptable, and on its own may not register as warning flags that signal danger of lethal violence. ... Incident-based justice responses that assess severity of abuse via physical injury and extract seemingly minor assaults and threats from ongoing coercive control may overlook possible points of intervention that could help prevent femicide.<sup>427</sup>

Based on this view, in some social environments the abusive course of conduct can be developed only through incidents of emotional abuse until it escalates to a single physically violent incident that leads to the death of the victim. As these social environments can be composed with victims of specific identities such as white, educated, high financial status, and disabled, the recognition of coercive behaviour committed through emotional abuse implies the protection of diverse victims.

Further, the definition has expanded to a wider group of victims, as it stated: 'Any incident or pattern of incidents of controlling, coercive or threatening behaviour, violence or abuse between those aged 16 or over who are or have been intimate partners...regardless of gender or sexuality.'<sup>428</sup> This is an improvement because as Refuge argued regarding the prior definition: 'The Government definition of domestic violence excludes under 18s. Young people aged 16-18 experiencing intimate partner violence are unlikely to receive support from children's services, so are not protected.'<sup>429</sup> Moreover, AVA argued 'The arbitrary over 18 'rule' means that few teenagers are able to access support from existing domestic violence service provision.'<sup>430</sup> Hence, this change constitutes an improvement as it recognises the identity of age as a contributing factor shaping the experience of IPA victimisation.

The expansion of the definition to young people also indicates an attempt of the government to challenge cultural attitudes for the better protection of victims by raising public awareness on IPA. This attempt was in agreement with the majority of respondents to the consultation,

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<sup>427</sup> Johnson H, Eriksson L, Mazerolle P and Wortley R, 'Intimate Femicide: The Role of Coercive Control' (2017) *Feminist Criminology* 1, 16.

<sup>428</sup> Home Office, *Guidance: Domestic Violence and Abuse* (2016) <<https://www.gov.uk/guidance/domestic-violence-and-abuse>> accessed 10 October 2016.

<sup>429</sup> Select Committee on Home Affairs, 'Memorandum Submitted by Refuge' (2008) <<https://www.publications.parliament.uk/pa/cm200708/cmselect/cmhaff/263/263we17.htm>> accessed 30 April 2017.

<sup>430</sup> AVA, *AVA's Response to: Cross Government Definition of Domestic Violence: A Consultation* (2012) 5.

namely the 85%, who supported the extension of the definition to those aged 16 and 17 because they believed that early intervention was imperative in order to raise awareness amongst young people as to what constitutes abuse.<sup>431</sup> Moreover, in the Impact Assessment of the definition, which is a document providing evidence for assessing any positive or negative consequences that a policy proposal could cause, the government argued concerning this change that it ‘may help to reduce the stigma surrounding the issue and address what is generally perceived to be a lack of understanding of what domestic violence entails. As such the abuse may be recognised by those suffering it much sooner.’<sup>432</sup> Therefore, the extension of the definition to young couples from the age of 16 constitutes a positive improvement at a policy level in terms of intervening early and raising awareness on IPA to young people.

### **3.4 The Contemporary Policy Framework of the Conservative Government to IPA**

The Conservative party after winning the general election in May 2015<sup>433</sup> announced in the HC through Theresa May, the then Secretary of State, that ‘The Government are committed to further supporting women to rebuild their lives, breaking cycles of abuse and bringing perpetrators to justice. We will continue to update our violence against women and girls strategy, as we have done every year...’.<sup>434</sup> In fact, the Government issued its new VAWG strategy ‘Ending Violence against Women and Girls Strategy 2016-2020’, in which it continued to promote a whole-system response as it is apparent from its commitment to prevent IPA by challenging the social attitudes through early intervention to young people, to protect victims through the CJS, and to provide them with support through funding for refuges.<sup>435</sup>

In addition, the government stated in the strategy that ‘We know that these terrible crimes are disproportionately gendered which is why our approach must be framed within a violence against women and girls strategy.’<sup>436</sup> This statement illustrates that the Conservative government continues to recognise IPA as gendered crime by framing it under a VAWG framework. EVAW’s critique on the strategy stated: ‘The Strategy maintains a strongly

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<sup>431</sup> Home Office, *Cross-Government Definition of Domestic Violence-A Consultation: Summary of Responses* (2012) 12.

<sup>432</sup> Home Office, *Impact Assessment-Domestic Violence Definition* (2011) 12.

<sup>433</sup> Hawkins O, Keen R and Nakatudde N, ‘General Election 2015’ (HC 2015) 7.

<sup>434</sup> HC Deb 6 July 2015 col1W.

<sup>435</sup> HM Government, *Ending Violence against Women and Girls Strategy 2016 – 2020* (2016) 9-11.

<sup>436</sup> *ibid* 6.

gendered frame, which is critical to recognising the scale, nature and impact of these forms of abuse and generating the best possible policy and practice.’<sup>437</sup> In addition to the gender-based policy framework, the government has also recognised the need of providing a specific response to the victims’ diverse needs. This recognition can be inferred by Women’s Aid critique that ‘At last there is recognition that creating a needs-led response to domestic abuse is the most effective and economically viable way to provide support to survivors.’<sup>438</sup> Thus, the strategy has adopted a gender-based approach that acknowledges the need to prevent IPA and protect victims based on their diverse needs, namely those arising from the intersection of their identities. However, the fact that it did not specify that gender needs to be the dominant identity in comparison to the others causes concern regarding its effective implementation in practice.

Further concern has been raised regarding its efficient implementation after the Brexit outcome of the referendum conducted in June 2016.<sup>439</sup> Particularly, the Fawcett Society has launched the campaign ‘#FaceHerFuture campaign’, whose aim is to assert women’s rights to be protected post-Brexit.<sup>440</sup> The campaign has emphasised, among others, that women should equally participate at the decision making in the Brexit process, prioritise the specific needs of women experiencing multiple disadvantages, and secure that equality for women will continue to progress.<sup>441</sup> In order to avoid any negative impact of Brexit to the support of victims, Women’s Aid proposed that

Women’s organisations, [and] campaigners ... have significant expertise in this area, which the Government and civil service can benefit from during this process. The Government should consider establishing formal advisory groups or panels on women’s rights and

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<sup>437</sup> EVAW, ‘Comprehensive and Ambitious New Ending Violence Against Women and Girls Strategy Welcomed’ (10 March 2016) <<http://www.endviolenceagainstwomen.org.uk/news/235/comprehensive-and-ambitious-new-ending-violence-against-women-and-girls-strategy-welcomed>> accessed 3 October 2016.

<sup>438</sup> Women’s Aid, ‘Women’s Aid Welcomes Government’s VAWG Strategy’ (8 March 2016) <<https://www.womensaid.org.uk/womens-aid-welcomes-governments-vawg-strategy/>> accessed 3 October 2016.

<sup>439</sup> Uberoi E, ‘European Union Referendum 2016’ (2016) 3.

<sup>440</sup> Fawcett Society, ‘#FaceHerFuture Campaign – “Make the UK the Best Place to Be a Woman” - Ten Women’s Organisations Call for Rights to Be Protected Post Brexit’ (2016) 1.

<sup>441</sup> Fawcett Society, ‘#FaceHerFuture’ <<http://www.faceherfuture.co.uk/>> accessed 28 April 2017.

violence against women and girls, who would provide expertise, guidance and recommendations during the Brexit negotiations.<sup>442</sup>

Based on this view, the government should use during the Brexit process the expertise of women's organisations. Such advisory groups could contribute to securing the protection of diverse victims.

Additionally, Women's Aid stated its concern that 'the UK will no longer have access to EU grant funding for non-governmental organisations, grassroots groups and networks for tackling domestic abuse..., or EU funds that support survivors to access the training, education and other services which are needed to build independence.'<sup>443</sup> Since the specialist voluntary agencies were already undermined due to the Big Society plan and the austerity measures,<sup>444</sup> the lack of EU funding grants could further deteriorate the position of women's organisations, which could affect the support provided to the victims. Furthermore, the fact that the VAWG strategy has not prioritised gender inequality in contrast to the other inequalities arising from the other identities could lead to the de-gendering of services provided to the victims due to the lack of funds.

Any negative changes for the prevention of IPA and the protection of its victims should not be expected to occur based on the governmental commitment included in the White Paper, 'The United Kingdom's Exit from and New Relationship with the European Union'.<sup>445</sup> In this document, the government sets the plan of shaping a new strategic partnership between the UK and the EU and explains that:

[W]herever practical and appropriate, the same rules and laws will apply on the day after we leave the EU as they did before. This approach will preserve the rights and obligations that already exist in the UK under EU law and provide a secure basis for future changes to our domestic law. This ... provides fairness to individuals whose rights and obligations will not be subject to sudden change.<sup>446</sup>

Based on this commitment, any negative changes should not occur on the IPA response. A preliminary positive indication that victims' situation will not be deteriorated is argued

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<sup>442</sup> Women's Aid, 'Written Submission from Women's Aid Federation of England' (OEU0039) para 39 <<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/women-and-equalities-committee/ensuring-strong-equalities-legislation-after-the-eu-exit/written/43183.html>> accessed 29 April 2017.

<sup>443</sup> Women's Aid, 'The Impact of Leaving the European Union' (2016) 3.

<sup>444</sup> See HM Treasury, *Budget 2010* (2010) 1; Women's Resource Centre, 'Engaging the Women's Voluntary and Community Sector: A Guide for Public Bodies' (2011) 3.

<sup>445</sup> UK Government, *The United Kingdom's Exit from and New Partnership with the European Union* (2017) 9.

<sup>446</sup> *ibid* 6.



because of the Prime Minister's announcement of planning a major new programme leading to a Domestic Violence and Abuse Act. This programme will examine what further improvements could be made to increase the victims' support, particularly in respect of the legal response aiming 'to completely transform the way we think about and tackle domestic violence and abuse.'<sup>447</sup> Based on this announcement, the government aims to introduce important changes that will have an important effect on the social perception towards IPA.

Women's organisations have welcomed this commitment. Specifically, EVAW commented on this announcement: 'We welcome the Prime Minister's announcement that there will be a probe into how law is working in response to domestic violence and the commitment to new legislation.'<sup>448</sup> Moreover, Women's Aid added that:

There is still a great deal of work to do to raise awareness and improve understanding of domestic abuse – particularly coercive control – and we welcome the Prime Minister's intention to tackle this. We call for this legislation to provide a strategic and overarching framework for all agencies and services that support survivors of domestic abuse: a framework that has a needs-led response at its heart.<sup>449</sup>

Based on this view, the IPA policy framework could be improved by acquiring a statutory status since it would create a legal duty for all agencies involved in the IPA prevention to achieve the aims set. The creation of this law could have a significant improvement in the area of IPA if these suggestions are taken into account.

In fact, the Conservative Party aimed to introduce significant changes through the new law, as it illustrated in its manifesto for the June 2017 election. Specifically, the manifesto indicates its aims, among others, to create a statutory domestic violence and abuse definition, and a domestic violence and abuse commissioner who will support victims and survivors, monitor the response to IPA, and hold the police and the CJS accountable. Furthermore, it

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<sup>447</sup> Home Office, 'Prime Minister's Plans to Transform the Way We Tackle Domestic Violence and Abuse' (17 February 2017) <<https://www.gov.uk/government/news/prime-ministers-plans-to-transform-the-way-we-tackle-domestic-violence-and-abuse>> accessed 29 March 2017.

<sup>448</sup> EVAW, 'Prime Minister's Commitment to Tackling Domestic Violence Welcomed' (18 February 2017) <<http://www.endviolenceagainstwomen.org.uk/news/282/prime-ministers-commitment-to-tackling-domestic-violence-welcomed>> accessed 29 March 2017; see also, Refuge, 'Refuge Welcomes the Prime Minister's Plans for a Domestic Violence and Abuse Act' (17 February 2017) <<http://www.refuge.org.uk/2017/02/17/refuge-welcomes-the-prime-ministers-plans-for-a-domestic-violence-and-abuse-act/>> accessed 29 March 2017.

<sup>449</sup> Women's Aid, 'Women's Aid Statement on Domestic Violence and Abuse Act' (17 February 2017) <<https://www.womensaid.org.uk/womens-aid-statement-domestic-violence-abuse-act/>> accessed 29 March 2017.

has committed to support victims leaving their partners and reviewing the funding for refuges.<sup>450</sup>

Regarding the suggested changes by the government, EVAW advocated that the law, policy and spending on VAWG needs to consider the diversity among women since policy development on VAWG often disregards their different needs and experiences causing them barriers in seeking support and justice.<sup>451</sup> Moreover, Refuge noted that ‘It is vital that the Government makes available sufficient funding and training to ensure that the new legislation has a meaningful impact on the lives of women ... who experience domestic violence.’<sup>452</sup> Furthermore, Women’s Aid pointed that improvement could be made if the domestic violence and abuse commissioner is independent to hold accountable not only the CJA but all agencies at local level<sup>453</sup> and proposed a separate funding model for refuges.<sup>454</sup> These feminist suggestions are important because they refer to improvements regarding considering the diverse needs of the victims and the efficient implementation of such changes in the CJS and the whole-system. However, they do not provide insight to the government on how to prioritise the diverse needs of the victims if conflict rises among them.

To conclude, the Labour government made significant improvements on the IPA response. Specifically, it gave statutory authority to its whole-system crime prevention through the multi-agency partnerships with the Crime and Disorder Act. This crime prevention approach promoted a whole-system response to IPA through the collaboration of the CJS and the social welfare mechanisms that provide support to the victims and raise social awareness on IPA. Despite this improvement, it had adopted a gender-neutral policy framework. This meant that gender inequality was not recognised as the cause of IPA. Even though there was a gender-neutral policy approach, the diverse needs of the victims factored in the policy shaping. Feminist activists argued that a gender-based approach needs to be adopted through a VAWG

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<sup>450</sup> Conservative Party, ‘Forward, Together-Our Plan for a Stronger Britain and a Prosperous Future: The Conservative and Unionist Party Manifesto 2017’ (2017) 58.

<sup>451</sup> EVAW, ‘Priorities for Government’ (2017) 7.

<sup>452</sup> Refuge, ‘Refuge Responds to Queen’s Speech Domestic Violence and Abuse Act Announcement’ (21 June 2017) <<http://www.refuge.org.uk/2017/06/21/refuge-responds-to-queens-speech-domestic-violence-and-abuse-act-announcement/>> accessed 8 August 2017.

<sup>453</sup> Women’s Aid, ‘Women’s Aid Responds to Prime Minister’s Pledge on Domestic Abuse’ (29 May 2017) <<https://www.womensaid.org.uk/womens-aid-responds-prime-ministers-pledge-domestic-abuse/>> accessed 8 August 2017.

<sup>454</sup> Women’s Aid, ‘Women’s Aid Responds to General Election Manifestos’ (18 May 2017) <<https://www.womensaid.org.uk/womens-aid-responds-general-election-manifestos/>> accessed 28 May 2017.

strategy that recognises the victims' diverse needs. In fact, the Labour government introduced in 2009 a VAWG strategy, with which it recognised IPA as a gender crime. Similarly, the Coalition government introduced a whole-system VAWG strategy that aimed to influence the social awareness to IPA and recognised the gendered nature of IPA and the diverse needs of the victims. However, the implementation of this strategy in practice was undermined with its Big Society plan and the severe funding cuts to the specialist voluntary agencies. Despite this, it introduced a major development with the recognition of the coercive pattern of IPA in the domestic violence definition. Feminist activists critiqued that this definition was a major improvement as it captured the coercive pattern of IPA. Furthermore, the Conservative government has adopted a gender-based policy framework that acknowledged the diverse barriers that victims with diverse identities face. However, it did not specify whether gender inequality would be prioritised in the case of IPA in comparison to the other inequalities caused by the additional identities of the victims. This gap could cause practical implications in the implementation of the policy framework. Although the Brexit proceedings have caused concern to women's organisations regarding the support of the victims, the government announced the creation of a new Domestic Violence Act that aims to radically change the social perception towards IPA. This announcement indicates that the government aims to strengthen its response to IPA.

### **3.5 The Response of the Substantive Criminal Law on the Physical IPA**

Although IPA is mainly a pattern of coercive behaviours caused by gender inequality, the law, as argued in Chapter 2, needs to be gender-neutral. A gender-neutral approach treats all individuals as equal without considering their diverse needs arising from their gender. While the law needs to be gender-neutral in its language, the influence of the intersectional gendered approach in the law formation, in practice, means that gender-neutral laws will be created and/or amended in order to strengthen the targeting of gender inequality and considering the diverse needs of the victims. For example, since IPA is a gender crime, the creation of a stronger law against IPA promotes the targeting of gender inequality even though the law is gender-neutral in its language. The creation of such laws would be promoted by the influence of the intersectional gendered approach. Thus, a policy framework that recognises IPA as gendered crime, the need to protect victims of diverse needs, and the need to raise awareness on IPA and its victims' needs can positively influence the legal

response in two ways: first, by leading to the creation or amendment of laws whose aim is to increase the protection of IPA victims with diverse needs; and second, by promoting the implementation of the laws by the CJA in a way that female victims with diverse needs are adequately protected.

### **3.5.1 *The Development of the Familial Homicide Offence***

Concerning the response of the criminal law to IPA, the Labour government, during its administration from 1997 to 2010, has enacted the DVCVA in 2004.<sup>455</sup> In brief, the DVCVA ‘intended to introduce reform to the civil and criminal law in these areas by criminalising the breach of non-molestation orders under the Family Law Act 1996; and by extending the availability of restraining orders under the Protection from Harassment Act 1997.’<sup>456</sup>

Although these reforms criminalised the breaches of the orders provided by the above laws, they are civil law orders; for this reason, they are not examined. Moreover, the DVCVA made common assault an arrestable offence;<sup>457</sup> and increased the protection for victims and witnesses by placing a requirement to issue a Code of Practice for Victims (VCOP) in respect of the services provided to victims of crime by persons who have functions relating to victims or the CJS as a whole.<sup>458</sup> Since these measures constitute procedural criminal law, their examination occurs in Chapter 4, which examines the procedural implementation of the substantive criminal law through the CJA practice. Further to these reforms, the DVCVA introduced with s. 5 the offence of familial homicide by criminalising the death of a vulnerable adult.<sup>459</sup> For this reason, this provision is examined in this section in order to provide insight on the response of the substantive criminal law to IPA regarding its protection of female victims with diverse needs.

The improvement of the substantive criminal law on IPA was not a central concern of the Labour government, as it can be identified by its policy documents. Specifically, the creation of the DVCVA was informed by several policy documents.<sup>460</sup> One of these documents was

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<sup>455</sup> Domestic Violence, Crime and Victims Act (DVCVA) 2004.

<sup>456</sup> Explanatory Notes to the DVCVA 2004, para 5.

<sup>457</sup> *ibid*

<sup>458</sup> *ibid* para 111.

<sup>459</sup> *ibid* para 6.

<sup>460</sup> See Explanatory Notes to the DVCVA 2004, paras 3-9; see also, Home Office, *Justice for All* (Cmd 5563, 2002) 41; Home Office, *Safety and Justice: The Government’s Proposals on Domestic Violence* (Cmd 5847, 2003) 25-41; Law Commission, *Children: Their Non-accidental Death or Serious Injury (Criminal trials) A Consultative Report* (Law Com No 279, 2003) ix; Home Office, *A Review the Victim’s Charter* (2001) 1; Law

the White Paper ‘Justice for All’, in which the government presented its plans for the reform of the CJS focusing on reforms of court procedures and sentencing.<sup>461</sup> Although this document acknowledged IPA as a criminal conduct manifested through a repetitive pattern, it included proposals for the improvement of the CJS response to IPA, among others, without proposing any improvements on the criminalisation of physical and emotional IPA.<sup>462</sup> Similarly, the ‘Safety and Justice: the Government’s Proposals on Domestic Violence’ focused on the same issues without making any reference to strengthen the substantive criminal law by criminalising the pattern of behaviour manifested in IPA cases.<sup>463</sup> Moreover, the enactment of the DVCA was also informed by the Law Commission’s report, published in 2003, ‘Children: Their Non-accidental Death or Serious Injury (Criminal Trials)’.<sup>464</sup> This report identified the need to criminalise the death or injury to a child caused in the familial environment through ill treatment.<sup>465</sup> In comparison to the other documents informing the creation of the DVCVA, this report was the only document addressing the improvement of the substantive criminal law. However, this proposal referred to the criminalisation of causing the death of a vulnerable child in the familial context and not of IPA victims.

The governmental goal for proposing this law, as announced by David Blunkett, the then Secretary of State for the Home Department, was to reform mind-sets and support victims to free themselves from domestic abuse, as this crime is unacceptable, and for this reason it should not be tolerated.<sup>466</sup> This goal suggests that the government aimed to send a symbolic message against IPA to society. However, the government aimed to achieve this goal by addressing procedural issues concerning the CJS response to IPA. Moreover, probably due to the focus that the above policy documents had on procedural issues, the contributions provided by the responses of Women’s Aid, Refuge, and ROW, were relevant to these issues and they did not raise concerns regarding the improvement of the substantive criminal law

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Commission, *The Effective Prosecution of Multiple Offending* (Law Com No 277, 2002) viii-ix.

<sup>461</sup> Home Office, *Justice for All* (Cmd 5563, 2002) 162.

<sup>462</sup> *ibid* 41.

<sup>463</sup> See Home Office, *Safety and Justice: The Government’s Proposals on Domestic Violence* (Cmd 5847, 2003) 25-41.

<sup>464</sup> Law Commission, *Children: Their Non-accidental Death or Serious Injury (Criminal trials) A Consultative Report* (Law Com No 279 2003) ix.

<sup>465</sup> *ibid*

<sup>466</sup> HC Deb 18 June 2003 vol 407 col 375.

concerning female victims.<sup>467</sup> Moreover, legislators aimed to strengthen the procedural criminal law and its symbolic message to IPA through the DVCV Bill proceedings. For example, according to Vera Baird, a then Labour party MP, the support to the victims would have been achieved by sending out a message that domestic violence is against the law and that the days when it was tolerated are over.<sup>468</sup>

Regarding the improvement of the substantive criminal law, the DVCV Bill was initially introduced to the parliament by the Law Commission<sup>469</sup> to criminalise familial homicide towards children. However, this was extended to vulnerable adults as well.<sup>470</sup> In Grand Committee, Baroness Scotland of Asthal explained that the Government departed from the Law Commission's proposals that were limited only to children because it was aware of at least one case of a vulnerable adult dying in domestic circumstances and the prosecution was unable to prove which close family member had been accountable. Therefore, the Government would neglect its duty if it did not take the opportunity to modify the law.<sup>471</sup>

As a result, the parliament introduced the offence of familial homicide with section 5, which stated:

[a] A person (“D”) is guilty of an offence if—(a) a...vulnerable adult (“V”) dies as a result of the unlawful act of a person who—(i) was a member of the same household as V, and (ii) had frequent contact with him,  
(b) D was such a person at the time of that act,  
(c) at that time there was a significant risk of serious physical harm being caused to V by the unlawful act of such a person....<sup>472</sup>

According to this provision, the commission of the offence is limited to situations where the victim’s death is a result of an unlawful action.<sup>473</sup> The term ‘unlawful act’ includes a course

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<sup>467</sup> See Refuge, *Refuge Response to Safety and Justice Government Consultation Paper* (2003); Women’s Aid, *Women’s Aid Response to Safety and Justice, The Government Consultation Paper on Domestic Violence* (2003) <<http://web.archive.org/web/20061006175722/http://www.womensaid.org.uk/page.asp?section=000100010009000300040006>> accessed 2 May 2017; Rights of Women, *Response to the Home Office Consultation Safety and Justice* (2003); Women’s Aid, *Women’s Aid Consultation Response to the 2002 Criminal Justice White Paper-Justice for All* (2003).

<sup>468</sup> HC Deb 18 May 2004 vol 421 col 233WH; examples from MPs of different parties showing interest in the tackling of domestic violence see HC Deb 24 February 2003 vol 400 col 319W; HC Deb 20 March 2003 vol 401 cols 1083-6; see also HL Deb 15 December 2003 vol 655 col 949; HC Deb 18 June 2003 vol 407 col 375.

<sup>469</sup> see Law Commission, *Children: Their Non-accidental Death or Serious Injury (Criminal trials) A Consultative Report* (Law Com No 279, 2003).

<sup>470</sup> HL Deb 21 January 2004 vol 657 col 329GC.

<sup>471</sup> HL Deb 21 January 2004 vol 657 col 334GC.

<sup>472</sup> DVCVA 2004 s. 5(1).

<sup>473</sup> Explanatory Notes to the DVCVA 2004, para 25.

of conduct, commission and omissions such as neglect over a period of time. Death must occur where there is an anticipated risk, for example where there is a history of violence or neglect, and would not include accidents.<sup>474</sup> Thus, this provision criminalises IPA as a course of conduct manifested in at least one incident prior of the deadly action or omission of the offender.

### **3.5.2 *The Symbolic v the Real Effect of the Law***

The extension of the DVCVA to include the criminalisation of familial homicide for IPA victims demonstrates the governmental and legislative intent to use the symbolic power of the law to influence the social perception against IPA. On this point, Hester stated that this criminalisation of domestic violence has provided a symbolic and normative condemnation of domestic violence.<sup>475</sup> Moreover, this provision strengthens the response of the criminal law as it captures the repetitive nature of IPA through the inclusion of the unlawful act committed as a course of conduct. Such inclusion was necessary for the criminal law's response to physical violence committed in the context of IPA because in order for the law to provide an adequate remedy should not focus only on incident-based violence.<sup>476</sup>

Although the inclusion of the course of conduct is a positive change, Grace criticised the DVCVA for not having a significant impact on the criminal law. She argued that the general provisions of the Offences Against the Persons Act 1861 (OAPA) continued to be for years the only option to address IPA. Moreover, she argued that the DVCVA lacked clarity and for this reason, 'courts tend to associate the conduct foreseen by the Offences Against the Person Act 1861 as including only that which amounts to physical injury, excluding behaviour that would be interpreted as coercive and controlling.'<sup>477</sup> The OAPA criminalises IPA crimes that could be manifested within a range of offences<sup>478</sup> such as assault occasioning actual bodily

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<sup>474</sup> Brammer A, 'Domestic Violence Crime and Victims Act 2004' (2006) 8 (1) *The Journal of Adult Protection* 50, 52.

<sup>475</sup> Hester M, 'Who Does What to Whom? Gender and Domestic Violence Perpetrators in English Police Records' (2013) 10 (5) *European Journal of Criminology* 623, 623; see also Lawson E, Johnson M, Adams L, Lamb J and Field S, *Blackstone's Guide to the Domestic Violence Crime and Victims Act 2004* (Oxford University Press 2005) 29.

<sup>476</sup> See Hanna C, 'The Paradox of Progress: Translating Evan Stark's Coercive Control into Legal Doctrine for Abused Women' (2009) 15 (12) *Violence Against Women* 1458, 1463.

<sup>477</sup> Graca S, 'Domestic Violence Policy and Legislation in the UK: A Discussion of Immigrant Women's Vulnerabilities' (2017) 22 (1) *European Journal of Current Legal Issues* <<http://webjcli.org/article/view/531/715>> accessed 3 May 2017.

<sup>478</sup> Burton M, *Legal Responses to Domestic Violence* (Routledge 2008) 60.

harm,<sup>479</sup> malicious wounding and inflicting grievous bodily harm,<sup>480</sup> and wounding and causing grievous bodily harm with intent.<sup>481</sup> These provisions applied to incidents of IPA and they did not recognise the coercive control which is manifested in such situations.<sup>482</sup> For example, in the case of *R v Dhaliwal*<sup>483</sup> the victim committed suicide after she had been physically and emotionally abused by her husband repeatedly. The prosecution charged the defendant with manslaughter and wounding based on s. 20 of the OAPA because the suicide resulted from the final assault. Despite this, the court acquitted the defendant because the prosecution could not establish psychiatric illness that could have led to the suicide and the prior repetitive IPA was not considered for forming the emotional state of the victim that culminated to the suicide. Thus, the implementation of the OAPA did not recognise the gendered nature of IPA manifested through a repetitive pattern of power and control but it was only based on an incident that needed to cause the physical harm.

Further, although this law includes the repetitive pattern, it does not address the gendered nature of IPA which is manifested in the context of power and control. On this point, Tuerkheimer argued:

To bring the law into alignment with reality, a statutory redefinition must reflect two fundamental characteristics of domestic violence: the patterned nature of abuse, and the centrality of power and control to the abusive dynamic. To capture the ongoing, patterned nature of domestic violence, it must be criminalized as a course of conduct. This necessarily expands the conventional temporal lens that views crime as occurring in an instant. A course of conduct is a pattern of conduct composed of a series of acts over a period of time, however, short, evidencing a continuity of purpose.<sup>484</sup>

The DVCVA was an improvement in the substantive criminal law because it sends a symbolic message against IPA and criminalises familial homicide committed as a result of repeated physical violence. However, it does not capture the second element of IPA, which is coercive behaviour that leads to the death of the victim.

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<sup>479</sup> Offences Against the Persons Act (OAPA) 1861 s.47.

<sup>480</sup> *ibid* s.20.

<sup>481</sup> *ibid* s.18.

<sup>482</sup> See also for the prosecution of IPA with the common law offences of assault and battery the cases *R v Venna* [1976] QB 421; *Fagan v Commissioner of Police of the Metropolis* [1969] 1 QB 439; see also for examples of the prosecution of physical IPA: CPS, *Domestic Abuse Guidelines for Prosecutors* <[http://www.cps.gov.uk/legal/d\\_to\\_g/domestic\\_abuse\\_guidelines\\_for\\_prosecutors/#a92](http://www.cps.gov.uk/legal/d_to_g/domestic_abuse_guidelines_for_prosecutors/#a92)> accessed 11 August 2017.

<sup>483</sup> *R v Dhaliwal* [2006] EWCA Crim 1139; see also *R v Chan Fook* [1994] 1 WLR 689.

<sup>484</sup> Tuerkheimer D, 'The Real Crime of Domestic Violence' in Stark E and Buzava E (eds), *Violence Against Women in Families and Relationships* (vol.3, ABC-CLIO 2009) 15.



An additional gap of the law is argued based on section 5 (4) which stated ‘For the purposes of this section—(a) a person is to be regarded as a “member” of a particular household, even if he does not live in that household, if he visits it so often and for such periods of time that it is reasonable to regard him as a member of it;...’.<sup>485</sup> On this subject, Baroness Scotland ascertained that in order for an individual to be criminally liable, he needs to be a member of the household and to be in frequent contact with the victim. Moreover, she added that ‘...a person is to be regarded as a member of the household if he or she has had such close personal contact with the other persons resident in the household that it is reasonable to regard him or her as a member of that household.’<sup>486</sup> Moreover, Edwards clarified that this provision does not require the party to live in the same household but to be a regular visitor such as non-cohabitant intimate partner that visits on a regular basis.<sup>487</sup> During the Grand Committee discussions of the DVCV Bill, Baroness Scotland explained that

The phrase [frequent contact] is intended to encapsulate the responsibility of the close members of the household without being too limiting. We need to be very wary that family relationships in modern times are much more fluid and flexible than they have been in the past, and may become more so in future.<sup>488</sup>

This suggests recognition of the diversity of familial relationships formed by different types of intimate relationships, and thus, adjustment of the law based on society’s needs by extending the protection of the law to victims of same sex relationships, and relationships where there is not cohabitation.

However, in reality this provision left unprotected victims who for example are mothers and are victimised by a former spouse or partner. Particularly, the Appeal Court in *R v Khan and others*<sup>489</sup> ruled that

[T]his legislation does not apply to visitors to the household who have caring responsibilities for the eventual victim, and have frequent contact with him or her, but who are not, and cannot begin to be described as members of the same household. There is a further condition that, in any event, even when membership of the same household is established, frequent contact between the defendant and the eventual victim is also required.

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<sup>485</sup> DVCVA 2004 s. 5 (4).

<sup>486</sup> HL Deb 09 March 2004 vol 658 cols 1145-1146.

<sup>487</sup> Edwards S, ‘More Protection for Victims of Domestic Violence? (The Domestic Violence, Crime and Victims ACT 2004)’ (2006) 18 (1) *The Denning Law Journal* 243, 252.

<sup>488</sup> HL Deb 21 January 2004 vol 657 col 348GC.

<sup>489</sup> *R v Khan and others* [2009] 4 All ER 544 at 552.

This can have a significant effect for modern-day families. For example, if the offender is a former spouse or former partner sharing a child with the victim and does not visit or visits her so infrequently for the purposes of being considered a member of the household or a person with frequent contact, he is not liable under the Act.<sup>490</sup> This decision illustrates a gap because it does not extend the protection of the law to former spouses and former partners. Although they are not members of the household or might not have frequent contact with the victim, they can take advantage of their prior relationship with the victim in order to abuse her. Therefore, the DVCVA does not appropriately address prevention of familial homicide committed by former spouses or former partners through the message it sends to society.

Despite the identified problems, the familial homicide provision improved the response of the substantive criminal law by providing a symbolic condemnation of IPA, by introducing the criminalisation of familial homicide as a result of a repetitive behaviour, and by extending its protection to unmarried couples. However, for the effective prevention of familial homicide and the protection of its victims, there is need that its implementation is accompanied by the appropriate measures to support the victims in order to access the CJS. On this point, Women's Aid although it welcomed the law, it stated that 'it gives a clear message that domestic violence is a crime and will not be tolerated. However we believe that the Act is a missed opportunity, and further legislative and policy changes are necessary to ensure increased protection and services for victims of domestic violence.'<sup>491</sup> Similarly, Refuge pointed that

Legal reform is crucial but without a clear plan for implementation (and this involves funds) including inter-departmental and agency policies, training and mechanisms to ensure competence and compliance it is difficult to see how the bill will promote effective change. The justice system needs to deliver a clear, consistent message to perpetrators and society that domestic violence is both unacceptable and criminal: the importance of this message should not be under-estimated. But the response of the legal system is only one part of the equation and it is important to get the balance right. The provision of specialist services to

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<sup>490</sup> See Clayton-Helm L, 'To Punish or Not to Punish? Dealing with Death or Serious Injury of a Child or Vulnerable Adult' (2014) 78 (6) *Journal of Criminal Law* 477, 482; see also, Leigh H L, 'Protecting Vulnerable Adults from Serious Harm Domestic Violence' (2009) 173 (7) *Criminal Law and Justice Weekly* 107, 109.

<sup>491</sup> Women's Aid, 'Women's Aid Briefing: Domestic Violence Crime and Victims Act 2004' (2007) <<https://web.archive.org/web/20111108234748/http://womensaid.org.uk/domestic-violence-articles.asp?itemid=1257&itemTitle=Women%27s+Aid+briefing%3A+Domestic+Violence+Crime+and+Victims+Act+2004&section=00010001002200070001&sectionTitle=Articles%3A+criminal+law>> accessed 1 October 2017.

address both practical and emotional needs is equally important, as are long-term strategies for prevention, particularly those aimed at children and young people....<sup>492</sup>

These views argued that although the creation of this law sends a message to society against IPA, the protection of the victims is achieved by the way the law is implemented by the CJA and by the support provided to victims through social welfare mechanisms. For example, the training provided to the CJA professionals, which is examined in Chapter 4, contributes to the effective implementation of the law by the CJA. Moreover, the early intervention to young people through education and the support provided to victims through refuges, which are examined in Chapter 5, contribute to the prevention of IPA at an early stage and the protection of victims.

### **3.5.3 *The Offence of Familial Serious Physical Harm***

Although the strengthening of the substantive criminal law was not included in the action plan of the Coalition government,<sup>493</sup> in 2012 the new offense of grievous bodily harm to vulnerable adults was introduced with the DVCV 2012 Amendment.<sup>494</sup> The incentive for amending s.5 of the DVCVA 2004 with s.1 of the DVCVA 2012 was to criminalise serious physical harm of children.<sup>495</sup> This gap was identified in cases where the victim barely survived the abusive act such as being left with severe brain damage or incapacitated.<sup>496</sup> In these situations, section 5 of the DVCVA 2004 could not apply. For this reason, this Amendment revised section 5 of the Act, by extending it to include also situations of ‘causing or allowing serious physical harm to a...vulnerable adult’.<sup>497</sup>

In particular, section 1 of the 2012 Amendment states:

- (1) Section 5 of the Domestic Violence, Crime and Victims Act 2004 (offence of causing or allowing the death of a... vulnerable adult) is amended as follows.
- (2) In subsection (1)—(a) in paragraph (a), after ‘dies’ insert ‘or suffers serious physical harm’.<sup>498</sup>

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<sup>492</sup> Refuge, *Refuge Response to Domestic Violence, Crimes and Victims Bill* (2004) 6.

<sup>493</sup> See HM Government, *Call to End Violence against Women and Girls Taking Action-The Next Chapter* (2012) 29-34.

<sup>494</sup> Ministry of Justice, *Domestic Violence, Crime, and Victims (Amendment) Act 2012* (2012) 2.

<sup>495</sup> PBC Deb 22 June 2011, cols 7-9.

<sup>496</sup> see PBC, *Domestic Violence, Crime and Victims (Amendment) Bill* (2011) 7.

<sup>497</sup> Explanatory notes to the DVCVA (Amendment) 2012, para 5.

<sup>498</sup> DVCVA (Amendment) 2012 s 1.

This Amendment applied also to vulnerable adults such as IPA victims because as Crispin Blunt MP stated ‘This very worthwhile measure would provide increased protection for... vulnerable adults who are at risk of serious physical harm from members of their own household’.<sup>499</sup> Since the death of victims is not the only result of IPA but also serious physical harm, this Amendment constitutes an improvement because it includes in its protection victims of physical abuse that suffered serious physical harm. Clayton-Helm argued that ‘This ... is an important step in the law, as it provides justice for more victims of violence, and it could also prevent future deaths. With the law able to step in at the point of serious physical harm, the lives of many ... vulnerable adults may be saved.’<sup>500</sup> Thus, this amendment strengthens the symbolic message to society against physical IPA and also contributes to the prevention of familial homicide.

In addition, for the application of this law, it is required for the victim to have been in significant risk of serious physical harm;<sup>501</sup> hence, the increased protection for IPA victims by the amendment of the DVCVA 2012 is argued based on the fact that ‘The risk is likely to be demonstrated by a history of violence towards the vulnerable person, or towards others in the household. The extended offence will not apply if there was no previous history of abuse, nor any reason to suspect a risk.’<sup>502</sup> This amendment extends the criminalisation of serious physical harm in the context of repeated violence; thus, it reflects the repetitive pattern of IPA.

Regarding the meaning of serious bodily harm, the Appeal Court in *R v Challis*,<sup>503</sup> hold the father of a child as responsible for his brain injuries by implementing s.1 of the DVCV Amendment 2012. The child did not sustain permanent damage by his brain bleed but the father was held liable due to prior history of physical abuse to the child. Although this is a child abuse case, the court’s reasoning can apply to IPA cases where female victims become physically injured, even temporarily, due to a violent act and they have been subjected to violence in at least one prior incident. This implementation of the law in the court decision illustrates an improvement by covering a gap in the IPA legislation with the criminalisation

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<sup>499</sup> HC Deb 21 Oct 2011 vol 533 col 1182.

<sup>500</sup> Clayton-Helm L, ‘To Punish or Not to Punish? Dealing with Death or Serious Injury of a Child or Vulnerable Adult’ (2014) 78 (6) *Journal of Criminal Law* 477, 485.

<sup>501</sup> DVCVA 2004 s.5 (1)(c).

<sup>502</sup> Explanatory Notes to the Domestic Violence, Crime and Victims Amendment 2012, para 8.

<sup>503</sup> *R v Challis* [2016] EWCA Crim 526.

of the repetitive pattern of physical violence in IPA cases. Moreover, this provision applies to a vulnerable adult, namely ‘a person aged 16 or over whose ability to protect himself or herself from violence, abuse, or neglect is significantly impaired through physical or mental disability, through old age or otherwise’.<sup>504</sup> This definition of vulnerable adult, although it is not specific whether all IPA victims are considered vulnerable victims for the purposes of the Act, it is important that expands to young victims of 16 years old, victims with disabilities, and elderly victims. This shows consideration of the law to at least symbolically condemn IPA committed against individuals with diverse identities.

### **3.6 The Response of the Substantive Criminal Law to Emotional Abuse**

As argued earlier, the familial homicide and the familial serious physical harm offences did not capture the power and control essence of IPA. For this reason, Women’s Aid launched the ‘Domestic Violence Law Reform’ campaign in order to promote legal reform because

The laws used to prosecute domestic violence... do not describe its essence. Patterns of power and control are missed. It misses the fact that domestic violence, particularly in intimate relationships, is about fear, coercive control and continuing acts. It is primarily a pattern of abuse, not a single incident.<sup>505</sup>

This campaign suggested the creation of a law that would mirror the elements of IPA, namely power and control and pattern of abuse. Moreover, Refuge launched the campaign ‘Care or Control’, with which it encouraged women to enquire whether their partner’s behaviour was controlling.<sup>506</sup> As shown earlier, coercive and controlling behaviours are manifested not only through physical violence but also through non-physical abuse such as emotional abuse. Thus, these campaigns indicate the interest of feminist activists for the creation of an offence that criminalises not only the patterned behaviour of power and control of physical violence but also of emotional abuse.

#### **3.6.1 Emotional Abuse**

Emotional abuse is a criminal offence based on the Protection from Harassment Act 1997 (PHA) that includes two criminal offences. First, section 2 provides the offence of criminal

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<sup>504</sup> Ministry of Justice, *Domestic Violence, Crime and Victims (Amendment) Act 2012* (2012) 4.

<sup>505</sup> Women’s Aid and Sara Charlton Charitable Foundation and Paladin, ‘Domestic Violence Law Reform-The Victim’s Voice Survey: Victim’s Experience of Domestic Violence and the Criminal Justice System’ (2014) 1.

<sup>506</sup> Refuge, ‘Care or Control’ <<http://www.refuge.org.uk/what-we-do/campaigns/care-or-control/>> accessed 5 October 2016.

harassment,<sup>507</sup> according to which ‘A person must not pursue a course of conduct—(a) which amounts to harassment of another, and (b) which he knows or ought to know amounts to harassment of the other.’<sup>508</sup> The meaning of harassment is: ‘References to harassing a person include alarming the person or causing the person distress.’<sup>509</sup> The definition of harassment is not specific; thus, the range of behaviours that can constitute an offence for the purposes of this Act is wide.<sup>510</sup> For example, this provision includes the protection of victims from repetitive emotional abuse committed through speech<sup>511</sup> that has the intent to cause distress through oppressive verbal means.<sup>512</sup> Moreover, section 4 of the PHA introduced the offence of putting people in the fear of violence, based on which ‘A person whose course of conduct causes another to fear, on at least two occasions, that violence will be used against him is guilty of an offence if he knows or ought to know that his course of conduct will cause the other so to fear on each of those occasions.’<sup>513</sup> Furthermore, victims are protected from emotional abuse caused with harassment, fear of physical violence, and alarming or causing distress to the person through stalking with s. 111 of the Protection of Freedoms Act 2012.<sup>514</sup> The language of these provisions includes coercive control, as it criminalises the coercive pattern of non-physical conducts that aim to control the emotional state of the victim. Thus, the language of these laws can protect emotionally abused victims and send a symbolic message to society against emotional abuse that is manifested to victims of diverse needs.

In addition, both of these provisions capture the repetitive pattern of IPA because ‘A “course of conduct” must involve conduct on at least two occasions.’<sup>515</sup> The courts have specified in respect of this regulation that the number of incidents is not the only factor determining a course of conduct, but also whether these incidents could be considered connected in type and context in order to justify them as a course of conduct.<sup>516</sup> Pearson and others explained that each separate incident can be different but they should be related on purpose in order to

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<sup>507</sup> Protection from Harassment Act 1997 s.2.

<sup>508</sup> *ibid* s.1.

<sup>509</sup> *ibid* s.7 (2).

<sup>510</sup> CPS, *Stalking and Harassment* <[http://www.cps.gov.uk/legal/s\\_to\\_u/stalking\\_and\\_harassment/#a02a](http://www.cps.gov.uk/legal/s_to_u/stalking_and_harassment/#a02a)> accessed 27 March 2017; see for example the protection of victims from stalking, as introduced in the PHA from the Protection of Freedoms Act 2012 s.111.

<sup>511</sup> See Protection from Harassment Act 1997 s.7 (4).

<sup>512</sup> *Plavelil v Director of Public Prosecutions* [2014] EWHC 736 (Admin).

<sup>513</sup> Protection from Harassment Act 1997 s.4 (1).

<sup>514</sup> Protection of Freedoms Act 2012 s 111.

<sup>515</sup> Protection from Harassment Act 1997 s.7 (3).

<sup>516</sup> See *Lau v DPP* [2000] Crim. L.R. 580; *R v Patel* [2005] 1 Cr. App. 27.

constitute a course of conduct.<sup>517</sup> Moreover, Hague and Malos noted that the benefit of this law is that the incidents do not have to be all serious and it provides protection to the victim without requiring serious physical or emotional harm to be caused.<sup>518</sup> Women's Aid also pointed that this legislation can be beneficial for abused women, especially for those who do not live with their abuser.<sup>519</sup> Thus, the language of this law provides protection to IPA victims of a diverse marital status from emotional abuse even if the actions are not the same but they are committed in the context of IPA through a course of conduct.

Despite the importance of this law for the symbolic message against IPA, in reality it has not been beneficial for IPA victims. Specifically, the courts did not apply these provisions in the case of IPA. For example, in *R v Hills*,<sup>520</sup> in which s. 4 was applied, the Appeal Court held that because the victim continued to live with the offender between the incidents suggests that the incident did not cause to the victim fear of violence. Moreover, in *R v Widdows*<sup>521</sup> coercive control in IPA was undermined because the judge held that victims choose to remain in a coercive relationship and the abuse is less serious if there is a 'long and predominantly affectionate relationship in which both parties persisted and wanted to continue'.<sup>522</sup> Bettinson criticised these decisions by arguing that:

This reasoning misunderstands the context and consequences of coercive control in intimate relationships. The perception of victims as autonomous individuals who remain in or return to the relationship because they freely choose to do so means that judges find it difficult to understand a victim who reports the behaviour of her partner but remains in the relationship. To interpret the legislation from this perspective ignores the dynamics and impacts of ongoing coercive control. It also undermines the potential utility of the offences contained in the 1997 Act to provide victims of domestic violence and/or abuse with adequate protection when the relationship is ongoing.<sup>523</sup>

Therefore, the case law demonstrates that although the above provisions have a symbolic role against IPA, in reality IPA victims are not protected from coercive control, which is the

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<sup>517</sup> Pearson C, Harwin N and Hester M with Abrahams H, *Making an Impact - Children and Domestic Violence: A Reader* (2nd edn, Jessica Kingsley Publishers 2007) 113.

<sup>518</sup> Hague G and Malos E, *Domestic Violence: Action for Change* (2nd edn, New Clarion Press 1998) 91.

<sup>519</sup> Women's Aid, 'Protection under the Criminal law'

<<http://web.archive.org/web/20061006145456/http://www.womensaid.org.uk/page.asp?section=00010001000900050001>> accessed 3 May 2017.

<sup>520</sup> *R v Hills* [2001] Crim LR 318; see also *R v Curtis* [2010] 3 All ER 849.

<sup>521</sup> *R v Widdows* [2011] EWCA Crim 1500.

<sup>522</sup> *ibid* para 29.

<sup>523</sup> Bettinson V and Bishop C, 'Is the Creation of a Discrete Offence of Coercive Control Necessary to Combat Domestic Violence?' (2015) 66 (2) Northern Ireland Legal Quarterly 179, 188.

essence of IPA. For this reason, the gendered nature of IPA was not recognised by these laws and further legislation was needed in order to effectively address IPA.

### **3.6.2 *The Development of the Coercive Control Offence***

The report 'Everyone's Business: Improving the Police Response to Domestic Abuse'<sup>524</sup> identified that the police could not respond appropriately to IPA incidents because officers did not understand the pattern of coercive control and its effect on the victims' behaviour. This was also recognised by the Coalition government, which in 2014 launched the consultation 'Strengthening the Law on Domestic Abuse-A Consultation'.<sup>525</sup> The focus of this consultation was on 'whether we should create a specific offence that captures patterns of coercive and controlling behaviour in intimate relationships, in line with the Government's non-statutory definition of domestic abuse.'<sup>526</sup> This statement indicates the governmental aim to increase the protection of IPA victims by criminalising emotional abuse manifested through coercive control.

The need for the strengthening of the substantive criminal law through the recognition of coercive control committed with non-physical abuse was also argued by Women's Aid, which recommended:

It is necessary to extend the law to recognise that violence in intimate relationships, at its most dangerous, is rarely a single incident of physical abuse but a pattern of ongoing controlling behaviour that involves psychological abuse as well as the threat or reality of physical.... violence. Women's Aid recommends that the law is strengthened by the introduction of a new criminal offence that enables a prosecution to be brought on the basis of 'a course of conduct' of coercive control against victims of violence/abuse (physical and non-physical) in intimate relationships. The course of conduct criminalised should be specifically identified as a pattern of coercive and controlling behaviour that can include, but is not limited to physical... and nonphysical violence such as psychological abuse.<sup>527</sup>

Women's Aid argued for the creation of a specific offence that criminalises a course of conduct, namely coercive control that leads to physical and/or emotional abuse. In fact, research has shown that victims of coercive control suffer consequences in their emotional state due to coercive control. For example, Johnson and Leone showed that victims of

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<sup>524</sup> HMIC, *Everyone's Business: Improving the Police Response to Domestic Abuse* (2014) 48-52.

<sup>525</sup> Home Office, *Strengthening the Law on Domestic Abuse-A Consultation* (2014).

<sup>526</sup> *ibid* 11.

<sup>527</sup> Women's Aid, *Women's Aid Response to the Home Office Consultation on Strengthening the Law on Domestic Abuse* (2014) 3.



intimate terrorism (coercive control) are attacked more frequently with less chance for the abuse to stop than victims of situational couple violence. For this reason, they exhibit more often symptoms of posttraumatic stress syndrome.<sup>528</sup> Moreover, Humphreys and Thiara argued that female victims experience severe emotional suffering due to the abuse inflicted on them. Their research with the victims showed that these women experience depression, post-traumatic stress, and self-harm as symptoms of the effects from the violence and abuse.<sup>529</sup> Similarly, Kirkwood reported that ‘all of the women expressed the view that their self-esteem was eroded as a result of the continual physical and emotional abuse by their partners’.<sup>530</sup> Consequently, it is argued that the criminalisation of coercive abuse is necessary due to the impact that IPA has on the mental state of the victims. Such criminalisation could promote the transformation of the social perception towards IPA experienced by victims with diverse needs such as victims with mental health problems and it would promote their appropriate protection by the CJS.

The government recognised the necessity of creating this law as it stated:

[T]here is a gap in the current legal framework around patterns of coercive and controlling behaviour, particularly where that behaviour takes place in an ongoing intimate partner... relationship. Non-violent coercive behaviour... falls outside common assault, which requires the victim to fear the immediate application of unlawful violence. Some patterns of domestic abuse could be captured by legislation that covers stalking and harassment. However, the law on stalking and harassment does not explicitly apply to coercive and controlling behaviour in intimate relationships.<sup>531</sup>

Based on this statement, the coercive control law would be beneficial because ‘The new offence seeks to address repeated or continuous behaviour in relationships where incidents viewed in isolation might appear unexceptional but have a significant cumulative impact on the victim’s everyday life, causing them fear, alarm or distress.’<sup>532</sup> For this reason, the legislators introduced section 76 (1) of the SCA 2015, in which it stated:

(1) A person (A) commits an offence if—

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<sup>528</sup> Johnson M P and Leone J M, ‘The Differential Effects of Intimate Terrorism and Situational Couple Violence: Findings from the National Violence Against Women Survey’ (2005) 26 *Journal of Family Issues* 322, 344.

<sup>529</sup> Humphreys C and Thiara R, ‘Mental Health and Domestic Violence: “I Call it Symptoms of Abuse”’ (2003) 33 *British Journal of Social Work* 209, 223.

<sup>530</sup> Kirkwood C, *Leaving Abusive Partners: From the Scars of Survival to the Wisdom for Change* (Sage 1993) 68.

<sup>531</sup> Home Office, *Strengthening the Law on Domestic Abuse Consultation— Summary of Responses* (2014) 11.

<sup>532</sup> PBC Deb 20 January 2015 col 172.

- (a) A repeatedly or continuously engages in behaviour towards another person (B) that is controlling or coercive,
- (b) at the time of the behaviour, A and B are personally connected,
- (c) the behaviour has a serious effect on B....<sup>533</sup>

Kelly and Westmarland explained that this law is composed by three elements: a) a pattern of behaviour, b) that has ‘serious effect’, and c) the person is aware it will have this effect.<sup>534</sup>

The creation of this law is significant because the prior legislative framework did not provide protection for coercive control as a pattern of behaviour and emotional abuse to IPA victims. Hanna argued that this excluded victims whose partners through controlling means compromised their autonomy and they were not able to prove significant physical harm.<sup>535</sup> In fact, McMahon and McGorrery have argued that ‘The new offence is certainly distinctive. Its most notable feature is that it seeks to protect victims of certain types of psychological pressure-controlling or coercive behavior-without necessarily requiring that they also experience physical violence or fear of violence.’<sup>536</sup> For example, in the case of Anwaar, the offender exercised controlling and abusive behaviour against his partner for around two years. He was convicted under the offence of coercive control for controlling her way of dressing, when she could see her friends and family, and by being with her constantly.<sup>537</sup> Therefore, this new offence reflects the gendered nature of IPA manifested through power and control for emotional abuse.

On the other hand, Bishop argued concerning the new offence:

[W]hilst this can be seen as a positive move that sends the message, at a legal and societal level, that such behaviours constitute domestic abuse and are criminal, there are concerns that the new offence does not go far enough in terms of challenging existing preconceptions that serious physical violence is central to the commission of severe abuse. The new offence co-exists alongside the established criminal law framework for dealing with domestic violence, thus perpetuating the view that coercive and controlling behaviour is a new and distinct form of domestic violence.... As it carries a maximum sentence of only five years imprisonment, there is also an inference that it is less serious in nature than direct physical violence....

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<sup>533</sup> Serious Crime Act 2015 s.76 (1).

<sup>534</sup> Kelly L and Westmarland N, ‘Naming and Defining “Domestic Violence”’: Lessons from Research with Violent Men’ (2016) 112 (1) *Feminist review* 113; Explanatory Notes to Serious Crime Act 2015, para 312.

<sup>535</sup> Hanna C, ‘The Paradox of Progress: Translating Evan Stark’s Coercive Control into Legal Doctrine for Abused Women’ (2009) 15 (12) *Violence Against Women* 1458, 1463.

<sup>536</sup> McMahon M and McGorrery P, ‘Criminalising Controlling and Coercive Behaviour: The Next Step in the Prosecution of Family Violence?’ (2016) 41 *Alternative Law Journal* 98, 99.

<sup>537</sup> BBC News, ‘Controlling Partner Mohammed Anwaar Jailed for 28 months’ (18 May 2016) <<http://www.bbc.co.uk/news/uk-england-south-yorkshire-36322931>> accessed 7 May 2017.

Therefore, if coercion and control were viewed along the same lines as the spectrum of criminal offences against the person, arguably at its very highest peak, it is as serious as an offence of grievous bodily harm with intent and thus should carry the same maximum sentence of life imprisonment.<sup>538</sup>

This view criticised the new offence for distinguishing coercive control from physical violence, which can constitute one of the ways that coercive control is manifested. This was opposed for undermining the message sent to society regarding the nature and gravity of IPA, especially due to the maximum sentence of five years. In fact, the coercive control offence can apply in conjunction to other offences, as for example, in the case of Justene Reece the offender was held liable for coercive control and manslaughter because his coercive behaviour led the victim to commit suicide.<sup>539</sup> Although this case shows an improvement in the criminal law response, the creation of a coercive control offence that integrates physical and non-physical abuse would send a stronger message against coercive control since it would mirror the real experiences of the victims.

Despite this gap, the creation of this offence is important because it introduces the pattern of power and control in the legal framework for IPA crimes. Specifically, according to the ‘Controlling or Coercive Behaviour in an Intimate or Family Relationship Statutory Guidance Framework’:<sup>540</sup>

Controlling or coercive behaviour is primarily a form of violence against women and girls and is underpinned by wider societal gender inequality. This can contribute to the ability of the offender to retain power and control, and ultimately the ability of the victim to access support and leave safely. It is, therefore, important to consider the role of gender in the context of power and control within a relationship when identifying controlling or coercive behaviour in heterosexual relationships. It is important to consider how any additional needs and barriers may affect the ability and willingness of the individual victim to recognise or report abusive behaviour. Perpetrators may try to exploit such vulnerabilities in order to maintain control, or try to prevent the victim from seeking help.<sup>541</sup>

The Guidance identifies the need of recognising the coercive nature of IPA perpetrated in heterosexual relationships. Moreover, it recognises other identities such as impairment,

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<sup>538</sup> Bishop C, ‘Domestic Violence: The Limitations of a Legal Response’ in Hilder S and Bettinson V (eds), *Domestic Violence Interdisciplinary Perspectives on Protection, Prevention and Intervention* (Palgrave Macmillan 2016) 71-72.

<sup>539</sup> CPS, ‘Man Jailed for Manslaughter after Stalking His Former Partner’ (28 July 2017)

<[http://www.cps.gov.uk/news/latest\\_news/man-jailed-for-manslaughter-after-s/](http://www.cps.gov.uk/news/latest_news/man-jailed-for-manslaughter-after-s/)> accessed 10 August 2017.

<sup>540</sup> Home Office, *Controlling or Coercive Behaviour in an Intimate or Family Relationship Statutory Guidance Framework* (2015).

<sup>541</sup> *ibid* 7.

ethnicity, drugs and alcohol, financial abuse, fear of losing children, sexual orientation, and age<sup>542</sup> as additional barriers, whose combination, shape the victimisation experiences.

Although this is a positive development, it should be noted that it recognises coercive control only in heterosexual relationships while this should be also recognised in same sex relationships.

Feminist activists argued that the implementation of the law needs to be promoted throughout the whole-system response in order to provide a specific response to the victims' needs. For example, although Refuge disagreed with the creation of a specific law on coercive control, it reiterated that: 'There is ... an urgent need for specialist training for criminal justice system professionals, to ensure they understand the basics of violence against women, which would include the fact that it is a form of gender discrimination and generally occurs within the context of ongoing control and repeated abuse.'<sup>543</sup> This training is necessary in order to ensure that the CJA professionals can recognise IPA and can adequately respond to the victims' needs. Moreover, EVAW argued:

If the Government were also to ensure that independent support services, including refuges..., were sustainably funded, then enormous value would be added to the efforts to prosecute this offence - since these services often provide the unique, essential support women need to be safe.<sup>544</sup>

EVAW recognised that the support of refuges is needed to support victims in accessing the CJS. In fact, providing victims with efficient support services is essential in order to prioritise gender in relation to the other identities by targeting gender inequality through a strong CJS response against IPA without disregarding the barriers caused by their additional identities.

Further, Women's Aid stated: 'It is a landmark moment in the UK's approach to domestic abuse, and must be accompanied by awareness-raising among the public....'<sup>545</sup> On this point, Imkaan further reiterated:

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<sup>542</sup> See *ibid* 7-9.

<sup>543</sup> Refuge, *Refuge Response to Home Office Consultation, 'Strengthening the Law on Domestic Abuse'* (2014) 7.

<sup>544</sup> EVAW, 'New VAWG Measures Announced: We Need to Go Further in Our Schools' (5 December 2015) <<http://www.endviolenceagainstwomen.org.uk/news/222/new-vawg-measures-announced-we-need-to-go-further-in-our-schools>> accessed 14 October 2016.

<sup>545</sup> Women's Aid, 'Women's Aid Welcomes Coercive Control Law' <<https://www.womensaid.org.uk/womens-aid-welcomes-coercive-control-law/>> accessed 25 September 2016.

[S]trengthening law in isolation will not automatically improve victim safety, encourage victims to report or reduce violence. Now that the government has changed its definition to acknowledge that abuse occurs among young people aged 16-17, government must also consider whether sufficient protection is provided to those experiencing abuse within this age group. It is crucial for the government to develop a prevention programme that includes compulsory sex and relationships education in schools in order to shift attitudes around violence and gender inequality, enable young people and school workers to identify when violence or abuse has taken place and to seek support.<sup>546</sup>

These views argue that the training of the CJA, the support of refuges, and the early intervention to young people through education are keys in implementing effectively the coercive control offence in order to protect victims and prevent IPA. In fact, the power of the law is limited and the tackling of IPA can be achieved through a coordination of the CJS and the social welfare system in order to improve the protection of diverse victims and promote the transformation of the social perception. Thus, due to the importance of these issues for the successful prevention of IPA and the protection of its victims, the training of the CJA is examined in Chapter 4 while refuges and early intervention to young people through education are examined in Chapter 5.

To conclude, the Labour government during its administration introduced the substantive criminal law offence of familial homicide that criminalised the death of an intimate partner due to a physically violent course of conduct. This law was an improvement, as it captured the repetitive pattern of IPA in comparison to the OAPA offences that criminalised only incidents of IPA. However, this law has more symbolic value than practical, as it does not mirror the gendered nature of IPA manifested through power and control. Moreover, the response of the substantive criminal law was further improved by the Coalition government which amended the DVCVA by introducing the familial serious physical harm offence. This offence was an improvement because the repetitive nature of IPA has been expanded to serious physical harm cases. Although these laws are important, the coercive element of IPA manifested through non-physical abuse such as emotional abuse was not addressed by the law until the creation of the coercive control offence by the Coalition government. Feminist activists argued that the creation of this law would be beneficial for victims as it would capture the repetitive coercive pattern of emotional abuse. In fact, this law can contribute to the transformation of the social perception against emotional abuse and the gendered nature

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<sup>546</sup> MsUnderstood, *Consultation Response Home Office Consultation on Strengthening the Law on Domestic Abuse* (2014) 3.

of IPA. However, its successful implementation in practice needs to be promoted by additional mechanisms such as the CJA practice, refuges, and education to young people in order to improve the prevention of IPA and the protection of diverse victims.

### **3.7 Conclusion**

The purpose of this chapter was to examine the development of the governmental policy frameworks from 1997 to 2017 by investigating the whole-system crime prevention strategies. Moreover, it examined the substantive criminal laws developed during these years, namely the familial homicide, the familial serious physical injury, and the coercive control offences. The examination aimed to identify whether these policy and legal developments recognised gender inequality as the cause of IPA and the additional identities as contributing factors that shape the victims' experiences and whether they have promoted the transformation of the social perception against IPA and its victims' diverse needs. Furthermore, it aimed to identify the contributions of feminist activists and theorists to the discussions on these developments.

The examination identified that the Labour government promoted a whole system response through the statutory establishment of the multi-agency partnerships. Moreover, it promoted gender-neutral crime prevention strategies until 2009. Despite the gender-neutrality of the crime prevention strategies, the Labour government acknowledged the need of addressing the diverse discriminations that victims of specific identities face. The feminist activists argued that a VAWG strategy was necessary in order to recognise the gendered nature of IPA. Such strategy was in fact adopted in 2009 by the Labour government, which framed IPA under a VAWG strategy that implied the recognition of its gendered nature. The Coalition government also formed a VAWG strategy, in which it explicitly recognised that IPA crimes are gender-based. Furthermore, although it recognised victims' diverse needs, the whole-system response was not effectively promoted due to its Big Society Plan and the funding cuts to the refuges. Despite this, the Coalition government introduced a significant development with the creation of the new domestic violence definition that mirrored the coercive pattern of behaviour manifested in IPA. Additionally, the Conservative government promoted a VAWG strategy that aimed to a whole-system response against IPA. Although this VAWG strategy has been a positive policy development, it did not specify the way gender intersects with the other identities of the victims. This gap can impact the practical

implementation of the VAWG strategy because if it is not clarified that gender is the dominant identity to be considered, competing interests among the identities can lead to the de-gendering of the whole-system response. In practice, the prioritisation of gender inequality in comparison to the other inequalities caused by the additional identities of the victims means that the CJS would aim to tackle IPA by targeting gender inequality while the additional inequalities would be overcome through support services. Feminist activists have been alarmed due to the Brexit developments, as victims' support services might be weakened due to the exit of the UK from the EU. However, the Conservative government has announced the creation of a new domestic violence Act that will significantly challenge the social awareness towards IPA. This indicates at a preliminary stage that the government might attempt to strengthen the support of the victims.

In addition, the examination showed that the response of the substantive criminal law has improved with the creation of the familial homicide and the familial serious physical harm offences as they send a symbolic message against IPA. Moreover, they strengthen the law in terms of capturing the repetitive nature of IPA. However, both of these offences do not include the coercive pattern of IPA. The response of the criminal law has substantially improved with the enactment of the coercive control offence which criminalised emotional abuse for IPA victims. This offence has captured both the repetitive and the coercive nature of IPA. Feminist activists and theorists have contributed to this development with their arguments and campaigns for such recognition.

These findings suggest that the crime prevention strategies and criminal laws have progressively improved. This improvement could be furthered with a consistent implementation of the policies and laws throughout the whole system response. This consistent implementation should provide an appropriate protection to female victims of diverse needs and also improve the prevention of IPA by promoting the transformation of the social perception. For this reason, Chapter 4 will examine whether the policy and legislative frameworks have been adequately implemented by the CJA response regarding the prevention of IPA and the protection of diverse victims.

## **Chapter 4. The Response of the CJA to IPA Victims**

### **4.1 Introduction**

The governmental strategies on IPA, examined in Chapter 3, can influence the formation of the CJA response at a policy and practice level regarding the implementation of the substantive criminal laws. For this reason, this chapter aims to examine the development of the response of three CJA (police, CPS, and courts) from 1997 to 2017 regarding the prevention of IPA and the protection of female victims with diverse identities. This investigation also focuses on the engagements of feminist activists and theorists with the CJA policies and practice. The examination will produce critiques based on the intersectional gendered approach. This means that it will identify to what extent the CJA response has promoted the prevention of IPA and the protection of its female victims with diverse identities but also the transformation of the social perception towards IPA and the diverse needs of the victims.

The chapter focuses on CJA policies and practice on the IPA during the administration of the Labour government. Moreover, the chapter examines CJA policies and practice during the administration of the Coalition government by investigating the implementation of the SED on the CJA response in order to show how it can influence the adoption of the intersectional gendered approach. Furthermore, the chapter continues to discuss the most current developments of the CJA response on the coercive control offence during the Conservative government.

The chapter argues that the CJA response has improved progressively regarding the prevention of IPA and the protection of female victims of diverse identities. However, this improvement has not been consistently applied to all policies and practice in all communities. Therefore, the CJA response could further improve in a policy and practice level by providing a stronger and consistent response against gender inequality but also showing consideration of the victims' specific needs caused by their diverse identities. This improvement is important because the CJA response contributes to the transformation of the social perception towards IPA and its victims.



## 4.2 The Response of the CJA during the Labour Government

As discussed in Chapter 3, the Labour government introduced new measures in combating IPA such as the establishment of statutory multiagency partnerships. The aim of these partnerships has been to provide a whole-system response to IPA through a coordinated collaboration among statutory agencies such as the CJA and voluntary agencies.<sup>547</sup> Although the CJA are the police, the prosecution, courts, prison, youth justice, and probation services,<sup>548</sup> this chapter focuses on the police, CPS, and courts due to their significant role for the protection of the victims by facilitating their access to the CJS.

The police has an important role because it affects the motivation of the victims to participate at later phases of the CJS.<sup>549</sup> This occurs because the police are usually the first agency, with which IPA victims, who seek the intervention of the CJS, come in contact.<sup>550</sup> Moreover, the police response has a political and symbolic significance to society as its positive action towards crimes such as IPA sends a deterrent message to society that it is a public matter and a concerning issue for the police that cannot be tolerated.<sup>551</sup> Additionally, the police role is crucial due its duties to investigate the offences, assess the evidence, charge the offenders, and refer the cases to the CPS.<sup>552</sup> The CPS also has a significant role in the CJS due to its responsibility to decide on the charges and prosecute the crimes<sup>553</sup> and due to its close collaboration with the police and the courts in order to be able to inform the victims on the progress of their cases.<sup>554</sup> The analysis also focuses on courts due to their important role through the SDVCs, which are ‘problem-solving’ courts that provide an enhanced role for the judiciary to improve the results for the victim, defendant, and community. The SDVCs aim to achieve their enhanced role by influencing policy and practice in order to attain system change, by continuously monitoring compliance with perpetrators’ programmes, and

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<sup>547</sup> See Crime and Disorders Act 1997 s.5-7

<sup>548</sup> Committee of Public Accounts, *The Criminal Justice System* (HC 2013-14, 59) 5.

<sup>549</sup> Robinson L A and Stroshine S M, ‘The Importance of Expectation Fulfilment on Domestic Violence Victims’ Satisfaction with the Police in the UK’ (2005) 28 (2) *Policing: An International Journal of Police Strategies and Management* 301, 302.

<sup>550</sup> Groves N and Thomas T, *Domestic Violence and Criminal Justice* (Routledge 2014) 64.

<sup>551</sup> Harne L and Radford J, *Tackling Domestic Violence: Theories, Policies and Practice* (Open University Press 2008) 118.

<sup>552</sup> CPS, ‘The Director’s Guidance on Charging 2013’

<[https://www.cps.gov.uk/publications/directors\\_guidance/dpp\\_guidance\\_5.html](https://www.cps.gov.uk/publications/directors_guidance/dpp_guidance_5.html)> accessed 25 May 2015.

<sup>553</sup> *ibid*

<sup>554</sup> HM Crown Prosecution Service Inspectorate, *Violence at Home: A Joint Thematic Inspection of the Investigation and Prosecution of Cases Involving Domestic Violence* (2004) 27.

participating in multi-agency partnerships.<sup>555</sup> Hence, the examination of these CJA response is important because their effective practice contributes to the reduction of the attrition problem by facilitating victims in accessing the CJS.<sup>556</sup>

#### **4.2.1 The Development of the Police Response**

Regarding the police response, Groves and Thomas argued that the police work on IPA is both reactive and proactive. Reactive is when the police respond to a report or complaint of an incident through to arrest, detention, investigation and charging of a suspect while the proactive response involves preventive work in order to protect women.<sup>557</sup> This proactive and reactive police response is mirrored in the ‘Living Without Fear: An Integrated Approach to Tackling Violence against Women’ which stated that ‘A woman's first formal contact in seeking justice will be the police. The effectiveness of the police response at that point is crucial in bringing the perpetrator to justice and preventing further violence.’<sup>558</sup> The proactive police response can be achieved by preventing further violence while the reactive by bringing perpetrators to justice.

This policy approach constitutes an improvement in comparison to the past, as in the 1970s and 1980s, the police response was criticised by Women’s Aid for being reluctant to interfere in the familial privacy.<sup>559</sup> This was also argued by feminist theorists who investigated the influence of police officers who first attend the scene of crime and decide on the suspect’s arrest,<sup>560</sup> the role of the custody officer responsible in charging the suspect,<sup>561</sup> the police behaviour through police records, observations<sup>562</sup> and collected data from interviews and questionnaires with female victims.<sup>563</sup> The police reluctance to respond appropriately to IPA

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<sup>555</sup> Burton M, ‘Judicial Monitoring of Compliance: Introducing “Problem Solving” Approaches Violence Courts in England and Wales’ (2006) 20 (3) International Journal of Law, Policy and the Family 366, 369-370.

<sup>556</sup> See The Police Foundation, *The Briefing: Policing Domestic Abuse* (2014) 11-12.

<sup>557</sup> Groves N and Thomas T, *Domestic Violence and Criminal Justice* (Routledge 2014) 64.

<sup>558</sup> Home Office, *Living Without Fear: An Integrated Approach to Tackling Violence against Women* <<http://webarchive.nationalarchives.gov.uk/20010714051016/http://www.cabinet-office.gov.uk:80/womens-unit/fear/05.htm>> accessed 20 November 2016.

<sup>559</sup> Select Committee, *Violence in Marriage* (HC 1974-75, 553-II) 123.

<sup>560</sup> Dobash R P and Dobash R E, *Violence Against Wives: A Case against Patriarchy* (Open Books 1980) 212-214.

<sup>561</sup> Edwards S S M, *Policing ‘Domestic’ Violence: Women, the Law and the State* (2nd edn, Sage 1991) 91-97.

<sup>562</sup> Oppenlander N, “‘Coping or Copping Out?’” Police Service Delivery in Domestic Disputes’ (1982) 20 (3-4) Criminology 449, 449-465; Edwards S S M, ‘Police Attitudes and Dispositions in Domestic Disputes: The London Study’ (1986) Police Journal 230, 230-241.

<sup>563</sup> Brown S E, ‘Police Responses to Wife Beating: Neglect of a Crime of Violence’ (1984) 12 Journal of Criminal Justice 277, 277-288; Pahl J, ‘Police Response to Battered Women’ (1982) Journal of Social Welfare

was explained by Bourlet that until the early 1990s police training on IPA was minimal and adopted the view that the police should be cautious about intervening and should encourage civil, rather than criminal law, remedies.<sup>564</sup>

However, this police practice started to change during the 1990s, as the police emphasised on a proactive response, according to which the police could primary respond by arresting the offenders.<sup>565</sup> The proactive police response was promoted with the participation of the police in the multi-agency initiatives in which it had to collaborate with the voluntary agencies.<sup>566</sup> Moreover, during the 1990s, the proactive police response included measures such as the establishment of Domestic Violence Units (DVUs) and the appointment of dedicated domestic violence officers (DVOs).<sup>567</sup> This measure has a proactive character because it can contribute to the protection of victims from further violence and send a message to society against IPA by encouraging victims to access the CJS through its specialised response.

#### **4.2.2 Specialised Police Response**

As argued in Chapter 3, the prevention of IPA and the protection of female victims could be improved if the CJA response in a policy and practical level recognises gender inequality as the cause of IPA. This could be reflected in the police response with the setting up of DVUs, so that victims were encouraged to seek the support from the CJS due to the specialist protection. The establishment of this specialised police response could have resulted due to the shift in the policy identified by Bridgeman and Hobbs, according to whom, IPA was acknowledged by the government as a crime of repeat victimisation, and thus, the police should focus also on the victims and not only on the perpetrators.<sup>568</sup>

Despite this policy improvement, this was not implemented consistently in the police practice. Specifically, the study conducted from 1997 to 1998 by Plotnikoff and Woolfson

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Lave 337, 337-343; Walker J and McNicol L, 'Policing Domestic Violence: Protection, Prevention or Prudence?' (Relate Centre for Family Studies 1994) 9.

<sup>564</sup> Bourlet A, *Police Intervention in Marital Violence* (Open University Press 1990) 14-21; 76.

<sup>565</sup> See Morley R and Mullender A, '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' (1992) 6 (2) *International Journal of Law and the Family* 265, 268.

<sup>566</sup> See Hague G and Malos E, 'Inter-agency Initiatives as a Response to Domestic Violence' (1997) *LXX* (1) *Police Journal* 37, 37-44.

<sup>567</sup> Home Office, *Circular 60/1990: Domestic Violence* (1990).

<sup>568</sup> Bridgeman C and Hobbs L, 'Preventing Repeat Victimisation: The Police Officers' Guide' (Police Research Group 1997) 1, 3; see also Hanmer J, Griffiths S and Jerwood D, 'Arresting Evidence: Domestic Violence and Repeat Victimisation' (Home Office and Policing and Reducing Crime Unit 1999) 5.

showed that six (14%) of the 42 forces had no specialised DVOs while 18 (43%) did not have a dedicated unit. Also, in seven forces with a specialist unit, DVOs had other duties in addition to domestic violence. However, the majority of forces (86%) were found by this study to have specialist DVOs.<sup>569</sup> This problem suggests that the police practice did not provide a consistent response across all police forces and that IPA victims did not receive equal consideration by the police forces.

Despite the establishment of this specialised police response, the police practice can be affected by the police culture. Particularly, IPA was a persistent problem promulgated due to beliefs in traditional gender roles and negative stereotypes about women that are particularly concerning when expressed by men officers, as a masculine police culture endured in police forces.<sup>570</sup> This occurred because the officers' gender influences their beliefs, stereotypes and reaction to IPA.<sup>571</sup> Loftus noted that the police was dominated by a white, heterosexist, male culture. However, this was opposed by a minority culture represented by female, LGBT, and BAME officers.<sup>572</sup> For this reason, the targeting of gender inequality in order to tackle IPA and the protection of victims with diverse identities can be facilitated if diversity is increased in the police forces.

The police culture, due to the different aims of the CJA, can affect their collaboration in the multi-agency partnerships and compromise the continuance of a case in the criminal justice process. For this reason, their collaboration has been regulated through service level agreements and multi-agency protocols.<sup>573</sup> The involvement of female police officers with

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<sup>569</sup> Plotnikoff J and Woolfson R, 'Policing Domestic Violence: Effective Organisational Structures' (Home Office and Policing and Reducing Crime Unit 1998) 17; see also Hoyle C and Sanders A, 'Police Response to Domestic Violence: From Victim Choice to Victim Empowerment?' (2000) 40 *British Journal of Criminology* 14, 28.

<sup>570</sup> Dick P and Jankowicz D, 'A Social Constructionist Account of Police Culture and Its Influence on the Representation and Progression of Female Officers' (2001) 24 *Policing: An International Journal of Police Strategies & Management* 181, 181-199; see also Rabe-Hemp C, 'Surviving the "All Boys Club": Policewomen and Their Struggle for Acceptance' (2007) 31 (2) *Policing: An International Journal of Police Strategies & Management* 251, 251-270.

<sup>571</sup> See Lockwood D and Prohaska A, 'Police Officer Gender and Attitudes toward Intimate Partner Violence: How Policy Can Eliminate Stereotypes' (2015) 10 (1) *International Journal of Criminal Justice Sciences* 77, 78.

<sup>572</sup> Loftus B, 'Dominant Culture Interrupted: Recognition, Resentment and the Politics of Change in an English Police Force' (2008) 48 (6) *The British Journal of Criminology* 756, 756-757.

<sup>573</sup> See CPS 'Service Level Agreement between the Crown Prosecution Service London and the Metropolitan Police Service for Domestic Violence Cases' <[http://cps.gov.uk/publications/agencies/dv/sla\\_cps\\_metpolice.html](http://cps.gov.uk/publications/agencies/dv/sla_cps_metpolice.html)> accessed 23 May 2017; CPS, 'Gwent Domestic Violence Project' <[http://cps.gov.uk/publications/agencies/dv/gwent\\_protocol.html#\\_05](http://cps.gov.uk/publications/agencies/dv/gwent_protocol.html#_05)> accessed 23 May 2017.

IPA victims can improve the multi-agency partnerships' response because as Rabe-Hemp argued:

[W]omen stressed communication, familiarity, and building trust and rapport between the police and community members as positive effects of their behaviors.... Female police officers actively resisted the expectations for aggression and violence typically associated with the police role and adopted the expectations for caretaking, softness, and empathy associated with the female role.<sup>574</sup>

Based on this view, female police officers are in a better position to understand the needs of female victims because through their personal characteristics of communication, empathy and caretaking they can build a relationship of trust with the victims. Due to these traits, female police officers are marginalised in the organisational structure from 'real' policing, namely street policing, due to their importance in some specialist departments.<sup>575</sup> In fact, DVOs and DVUs, which provide the specialist police response to IPA, are involved with the multi-agency collaborations. According to McCarthy, the multi-agency partnerships 'challenge typical policing structures by aligning the police in collaborative decision-making with other community agencies, and by having a greater number of female officers operating within these networks.'<sup>576</sup> Therefore, the utilisation of female DVOs can provide a more effective police participation in the multi-agency response.

Plotnikoff and Woolfson noted that 'In 12 forces, a third of those with DVOs, all were women, while in all but two of the remaining forces, women DVOs outnumbered their male colleagues. Nine forces had DVOs of ethnic minority background.'<sup>577</sup> The use of DVOs from BAME communities can be also beneficial to victims because in addition to the gender of the police officers, there are additional diverse identities that contribute to the police practice due to their familiarity with the cultural differences in their ethnic groups that can cause additional victimisation to IPA victims. Due to the importance that diverse female officers can have in the support provided to the victims, it is argued that female officers from diverse backgrounds needed to be increased consistently across all police forces.

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<sup>574</sup> Rabe-Hemp E C, 'POLICEwomen or PoliceWOMEN?: Doing Gender and Police Work' (2009) 4 (2) *Feminist Criminology* 114, 124-125; see also, Schuck M A, 'Gender Differences in Policing: Testing Hypotheses From the Performance and Disruption Perspectives' (2014) 9 (2) *Feminist Criminology* 160, 177.

<sup>575</sup> Westmarland L, *Gender and Policing: Sex Power and Police Culture* (2nd edn, Routledge 2011) 22.

<sup>576</sup> McCarthy D J, 'Gendering "Soft" Policing: Multi-agency Working, Female Cops, and the Fluidities of Police Culture/s' (2013) 23 (2) *Policing and Society* 261, 262.

<sup>577</sup> Plotnikoff J and Woolfson R, 'Policing Domestic Violence: Effective Organisational Structures' (Home Office and Policing and Reducing Crime Unit 1998) 18.

Further, the police practice can be improved by proactively aiming to transform the perception towards IPA and the diverse needs of the victims through training provided to police officers. Grace found that there was little on-going training on domestic violence for generalist police officers.<sup>578</sup> Such training was provided with the ‘Policing domestic violence—a modular training programme’,<sup>579</sup> which aimed to provide training on domestic violence within the police service including to DVOs.<sup>580</sup>

The limited impact of training on the police practice can be identified in the Hollie Gazzard case investigated by the Independent Police Complaints Commission (IPCC). The IPCC found that the police officer responding to the call of Gazzard did not prioritise her call as urgent because she was not able to assess the details of her case due to her lack of domestic violence training.<sup>581</sup> This police practice has been criticised by Refuge, which stated:

The call handler said she had not received specific training on domestic violence.... This is completely unacceptable. Police across the country receive a domestic violence call every 30 seconds. How can it be that call handlers are still not being trained in this vital area of public protection? Domestic violence is core police business. With the right training, the call handler should have realised that Hollie could be at high risk of homicide or serious harm.<sup>582</sup>

This case shows the importance that not only DVOs should receive training but also police officers responding to emergency calls and officers going at the scene of a crime. The police practice is argued to be inefficient because if call handlers are not handling IPA calls properly due to lack of training, this can affect the police investigation outcome and the CPS response.

#### **4.2.3 Pro-Arrest Policy**

The proactive and reactive police response has been promoted with the pro-arrest policy, as it encourages victims to participate in the criminal justice process.<sup>583</sup> The prevention of IPA and the protection of its victims can be achieved by either preventing violence occurring in

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<sup>578</sup> Grace S, ‘Policing Domestic Violence in the 1990s’ (HMSO 1995) 53.

<sup>579</sup> Association of Chief Police Officers/Centrex, *Guidance on Investigating Domestic Violence* (2004) 5.

<sup>580</sup> HC Deb 10 December 2002 vol 396 col 233W.

<sup>581</sup> IPCC, ‘Investigation into Police Contact with Miss Hollie Gazzard Prior to Her Death on 18 February 2014’ (2014) 18.

<sup>582</sup> Refuge, ‘Refuge Responds to IPCC Report into the Murder of Hollie Gazzard in Gloucester’ <<http://www.refuge.org.uk/2015/04/30/refuge-responds-to-ipcc-report-into-the-murder-of-hollie-gazzard-in-gloucester/>> accessed 28 May 2015.

<sup>583</sup> see Hester M, ‘Making It through the Criminal Justice System: Attrition and Domestic Violence’ (2005) 5 (1) *Social Policy & Society* 79, 79-80.

the first place or preventing repeat victimisation.<sup>584</sup> The latter could be achieved with the pro-arrest policy, provided by the Police and Criminal Evidence Act (PACE) 1984 Act as amended with section 10(1) of the DVCVA.<sup>585</sup> This amendment resulted from the criticism of the Safety and Justice strategy for being complicated in its application to common assaults such as IPA. The Report stated that it was a common phenomenon for the police not to be able to arrest the perpetrator if he had left the scene of the crime, and the victim was not visibly injured or did not want the offender to be arrested.<sup>586</sup> For this reason, the government suggested through its report to make common assault an arrestable offence, so that the pro-arrest policy may apply to IPA incidents, under section 24 of the PACE, giving this way to the police more power to offer better protection to victims.<sup>587</sup>

The above provision gave to the police ‘the power to arrest an individual on suspicion of assault and/or battery without an arrest warrant.’<sup>588</sup> This police power resulted from the fact that the police officer is able to arrest the offender even without the collaboration of the victim. This is also illustrated by the view of Sanders and others who supported that the police, in practice, needs to have reasonable suspicion in order to proceed with an arrest.<sup>589</sup> This meant that the police officer going to the scene where IPA occurred has the discretion based on a reasonable suspicion to decide whether to arrest the perpetrator. On this point, Lord Amptill observed that making common assault an arrestable offence puts a huge responsibility on the police officer to decide whether a common assault has occurred and whether he should arrest at that stage.<sup>590</sup>

In contrast to the mandatory arrest implemented in the US where arrest is compulsory,<sup>591</sup> the pro-arrest policy gives the discretion to the police officer to decide whether to arrest depending on the circumstances of each case. Specifically, the mandatory arrest policy was promoted by feminist theorists who argued that the personal is political and promoted the view that IPA is a public matter that should be handled publicly because violence in the

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<sup>584</sup> Morley R and Mullender A, ‘Preventing Domestic Violence to Women’ (Police Research Group 2004) 11.

<sup>585</sup> DVCVA 2004 s. 10 (1).

<sup>586</sup> Home Office, *Safety and Justice: The Government’s Proposals on Domestic Violence (Cmd 5847, 2003)* 27.

<sup>587</sup> *ibid*

<sup>588</sup> Explanatory Notes to the DVCVA 2004, para 51.

<sup>589</sup> Sanders A, Young R and Burton M, *Criminal Justice* (Oxford University Press 2010) 156.

<sup>590</sup> HL Deb 19 January 2004 vol 657 cols 200-201GC.

<sup>591</sup> See Hirschel D, Buzawa E, Pattavina A and Faggiani D, ‘Domestic Violence and Mandatory Arrest Laws: To What Extent Do They Influence Police Arrest Decisions’ (2007) 98 *Journal of Criminal Law & Criminology* 255, 255-256.

family is the result of the political disempowerment of women.<sup>592</sup> For example, Schneider pointed that mandatory arrest laws:

[S]end a message that domestic violence shall not be treated as a less serious crime than violence between strangers, and thus they transform the private nature of domestic violence into a public matter. Otherwise, by refusing to intervene under a rationale that domestic violence is a private family matter, the state not only condones beating but in fact promotes it.<sup>593</sup>

Based on these views, the mandatory arrest treats IPA as a public issue and makes compulsory the interference of the criminal law despite of the victims' wishes.

This response, according to Goodmark, is against the anti-essentialist feminist views<sup>594</sup> because it deprived victims of deciding their participation in the CJS.<sup>595</sup> Moreover, mandatory policies disregard the deep effect that race, class, sexual orientation, and other identities can have on women's decisions to invoke formal systems.<sup>596</sup> Due to these diverse identities, Jamieson pointed that anti-essentialist feminism entails that battered women are treated based on their different identities and abilities, and that they should be provided with the chance to decide according to their goals and priorities.<sup>597</sup> In fact, Ruttenberg argued that

Mandatory arrest laws represent a policy supporting a white woman's perspective of the state and its role in protecting them against violence. Black women also suffer abuse at the hands of their husbands, but coming face-to-face with state intervention in the form of mandatory arrest often proves more dangerous than helpful.<sup>598</sup>

Based on this view, the police decision to arrest the offender could be detrimental to some victims, as due to their diverse circumstances, they might have to face severe repercussions

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<sup>592</sup> See Mackinnon A C, *Feminism Unmodified: Discourses on Life and Law* (Harvard University Press 1987) 100; Siegel R, "The Rule of Love": Wife Beating as Prerogative and Privacy' (1996) 105 Yale Law Journal 2117, 2196-2206.

<sup>593</sup> Schneider M E, *Battered Women and Feminist Lawmaking* (Yale University Press 2000) 186.

<sup>594</sup> Goodmark L, 'Autonomy Feminism: An Anti-essentialist Critique of Mandatory Interventions in Domestic Violence Cases' (2009-2010) 37 (1) Florida State University Law Review 1, 43.

<sup>595</sup> Goodmark L, *A Troubled Marriage: Domestic Violence and the Legal System* (New York University Press) 107.

<sup>596</sup> Miller L S, *Victims as Offenders: The Paradox of Women's Violence in Relationships* (Rutgers University Press 2005) 8; see also Richie E B, *Compelled to Crime: The Gender Entrapment of Black Battered Women* (Routledge 1996) 96.

<sup>597</sup> Jamieson B K, *Real Choices: Feminism, Freedom, and The Limits of Law* (The Pennsylvania State University Press 2001) 220.

<sup>598</sup> Ruttenberg H M, 'A Feminist Critique of Mandatory Arrest: An Analysis of Race and Gender in Domestic Violence Policy' (1994) 2 American University Journal of Gender, Social Policy & the Law 171, 198-199.



from their social environments or even suffer due to poor financial means to maintain themselves.

These opposing theoretical views are also apparent in the arguments of feminist activists. For example, Women's Aid stated that 'We...support the proposal to make common assault an arrestable offence. The immediate and routine arrest of perpetrators provides essential breathing space for women to explore their options...'.<sup>599</sup> However, ROW argued:

The proposal to make common assault an arrestable offence we find to be potentially problematic... We believe that there should be a proarrest policy in cases of domestic violence... [W]e find that giving the police the power to arrest for common assault is at best unnecessary, as they already have powers to arrest where they suspect that actual or grievous bodily harm has occurred... We are concerned that such an increase in police powers runs the risk of generating accusations of oppressive use against particular communities...<sup>600</sup>

Regardless of these observations, the mandatory arrest provides a stronger response against IPA because it targets gender inequality despite of the victims' circumstances arising from their identities. The mandatory arrest of the offender suggests that gender inequality is prioritised in comparison to the other inequalities that victims might face. However, since the diverse needs of the victims need to be also protected, this could be promoted through specialised policing and services provided by the whole-system response in order to help the victims overcome their barriers and access the CJS.

The police document 'ACPO Guidance on Investigating Domestic Abuse'<sup>601</sup> instructed that the officers at the scene should 'consider the needs of victims ... from black and minority ethnic communities and other victims whose requirements, due to their sexuality, disability or other factor, may increase their vulnerability...'.<sup>602</sup> This indicates the policy aim to protect victims by considering their diverse needs. However, in practice the discretion of the officers to arrest the abuser can be affected by the patriarchal perspectives and lack of understanding on the diverse needs of women. Particularly, the police prejudice and lack of understanding

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<sup>599</sup> Women's Aid, *Consultation Response: Safety and Justice, The Government Consultation Paper on Domestic Violence* (2003) 23; see also, Refuge, *Refuge Response to Safety & Justice* (2003) 15.

<sup>600</sup> Rights of Women, *Rights of Women Response to the Home Office Consultation Paper Safety and Justice* (2003) 4.

<sup>601</sup> ACPO, *Guidance on Investigating Domestic Violence* (2004).

<sup>602</sup> *ibid* 25.

of BAME communities has further prevented these women from accessing justice.<sup>603</sup> Thus, although the pro-arrest policy aimed to protect the victims' diverse identities, in practice, victims continued to be reluctant to collaborate with the police. Consequently, the pro-arrest policy weakened the response against gender inequality in comparison to the mandatory arrest while at the same time did not efficiently address the barriers of the victims.

The mandatory arrest can be beneficial because the arrest of the offender can improve the deterrent impact. Specifically, Zorza observed that nineteen percent of those arrested repeated IPA while thirty-seven percent of advised offenders and thirty-three percent of removed offenders repeated IPA.<sup>604</sup> Moreover, based on Hirschel's study, mandatory arrest can produce higher IPA arrest rates than pro-arrest policy.<sup>605</sup> Despite this improvement that mandatory arrest can have on IPA prevention, Iyengar observed that intimate partner homicides augmented by about 60% in states with mandatory arrest, possibly because of retaliation of the offenders against the victims.<sup>606</sup> This increase of intimate partner homicides suggests that although mandatory arrest can provide a stronger targeting against gender inequality than pro-arrest policy, it needs to be accompanied by additional measures of the CJS and social welfare mechanisms to support victims.

#### **4.2.4 Risk Assessment**

The police discretion exercised with the pro-arrest policy could cause more harm to the victims if it is exercised in a gender-neutral manner that ends to promote the patriarchal social structures influencing the perception of officers. However, the police officer's discretion is limited with the risk assessment process in order to determine the potential future victimisation of each victim. Particularly, in 2005, the ACPO produced the 'Guidance on Identifying, Assessing and Managing Risk in the Context of Policing Domestic

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<sup>603</sup> See All-Party Parliamentary Group on Domestic and Sexual Violence and Women's Aid, 'Women's Access to Justice: From Reporting to Sentencing' (2005) 11-13.

<sup>604</sup> Zorza J, 'Must We Stop Arresting Batterers?: Analysis and Policy Implications of New Police Domestic Violence Studies' (1994) 28 *New England Law Review* 929, 934.

<sup>605</sup> Hirschel D, Buzawa E, Pattavina A and Faggiani D, 'Domestic Violence and Mandatory Arrest Laws: To What Extent Do They Influence Police Arrest Decisions?' (2007) 98 *Journal of Criminal Law & Criminology* 255, 292.

<sup>606</sup> Iyengar R, 'Does the Certainty of Arrest Reduce Domestic Violence? Evidence from Mandatory and Recommended Arrest Laws' (2009) 93 *Journal of Public Economics* 85, 85-86.

Violence'.<sup>607</sup> This specified the core aims of identifying, assessing and managing risk in the context of policing IPA as 'to reduce the likelihood of future harm' and 'to facilitate the effective use of police powers'.<sup>608</sup> One way to achieve these aims is for the police to assess and manage risk of IPA victims in collaboration with other relevant agencies based on a shared understanding of the nature of risk.<sup>609</sup>

The risk assessment process is consisted of a three-stage model for police officers to form their response to IPA incidents. These three stages refer to an initial assessment by the police officer attending the scene of a domestic dispute, followed by interventions and a further assessment by a specialist officer, and finally, safety planning formed with the collaboration of the victim.<sup>610</sup> The risk assessment is a process that involves the responsibility of the police to assess the victims' needs and determine the necessary support by considering factors such as personal characteristics, the nature and conditions of the crime, and the personal views of the victims.<sup>611</sup> For this reason, it is argued that this process is based on the diversity intersectional approach, as it tries to ensure that victims are treated based on the diverse circumstances of each victim without specifying whether gender equality is the primary value to protect. Therefore, a conflict among diverse identities can cause the de-gendering of the police response through this process, as the police discretion could be exercised in this case based on the officers' perception of which identity prevails.

The de-gendering of the police response through risk assessment can also influence the response of the multi-agency partnerships. This is attested by Radford and others who argued that risk assessment can contribute to the development of a more integrated approach from agencies willing to work together to improve safety.<sup>612</sup> This is argued because the risk assessment occurs based on the DASH-checklist, which divided the degree of risk in standard, medium and high risk. Standard risk referred to cases when the available evidence

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<sup>607</sup> ACPO, *Guidance on Identifying, Assessing and Managing Risk in the Context of Policing Domestic Violence* (2005).

<sup>608</sup> *ibid* 2.

<sup>609</sup> *ibid* 2.

<sup>610</sup> See Richards L, 'Domestic Abuse, Stalking and Harassment and Honour Based Violence (DASH, 2009-16) Risk Identification and Assessment and Management Model' (2009-2016) 2; see also on risk assessments Hoyle C, 'Will She Be Safe? A Critical Analysis of Risk Assessment in Domestic Violence Cases' (2008) 30 *Children and Youth Services Review* 323, 325.

<sup>611</sup> Ministry of Justice, *Code of Practice for Victims* (2005) 9.

<sup>612</sup> Radford L, Blacklock N and Iwi K, 'Domestic Violence Risk Assessment in Child Protection: Working with Perpetrators' in Humphreys C and Stanley N (eds), *Domestic Violence and Child Protection* (Jessica Kingsley 2005) 171.

did not point to probability of causing serious harm while medium risk incidents constitute those that present identifiable indicators of serious harm risk. Also, high risk referred to cases when there are identifiable indicators of serious harm and the potential event could occur at any time while its effect would be severe.<sup>613</sup> The high-risk cases are referred to the Multi-Agency Risk Assessment Conferences (MARACs), which are multi-agency meetings where statutory and voluntary agency representatives exchange information about high-risk victims in order to produce a coordinated action plan to enhance victims' protection.<sup>614</sup> Refuge has contributed to the MARACs through the participation of their Independent Domestic Violence Advisors (IDVAs). IDVAs provide practical and emotional support to high risk victims such as accompanying them to court or arranging pre-trial visits, supporting them to give evidence, accessing refuge accommodation, and referring them to counselling services.<sup>615</sup> The participation of IDVAs in the MARACs can affect the multi-agency response by contributing with their feminist views. However, the gender-neutral governmental strategies that form the whole-system response can affect the collaboration of statutory and voluntary agencies in the MARACs.

In fact, the police practice has been affected by the lack of appropriate training on risk assessment. For example, in the Goodwin case examined by the IPCC, it was identified that the death of Goodwin was influenced by the fact that the call officer did not perform the necessary checks of her case which would informed him that she was a high-risk victim and that the victims did not reveal this during her call. This might have resulted due to the fact that first response officers do not receive enhanced DASH training on domestic violence.<sup>616</sup> Refuge claimed regarding training that:

[T]here are usually only a few members of staff which leaves individual officers with high caseloads to manage. Despite their 'specialist' role in relation to supporting victims of

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<sup>613</sup> ACPO and CAADA, 'The Domestic Abuse, Stalking and Harassment and Honour Based Violence (DASH 2009) Risk Identification, Assessment and Management Model' (2009) 8.

<sup>614</sup> Steel N, Blakeborough L and Nicholas S, 'Supporting High-Risk Victims of Domestic Violence: A Review of Multi-Agency Risk Assessment Conferences (MARACs)' (2011) 1.

<sup>615</sup> Refuge, 'Independent Domestic Violence Advocacy' <<http://www.refuge.org.uk/what-we-do/our-services/independent-domestic-violence-advocacy/>> accessed 22 May 2017.

<sup>616</sup> IPCC, 'Investigation into Essex Police's Contact with Mrs Jeanette Goodwin Prior to Her Death' (2011) 45, 51; see also IPCC, 'Commissioner's Report: IPCC Independent Investigation: Police Contact with Clare Wood prior to her Death' (2010) 12; IPCC, 'Commissioner's Report: Investigation into the Police Management of Reports of Domestic Abuse Made by/in Relation to Casey Brittle' (2011) 14.

domestic violence, it remains the case that not all officers ... are adequately trained about domestic violence, risk assessment and safety planning.<sup>617</sup>

This lack of training causes efficiency problems as often victims depending on their diverse identities react differently on potential risk of abuse and might not reveal all necessary information, which could jeopardise the investigation and prosecution of the case. Hence, the implementation of the risk assessments is argued to be problematic due to the limited training. This can undermine the efficiency of the protection provided to diverse victims but also to send a strong message to society against IPA through the police practice.

### **4.3 The Development of the CPS Response to IPA from 1997 to 2005**

As mentioned earlier, the police refer the cases to the CPS which is responsible of their prosecution. The decision whether to continue with a case is made based on 'The Code for Crown Prosecutors',<sup>618</sup> according to which, IPA cases can be prosecuted if they pass the evidential and the public interest tests. During the evidential test, the prosecution must be satisfied that there is sufficient evidence to obtain a conviction.<sup>619</sup> Therefore, the role of the police in investigating a case has a crucial role for its prosecution because if there is not sufficient evidence, then the case is not prosecuted. However, if a case passes the evidential test, prosecutors need to determine whether such prosecution would be in favour of the public interest.<sup>620</sup>

The CPS Code has been applied on IPA cases by a specialist lead prosecutor on domestic violence that was established in each of the 42 areas of the CPS.<sup>621</sup> In the past, the police were responsible for the prosecution of IPA cases until 1986, when the CPS was established in England and Wales as the principal prosecuting authority deciding on whether a prosecution should occur.<sup>622</sup> This change could have improved the prosecution of IPA because of the influence that the police patriarchal culture could have not only on policing but also on the prosecution of IPA cases. Despite this improvement, the CPS did not

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<sup>617</sup> Refuge, 'Safeguarding Adults a Consultation on the Review of the "No Secrets" Guidance' (2009) 5.

<sup>618</sup> CPS, 'The Code for Crown Prosecutors' (2000)

<<https://web.archive.org/web/20020812203745/http://www.cps.gov.uk/Home/CodeForCrownProsecutors/CodeTests.htm>> accessed 15 December 2016.

<sup>619</sup> *ibid* para 4.1

<sup>620</sup> Home Office, *Domestic Violence: Break the Chain Multi-Agency Guidance for Addressing Domestic Violence* (2000) 9.

<sup>621</sup> HC Deb 13 March 2003 vol 401 col 424.

<sup>622</sup> Justice Committee, *Appointment of HM Chief Inspector of the Crown Prosecution Service* (HC 2014-15, 1117) para 5.

participate in the multi-agency partnership.<sup>623</sup> This could detach its response from the victims' diverse needs, as it did not collaborate with women's organisations that brought victims' experiences in the multi-agency partnerships.

The CPS Equality and Diversity Unit (EDU) confirmed the above view by asserting that the CPS culture was detached from the important issues of the communities. This impacted on the ability of the CPS to prosecute IPA effectively.<sup>624</sup> In fact, in 2001 the CPS tried to actively engage the community to the formation of its policies by participating in the multi-agency partnership.<sup>625</sup> Such collaboration is important since withdrawal of the victims' support to the CPS can result to an ineffective trial and affect the message send to society. For example, Women's Aid reported that sometimes victims such as BAME women did not want the prosecution to proceed with their cases due to the risk of community exclusion, accusations of disloyalty or collusion with police racism.<sup>626</sup>

#### **4.3.1 Prosecutorial Decision**

The 'Safety and Justice' document aimed to improve the prosecution of IPA cases, which could be achieved if 'Victims' interests are best served when the case against their abuser proceeds swiftly and smoothly and in a way that is sensitive to their needs.'<sup>627</sup> This was implemented through the prosecutorial decision whether to proceed with a case. Specifically, the victim's reluctance can impact the prosecutorial decision during the evidential stage, as the testimony of the victim constitutes important evidence for the prosecution of a case. Hence, the prosecutor had to decide whether to use the victim as a witness by implementing section 80 of the PACE 1984, which made a wife a compellable witness against her spouse<sup>628</sup> where the 'offence...involves an assault on, or injury or a threat of injury to the spouse.'<sup>629</sup>

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<sup>623</sup> See Collier R, 'On the Edge of Objectivity: Community Engagement as a Means of Improving Prosecutions' (2006) 1.

<sup>624</sup> see CPS, *Addressing Equality and Diversity in the Crown Prosecution Service* (2004) 49-50.

<sup>625</sup> Collier R, 'On the Edge of Objectivity: Community Engagement as a Means of Improving Prosecutions' (2006) 1.

<sup>626</sup> Women's Aid, 'Prosecution of Domestic Violence Cases' (28 November 2007)

<[http://www.webarchive.org.uk/wayback/archive/20080618215255/http://www.womensaid.org.uk/domestic-violence-](http://www.webarchive.org.uk/wayback/archive/20080618215255/http://www.womensaid.org.uk/domestic-violence-articles.asp?section=00010001002200400001&itemid=1209&itemTitle=Prosecution+of+domestic+violence+cases)

[articles.asp?section=00010001002200400001&itemid=1209&itemTitle=Prosecution+of+domestic+violence+cases](http://www.webarchive.org.uk/wayback/archive/20080618215255/http://www.womensaid.org.uk/domestic-violence-articles.asp?section=00010001002200400001&itemid=1209&itemTitle=Prosecution+of+domestic+violence+cases)> accessed 16 December 2016.

<sup>627</sup> HM Government, *Safety and Justice: The Government's Proposals on Domestic Violence* (Cmd 5847, 2003) 26.

<sup>628</sup> Police and Criminal Evidence Act 1984 s.80 (2A).

<sup>629</sup> *ibid* s.80 (3).

This meant that the prosecution of IPA was facilitated by compelling spouses to testify against their partners in cases of assaults, injury or threats against them.<sup>630</sup> Therefore, if the prosecutor decided not to compel a victim to testify against her spouse, the case might not had been able to be prosecuted for lack of evidence but if decided to compel the victim, this could cause her additional victimisation either by her community or the CJS professionals.

Dempsey argued that IPA prosecutions are suitable for feminist intervention because the prosecutorial practice in such cases is a chance to approve, ignore or condemn patriarchy.<sup>631</sup> An example of the prosecutorial practice to tackle patriarchy is the pro-prosecution policy. Pro-prosecution policies are often distinguished as ‘hard’ or ‘soft’ no-drop policies.<sup>632</sup> The pro-prosecution policy of s. 80 of the PACE Act is a ‘hard’ no-drop policy because ‘hard’ policies are those, in which the prosecution proceeds despite of the victim's request when there is sufficient evidence to prosecute.<sup>633</sup> On the other hand, ‘soft’ policies are those, in which prosecutors do not force victims to participate in the criminal justice process but they are supported and encouraged to continue the process.<sup>634</sup>

The pro-prosecution policy of s.80 of the PACE Act seems to have been influenced by the feminist views that argued that the private is political and for this reason, IPA should become a public matter. Specifically, feminist work argued that the protection of the private sphere requires intervention of the state in IPA cases.<sup>635</sup> This prosecutorial action has a symbolic value because it sends a strong message that the public does not tolerate IPA.<sup>636</sup> Although the

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<sup>630</sup> Miles J, ‘Domestic Violence’ in Herring J (ed), *Family Law: Issues, Debates, Policy* (Willan 2001) 91.

<sup>631</sup> Dempsey M M, ‘Toward a Feminist State: What Does ‘Effective’ Prosecution of Domestic Violence Mean?’ (2007) 70 (6) *The Modern Law Review* 908, 927; see also, Dempsey M M, *Prosecuting Domestic Violence: A Philosophical Analysis* (Oxford University Press 2009) 129.

<sup>632</sup> Cahn R N, ‘Innovative Approaches to the Prosecution of Domestic Violence Crimes: An Overview’ in Buzawa S E and Buzawa G C (eds), *Domestic Violence: The Changing Criminal Justice Response* (Auburn House 1992) 161, 168.

<sup>633</sup> See Asmus E M, Ritmeester T and Pence L E, ‘Prosecuting Domestic Abuse Cases in Duluth: Developing Effective Prosecution Strategies from Understanding the Dynamics of Abusive Relationships’ (1991) 15 *Hamline Law Review* 115, 136.

<sup>634</sup> Cahn R N, ‘Innovative Approaches to the Prosecution of Domestic Violence Crimes: An Overview’ in Buzawa S E and Buzawa G C (eds), *Domestic Violence: The Changing Criminal Justice Response* (Auburn House 1992) 161.

<sup>635</sup> See Schneider M E, ‘The Violence of Privacy’ (1991) 23 *Connecticut Law Review* 973, 985; see also, Stanko A E, ‘Fear of Crime and the Myth of the Safe Home: A Feminist Critique of Criminology’ in Yllo K and Bograd M (eds), *Feminist Perspective on Wife Abuse* (Sage 1988) 75-76.

<sup>636</sup> Epstein D, Bell M and Goodman L, ‘Transforming Aggressive Prosecution Policies: Prioritising Victims’ Long-Term Safety in the Prosecution of Domestic Violence Cases’ (2003) 11 *American University Journal of Gender, Social Policy and the Law* 465, 466; see also Ellison L, ‘Responding to Victim Withdrawal in Domestic Violence Prosecutions’ (2003) *Criminal Law Review* 760, 769.

prosecutorial discretion to prosecute may undermine the victim's autonomy to choose, this is necessary to protect women overall.<sup>637</sup> Moreover, Gwinn and O'Dell argued that the prosecutorial decision to prosecute regardless of the victim's wish is beneficial for the victim because the abuser is less motivated to control or intimidate his victim as the continuance of the process is out of her control.<sup>638</sup>

The above views are opposed by the feminist anti-essentialist feminist views. Specifically, Hoyle and Sanders noted that pursuing a prosecution despite of a victim's refusal disregards the differences among women.<sup>639</sup> For example, IPA victims come from diverse social backgrounds and face distinct issues that affect their victimisation.<sup>640</sup> On this point, Kinports argued that although the prosecution of IPA may contribute to general deterrence, prosecutors have to choose between risking escalating the danger to a specific victim and the advantage of protecting the general community from the threat of IPA.<sup>641</sup> The prosecution of IPA regardless of the risk to the victim in order to protect the public and send a message against IPA suggests the adoption of a gender-based approach since this response focuses on the tackling of gender inequality without considering the diverse identities of the victims. On the other hand, avoiding to prosecute IPA due to the conflicting interests of the victims arising from their diverse identities suggests the adoption of the diversity intersectional approach which can undermine the tackling of gender inequality because the identity of gender is considered as equal to the other identities.

Based on the intersectional gendered approach, it is argued that the prosecution should occur despite of the victims' wishes and the victim should be compelled to testify when a successful prosecution cannot be achieved through other evidence. This is argued because

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<sup>637</sup> Hanna C, 'No Right to Choose: Mandated Victim Participation in Domestic Violence Prosecutions' (1996) 109 (8) *Harvard Law Review* 1849, 1869.

<sup>638</sup> Gwinn G C and O'Dell A, 'Stopping the Violence: The Role of the Police Officer and the Prosecutor' (1993) 20 *Western State University Law Review* 297, 310.

<sup>639</sup> Hoyle C and Sanders A, 'Police Response to Domestic Violence: From Victim Choice to Victim Empowerment' (2000) 40 (1) *British Journal of Criminology* 14, 19; see also, Goodmark L, 'Autonomy Feminism: An Anti-essentialist Critique of Mandatory Interventions in Domestic Violence Cases' (2009) 37 *Florida State University Law Review* 1, 45-46; Schneider E, *Battered Women and Feminist Lawmaking* (Yale University Press 2000) 62-65; Sack E, 'Battered Women and the State: The Struggle for the Future of Domestic Violence Policy' (2004) *Wisconsin Law Review* 1657, 1676.

<sup>640</sup> Walby S and Allen J, 'Domestic Violence, Sexual Assault and Stalking: Findings from the British Crime Survey' (2004) 73-88.

<sup>641</sup> Kinports K, 'Feminist Prosecutors and Patriarchal States' (2014) 8 (3) *Criminal Law and Philosophy* 529, 538.



gender inequality is the cause of IPA; thus, gender inequality needs to be prioritised. However, the diverse needs of the victims should be considered by attempting to collect other evidence to support the prosecution in order to avoid compelling the victim to testify and also provide the appropriate support to the victim to avoid further victimisation. Specifically, the CPS issued a new ‘CPS Policy for Prosecuting Cases of Domestic Violence’, which provided practical guidance on how to proceed if a victim withdraws support for the case and instructed on the construction of cases, where possible, on evidence other than that of the victim.<sup>642</sup> This policy suggests that the CPS aimed to target gender inequality without disregarding victims’ needs, as it aimed to build its cases on additional evidence to their testimonies.

Additionally, as Refuge argued, since the power of the law is limited, the efficient implementation of the laws needs to be promoted through the training of the CJA professionals.<sup>643</sup> Such training was promoted by the CPS, which established domestic violence training for all prosecutors, and especially those specialised in domestic violence courts, with the CENTREX/CPS Training Modules. Domestic violence issues were addressed within the case analysis training, especially in relation to clarification of the interpretation of the Code for Crown Prosecutors, multi-agency domestic violence training within CDRPs and inclusion of diversity and equality perspectives.<sup>644</sup> This training programme was provided through a CD Rom and a paper copy, and was developed with CENTREX in order to coordinate the police and the CPS training.<sup>645</sup> The content of this training suggests not only the CPS commitment to the whole-system governmental approach through its collaboration in the multiagency partnerships but also to inform its practice concerning the diverse needs of the victims.<sup>646</sup> However, this training was limited since it was provided through a training pack and not through face-to-face training that could provide a better opportunity for the professionals to discuss diverse issues on IPA.

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<sup>642</sup> CPS, *CPS Policy for Prosecuting Cases of Domestic Violence* (2001) 8-9.

<sup>643</sup> Refuge, *Refuge Response to Home Office Consultation, ‘Strengthening the Law on Domestic Abuse’* (2014) 7.

<sup>644</sup> CPS, *CPS Domestic Violence-Good Practice Guidance Summary* (2005) 6.

<sup>645</sup> CPS, *Evaluation of the National Domestic Violence Training Programme 2005-2008*

<[https://www.cps.gov.uk/publications/equality/evaluation\\_of\\_national\\_domestic\\_violence\\_training\\_programme.html](https://www.cps.gov.uk/publications/equality/evaluation_of_national_domestic_violence_training_programme.html)> accessed 24 May 2017.

<sup>646</sup> See also as additional example the CPS Domestic Violence Project, Cook D, Burton M, Robinson A and Valley C, ‘Evaluation of Specialist Domestic Violence Courts/Fast Track Systems’ (2004) 4.

Despite the CPS efforts to consider the victims' diverse needs by participating in the multi-agency partnership, a review of HMCPSI area inspection reports assessed that although generally CPS policy was implemented appropriately, there were some problematic issues. These included, among others, failure to consult the police in appropriate circumstances, failure to pursue alternative charges and to investigate the reasons of victims' withdrawals or to use alternative evidence.<sup>647</sup> This was also reflected in the EDU evaluation of the CPS, which identified that from the domestic violence cases reaching CPS, 28% were discontinued while 44% of all victim withdrawals of complaints were domestic violence cases.<sup>648</sup> Based on these findings, there were still areas for improvement in the CPS response such as a better understanding of the victims' needs and the building of cases with alternative evidence. These problems suggest that gender inequality was not sufficiently challenged by the CPS response and the diverse needs of the victims were not adequately considered.

#### ***4.3.2 The Development of the CPS Response from 2005 to 2010***

As argued in Chapter 3, the government with its 'National Report' promoted a gender-neutral approach to the whole-system response.<sup>649</sup> The CPS response could be influenced by the gender-neutral cross-governmental policy framework along with the problematic police practice identified in section 4.2. The CPS in order to form an efficient response, as member of the cross-governmental partnership, aimed to:

Deliver a high quality prosecution service that brings offenders to justice, helps reduce both crime and the fear of crime, and thereby promote public confidence in the rule of law through the consistent, fair and independent review of cases and through their fair, thorough and firm presentation at court.<sup>650</sup>

The CPS overall aim to bring offenders to justice, reduce crime, and promote public confidence suggests a focus of the CPS on the victims.<sup>651</sup> This aim promotes the protection of victims and the prevention of IPA as its successful implementation would contribute to the transformation of the social perception to IPA.

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<sup>647</sup> see examples HMCPSI, *The Inspectorate's Report on CPS Avon and Somerset* (Report 13/2002) 21-22; HMCPSI, *The Inspectorate's Report on CPS Bedfordshire* (Report 1/2002) 22; HMCPSI, *The Inspectorate's Report on CPS Derbyshire* (Report 2/2002) 17; HMCPSI, *The Inspectorate's Report on Hertfordshire* (Report 8/2002) 17.

<sup>648</sup> CPS, *Addressing Equality and Diversity in the Crown Prosecution Service* (2004) 37.

<sup>649</sup> See Home Office, *A National Report* (2005) 9.

<sup>650</sup> CPS, *Annual Report and Resource Accounts 2005-2006* (2006) 6.

<sup>651</sup> See Statement by the Attorney General, *The Prosecutors' Pledge* (2006)

<[http://www.cps.gov.uk/publications/prosecution/prosecutor\\_pledge.html](http://www.cps.gov.uk/publications/prosecution/prosecutor_pledge.html)> accessed 30 August 2015.

In the case of IPA, the CPS aims could be achieved if its response opposes gender inequality by tackling IPA but also take in consideration the additional identities of the victims to increase their protection and encourage them to seek the support of the CJS. The CPS aimed to improve the protection of the victims by promoting their equal treatment with its Equality and Diversity policy, which stated that ‘We must act fairly at all times in the interests of justice. For both the public and for us, equality and diversity — and by this we mean treating people fairly, providing equal chances while respecting people’s differences — ...in the prosecution process are firmly linked.’<sup>652</sup> The implementation of this approach can be mirrored in the CPS domestic violence policy through its Guidance in the following statement:

In considering the issues that arise in relation to victims of domestic violence from diverse backgrounds, it is recognised that there are different barriers to involvement in the prosecution process and that specialist support may be required. The CPS is now working towards the integration of equality and diversity issues to ensure that these different barriers are identified and addressed in a sensitive, supportive and appropriate way.<sup>653</sup>

This statement illustrated that the CPS started to take a policy approach more focused to the victims and to adopt the view that the safety of the victim is prevalent and for this reason, its policy needs to be formed based on their diverse identities and circumstances.

The Equality and Diversity approach of the CPS was further promoted in its policies. Specifically, the CPS launched in 2007 the consultation ‘Violence against Women Strategy and Action Plans’,<sup>654</sup> which aimed to introduce a VAW strategy in order to coordinate and improve the prosecutorial response to VAW crimes. This consultation partly resulted from the feminist campaign of EVAW ‘Making the Grade?’, whose purpose was ‘to create an integrated and coordinated approach that combines targeted initiatives for the promotion of gender equality, including the elimination of violence against women, with systematic use of gender mainstreaming in all sectors.’<sup>655</sup> Also, this issue was raised by respondents of the consultation, which believed that the Strategy should be placed in a multi-agency context,

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<sup>652</sup> CPS, *Equality and Diversity Policy* (2005) 1.

<sup>653</sup> CPS, *Domestic Violence: Good Practice Guidance* (2005) 3.

<sup>654</sup> CPS, *Draft Violence against Women Strategy and Action Plans* (2007) 6.

<sup>655</sup> EVAW, ‘Making the Grade? The Second Annual Independent Analysis of Government Initiatives on Violence against Women’ (2006) 9; see also EVAW, ‘Making the Grade? The First Annual Independent Analysis of Government Initiatives on Violence against Women’ (2005) 6.

and in the context of cross-government strategic working on this issue.<sup>656</sup> For example, Refuge argued:

[T]here would be increased benefits if a VAW strategy was implemented across government. The CPS is just one part of the criminal justice system, so whilst adopting a gendered approach to prosecution is extremely important, it will be inconsistent with the approach of other agencies. For instance, as the frontline response agency, it is also important for the police to recognise the gendered dynamics of VAW and to respond appropriately. Yet until they do so there will only ever be a limited number of cases that are arrested and reach the prosecution stage in the first place.<sup>657</sup>

Based on Refuge's view, even if the CPS adopted a gender-based approach with the VAW strategy, its impact would be limited because the CPS response would be influenced by the lack of a VAW strategy by the government, the police, and other agencies.

In fact, the CPS issued in 2008 its VAW strategy, in which it categorised IPA as a VAW crime because as it stated:

[M]ost often the victims are women and the defendants are men. Often, the nature of the offending indicates that the defendant exerts a controlling influence on the victim's life. The context is frequently one of abuse of power, used by perpetrators, the majority of whom are men, to control victims who are women....<sup>658</sup>

This strategy constitutes an improvement in the CPS policy as the framing of IPA under a VAW strategy implies that the CPS recognised gender inequality as the cause of IPA and the need to target gender inequality in order to tackle IPA. However, although there may be some commonality of experience on the basis of gender, the interaction of gender with other identities can produce a substantively distinct experience of violence for each woman. On this point, the strategy reiterated that

As a result of intersectionality, individual women's experiences of violence will be different. Women may also encounter additional barriers to accessing justice.... Where links are not made between the different aspects of a woman's identity, the prosecution response is likely to be ineffective. We recognise that women's different experiences require specific responses from the CPS.<sup>659</sup>

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<sup>656</sup> CPS, *A Consultation on the CPS Violence against Women Strategy and Action Plans: Response to Consultation* (2008) 7.

<sup>657</sup> Refuge, *Consultation Response The Crown Prosecution Service Violence Against Women: Strategy and Action Plans* (2008) 3.

<sup>658</sup> CPS EDU, *The Crown Prosecution Service Violence Against Women: Strategy and Action Plans* (2008) 11.

<sup>659</sup> *ibid* 13.

Based on the above evidence, the CPS VAWG strategy adopted an intersectional approach, so that female victims from diverse backgrounds are placed in the centre of the CJS.

However, the question arising regarding this intersectional approach is how gender intersects with the other identities. Particularly, as part of the new CPS VAWG strategy, the CPS launched in 2008 the consultation ‘CPS Policy for Prosecuting Domestic Violence’,<sup>660</sup> in an effort to review its policy. In this document, it stated

We recognize that equality and diversity – and by this we mean treating people fairly, whilst respecting people’s differences – is fundamental to delivering fair prosecutions and essential if we are to command the confidence of all the communities we serve. This policy statement therefore applies to people from all backgrounds and communities.<sup>661</sup>

This statement illustrates that the CPS integrated its Equality and Diversity policy, mentioned above, and that equality would be achieved by respecting individuals’ differences; however, the CPS statement did not specify what it meant with the term ‘diversity’. On this point, a number of respondents suggested that ‘the statement should recognise that the needs of individuals may vary according to gender, sexuality, ethnicity, immigration status, age, gender identity, religion or belief, disability or other identity.’<sup>662</sup> This suggestion promotes the diversity intersectional approach, as it gives equal consideration of the gender with the additional identities of the victims.

The respondents’ suggestion was integrated in the ‘CPS Policy for Prosecuting Cases of Domestic Violence’ that stated:

We understand that victims’ experiences of domestic violence and of the criminal justice system will be different, and that they will have individual needs and safety requirements, perhaps as a result of their ethnicity, gender, gender identity, age, disability, immigration status, sexuality, religion or belief, socio-economic background or other identity. We recognise that these different experiences require specific responses from the CPS, and so we will do our best to ensure that support for victims is tailored to suit their needs....<sup>663</sup>

This diversity intersectional approach adopted by the CPS can cause, as argued in Chapter 2, the de-gendering of the policies. This is caused because when gender is not framed as the

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<sup>660</sup> CPS, *A Consultation on the CPS Policy for Prosecuting Cases of Domestic Violence* (2008).

<sup>661</sup> *ibid* 14.

<sup>662</sup> CPS, *A Consultation on the CPS Policy for Prosecuting Cases of Domestic Violence: A Summary of Responses* (2008) 11.

<sup>663</sup> CPS, *CPS Policy for Prosecuting Cases of Domestic Violence* (2009) 37.

overarching identity of IPA, the CPS practice will give equal importance to the identities of the victims and weaken their gender need to tackle gender inequality.

### **4.3.3 *The CPS Practice through the Special Measures***

The diversity intersectional approach adopted by the CPS policy can de-gender the CPS practice. In fact, the influence of the de-gendered policy approach on the CPS practice is argued by reviewing the special measures provided to IPA victims to ensure their court collaboration. Specifically, high-risk victims have been offered enhanced protection with section 32 of the DVCVA 2004<sup>664</sup> which stated ‘The Secretary of State must issue a code of practice as to the services to be provided to a victim of criminal conduct by persons appearing to him to have functions relating to—(a)victims of criminal conduct, or (b)any aspect of the criminal justice system.’<sup>665</sup> As a result, the VCOP<sup>666</sup> was introduced with statutory authority, aiming to ensure that victims are provided with timely and of satisfactory quality support services in their local area to meet the individual needs of each victim, including those needing specialist support.<sup>667</sup>

The VCOP determined that enhanced services should be provided to witnesses identified as vulnerable or intimidated.<sup>668</sup>The definition used for vulnerable witnesses is based on s. 16 of the Youth Justice and Criminal Evidence Act 1999 (YJCEA),<sup>669</sup> which includes children aged under 18 at the time of the hearing, witnesses with a mental disorder (as described in the Mental Health Act 1983), witnesses impaired in respect to intelligence and social functioning including learning disability, and with a physical disability or a physical disorder. Moreover, intimidated witnesses are those, according to s.17 of the YJCEA 1999,<sup>670</sup> who suffer from fear or distress to testify due to particular obstacles such as ethnicity, culture, religion, and age. Prosecutors were responsible to give early consideration to apply ‘special measures’ to high-risk victims<sup>671</sup> that provided additional protection such as testifying in court through a

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<sup>664</sup> National Policing Improvement Agency and ACPO, *Guidance on Investigating Domestic Abuse* (2008) 48.

<sup>665</sup> DVCVA 2004 s.32 (1).

<sup>666</sup> Office for Criminal Justice Reform, *The Code of Practice for Victims* (2005) 1.

<sup>667</sup> *ibid*

<sup>668</sup> *ibid* 4-5.

<sup>669</sup> Youth Justice and Criminal Evidence Act 1999 s.16.

<sup>670</sup> *ibid* s.17.

<sup>671</sup> see CPS, *The Code of Practice for Victims of Crime: CPS Legal Guidance* (2005)

<[http://webarchive.nationalarchives.gov.uk/20100407120701/cps.gov.uk/legal/v\\_to\\_z/victims\\_code\\_operational\\_guidance/](http://webarchive.nationalarchives.gov.uk/20100407120701/cps.gov.uk/legal/v_to_z/victims_code_operational_guidance/)> accessed 27 August 2015.

televised link or testifying in private by excluding the press and members of the public from the courtroom.<sup>672</sup>

IPA victims could be regarded as intimidated witnesses; however, they were not automatically considered as such.<sup>673</sup> Women's Aid criticised the VCOP for failing to meet the needs of IPA victims, as they were not given the legal status of vulnerable/intimidated witnesses in legislation. Consequently, IPA victims did not have the right to 'special measures' for giving evidence that other vulnerable victims had access unless they stated that they were not necessary to them.<sup>674</sup> Refuge agreed with this view by recommending that IPA victims should be considered as vulnerable and intimidated witnesses and provided automatically 'special measures'.<sup>675</sup>

These 'special measures' can facilitate victims to feel more comfortable in testifying in court and provide the prosecution the adequate support to proceed with a case. For example, they can offer the appropriate relief to victims for the better support of the prosecution such as not having to face their abuser in court. This can be especially useful to victims who face discrimination from their familial or social environment for testifying against their partners. However, all IPA victims should be offered special protection due to the seriousness of IPA and its great impact on the victims' lives.<sup>676</sup> The fact that such protection was not offered to all female IPA victims but only to victims with some identities suggests the de-gendering of the CPS response due to the influence of the diversity intersectional approach. This is argued because if gender was the overarching identity, the protection would be provided to all female victims because they become vulnerable due to their gender, and it would not focus only on some identities.

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<sup>672</sup> CJS, *Early Special Measures Discussions between the Police and the Crown Prosecution Service: Practice Guidance* (2007) 5.

<sup>673</sup> Charles C, 'Special Measures for Vulnerable and Intimidated Witness: Research Exploring the Decisions and Actions Taken by Prosecutors in a Sample of CPS Case Files' (CPS 2012) 15.

<sup>674</sup> Women's Aid, 'Women's Aid Briefing: Domestic Violence Crime and Victims Act 2004' (2007) <<https://web.archive.org/web/20101223001258/http://womensaid.org.uk/domestic-violence-articles.asp?itemid=1257&itemTitle=Women%27s+Aid+briefing%3A+Domestic+Violence+Crime+and+Victims+Act+2004&section=00010001002200070001&sectionTitle=Articles%3A+criminal+law>> accessed 25 May 2017.

<sup>675</sup> Refuge, *Response to Domestic Violence Crime and Victims Act 2004* (2004) 3.

<sup>676</sup> see Horley S, *Power and Control: Why Charming Men Can Make Dangerous Lovers* (3rd edn, Cox and Wyman 2002) 27-90.

#### 4.4 The Response of the Courts towards IPA Victims

The importance of the courts' response on IPA was recognised by the Labour party election manifesto of 2001, which incorporated its dedication to consider whether the SDVCs would offer more effective protection for victims.<sup>677</sup> As a result of this commitment, the Labour government in its White Paper 'Justice for All'<sup>678</sup> suggested specialisation within the criminal courts to improve their response towards IPA. The courts' response through the establishment of SDVCs was framed in the 'Safety and Justice: The Government's Proposals on Domestic Violence'<sup>679</sup> under its purpose to tackle IPA through protection and justice for victims.

The creation of SDVCs constituted one way to implement these aims of the government, as they are a domestic violence partnership that includes the police, prosecutors, court staff, the probation service and specialist support services for victims. The SDVCs refer to a whole system that provides a specialised response to IPA cases in magistrates' courts.<sup>680</sup> The SDVCs operate either with the clustering system, based on which all domestic violence cases are grouped into one court session to deal with a range of issues, or with the fast-tracking, which gives precedence to such cases by assigning specific sessions of the court list.<sup>681</sup> These systems aimed to 'cluster' or 'fast-track' domestic violence cases in order to improve the coordination of statutory and voluntary agencies in their work with victims, reduce rates of victimisation and delays in the processing of cases through the courts.<sup>682</sup> Although fast-tracked IPA cases are judged in mainstream courts and clustered cases go either to mainstream courts or to a specialist domestic violence court, both systems have specialised judges trained on domestic violence.<sup>683</sup>

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<sup>677</sup> New Labour, 'Ambitions for Britain-Labour's Manifesto 2001' (2001) 33.

<sup>678</sup> see Home Office, *Justice for All* (Cmd 5562, 2002) 13.

<sup>679</sup> Home Office, *Safety and Justice: The Government's Proposals on Domestic Violence* (Cmd 5847, 2003) 11.

<sup>680</sup> Home Office, HMCS and CPS, *Specialist Domestic Violence Courts Review 2007-08: Safety with Justice* (2008) 3; see also Home Office, DCA, CPS and HMCS, *Specialist Domestic Violence Court Programme: Resource Manual* (2006) 4.

<sup>681</sup> HMCS, *Domestic Violence: A Guide to Civil Remedies and Criminal Sanctions* (2007) 29.

<sup>682</sup> Cook D, Burton M and Robinson A, 'Enhancing "Safety and Justice": The Role of Specialist Domestic Violence Courts in England and Wales' (2005) 7 *British Journal of Criminology* 1, 2.

<sup>683</sup> Connelly C, 'Handling Domestic Abuse Cases: A Toolkit to Aid the Development of Specialist Approaches to Cases of Domestic Abuse' (Scottish Government 2008) 15.



The feminist influence on the establishment of SDVCs is argued based on the positive approach that the WNC report ‘Unlocking the Secret’<sup>684</sup> took towards SDVCs. This report included the views of the victims and women’s organisations such as Women’s Aid, which supported the further development of SDVCs.<sup>685</sup> Specifically, Women’s Aid recommended ‘the development of coordinated Domestic Violence Courts dealing with all matters - civil, criminal and family cases - where women can go to one court....’<sup>686</sup> Such improvement would be important for diverse victims, as the judiciary would provide a coordinated criminal and civil law response that could avoid further victimisation.<sup>687</sup> Furthermore, feminist influence in the SDVCs is argued due to the delivering of specialist training by Women’s Aid. In fact, Women’s Aid has provided training to professionals involved with IPA victims that develops a range of skills based on the victims’ needs. The training follows the feminist principles, incorporates developments in the field, and supports a need led approach.<sup>688</sup>

The establishment of the SDVCs is a policy improvement in respect of the courts’ response as this multi-agency initiative aimed to the cooperation of the agencies for identifying, risk assessing IPA cases, and supporting IPA victims.<sup>689</sup> Such an example of SDVC was the one established in 2002 in West London in order to enhance the efficiency of the judicial system in providing protection and support to victims. This court aimed ‘to consider the needs and safety of the victims’.<sup>690</sup> The creation of such courts suggests the targeting of gender inequality at a policy level because it aims to provide a specialised response towards victims. However, this can be undermined due to the court’s aim to consider the victims’ needs and safety since it was not specified which need would be prioritised. The lack of such

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<sup>684</sup> Women’s National Commission, ‘Unlocking the Secret: Women Open the Door on Domestic Violence’ (2003) 21-23.

<sup>685</sup> see Harwin N, ‘Putting a Stop to Domestic Violence in the United Kingdom: Challenges and Opportunities’ (2006) 12 (6) *Violence against Women* 556, 563.

<sup>686</sup> Women’s Aid, *Consultation Response: Safety and Justice, the Government Consultation Paper on Domestic Violence* (2003) 29.

<sup>687</sup> see Hanman D J, ‘Enhancing Multi-agency Work’ in Hanmer J and Itzin C, *Home Truths about Domestic Violence: Feminist Influences on Policy and Practice A Reader* (Routledge 2000) 269.

<sup>688</sup> Women’s Aid, ‘Our Qualifications’ <<http://www.nationaltrainingcentre.org.uk/qualifications/>> accessed 19 December 2016; see also Refuge, ‘Training’ <<http://www.refuge.org.uk/what-we-do/training/>> accessed 19 December 2016.

<sup>689</sup> see Home Office, HMCS and CPS, *Specialist Domestic Violence Courts Review 2007-08: Safety with Justice* (2008) 3.

<sup>690</sup> HMCS, *West London Magistrates’ Court Specialist Domestic Violence Court Bench Book and Good Practice Guidance* (2003) 4.

clarification can weaken the response against gender inequality due to the need of the victim to avoid the prosecution of the offender for avoiding further victimisation.

#### **4.4.1 *The SDVCs Practice***

The Standing Together, a multi-agency partnership of West London, which researched the victims' perspectives, evaluated this SDVC in 2003. According to the views of Filipino women, SDVCs practice should be improved in respect of better informing them on the intervention and support they offer to victims.<sup>691</sup> Since women from diverse cultural backgrounds might be afraid of being further victimised by their abuser and by their ethnical groups,<sup>692</sup> such information could be valuable in helping them seek the necessary support for avoiding further victimisation. Hence, this evaluation illustrated an example of the gap existing between policy and practice from the response of the courts. Despite the implementation problems of the policy in practice, improvements were also noted in the practical response of the courts. For example, the evaluation of the Wolverhampton SDVC showed improvement in the treatment of victims, as the victims' participation and the public confidence in the CJS increased.<sup>693</sup> The increase of victims' participation and of the public confidence suggests that the SDVC's consideration of the victims' diverse needs improved; therefore, these examples demonstrate an inconsistent response among different communities.

Additionally, in the Caerphilly and Croydon SDVC evaluation, the victims often felt that understanding of the complexity of individual cases was absent.<sup>694</sup> This lack of understanding occurred because:

Neither victim nor perpetrator characteristics had any impact statistically on case outcomes and respondents from the criminal justice agencies generally believed that there were no issues to address. This indicated that more diversity and equality awareness was needed by

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<sup>691</sup> Standing Together against Domestic Violence, 'Voices of Experience' (2004) 36; see also Standing Together, 'Lessons to Share' (2007) 3-5; Standing Together, 'Lessons Learnt' (2006) 4-7.

<sup>692</sup> The Legal Services Commission, 'Report on Black, Asian and Minority Ethnic (BAME) Women, Domestic Abuse and Access to Legal Aid' (2009) 24.

<sup>693</sup> Cook D, Burton M, Robinson A and Valley C, 'Evaluation of Specialist Domestic Violence Courts/Fast Track Systems' (CPS 2004) 6.

<sup>694</sup> Valley C, Robinson A, Burton M and Tregidga J, 'Evaluation of Domestic Violence Pilot Sites at Caerphilly (Gwent) and Croydon 2004/05' (2005) 5.

the CJS to address the barriers experienced by different communities and their differing needs.<sup>695</sup>

This view suggests that the identities of the victims were not considered. The reason for this was the limited awareness of the judiciary on equality and diversity issues involving IPA victims. This concern was also raised by Margaret Moran, a Labour party MP, in respect to what steps were taken to raise awareness on IPA in the CJS.<sup>696</sup> This problem existed despite the SDVC policy efforts to raise more awareness on IPA through training offered to magistrates across the country by providing them with a training pack called ‘Domestic Violence: An Ordinary Crime?’.<sup>697</sup> Although providing training to the judiciary through this training pack was positive, it provided limited training because it did not involve compulsory face-to-face sessions that could have promoted a stronger interactive learning. Raising awareness through training can have a positive impact not only on the response of the courts and to the practice of the CJA through their collaboration but also to the society, as courts’ response sends a message against IPA to society.

To conclude, the response of the police, CPS, and courts improved gradually in respect of targeting gender inequality, considering the diverse identities of the victims, and promoting the transformation of the social perception towards IPA and its victims. However, this improvement is not consistently integrated throughout all policies and practices of the CJA. Feminist theorists and activists contributed to the CJA response to IPA through their arguments, campaigning, and training. Due to the collaboration of the CJA, a problematic response from any of these agencies is sufficient to undermine the protection of victims and the prevention of IPA. This is argued because it weakens the message sent against IPA and does not provide a specific response to the victims in order to encourage them accessing the CJS.

#### **4.5 The CJA Response during the Coalition Government**

The Coalition government with the ‘Call to End Violence against Women and Girls’<sup>698</sup> recognised IPA crimes as gender-based, which meant in a policy level the formation of policies that attempted to tackle gender inequality as the cause of IPA. This VAWG strategy,

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<sup>695</sup> *ibid* 21.

<sup>696</sup> see HC Deb 17 March 2003 vol 401 cols 579-80W.

<sup>697</sup> HL Deb 2 Nov 2004 vol 666 col 186.

<sup>698</sup> Home Office, *Call to End Violence against Women and Girls* (2010) 5.

which resulted from the Equality Strategy,<sup>699</sup> ‘The Equality Strategy-Building a Fairer Britain’<sup>700</sup> had to be implemented in the CJA response along with the SED. In Chapter 2, it was argued that the SED has promoted the protection of multiple inequalities on the formation of the CJA policies and practice. The SED can affect the response of the CJA since it requires from them to have due regard to its aims when making decisions and setting policies.<sup>701</sup> In order to achieve this, the decision-makers need to understand ‘the potential impact of their decisions on people with different protected characteristics and to identify potential mitigating steps to reduce or remove adverse impacts. This should help to ensure that the policy is fully effective for different groups of people.’<sup>702</sup> Consequently, since all protected characteristics of the SED are equally important, the application of the SED can influence the formation of the CJA response in a way that gender inequality, as the cause of IPA, is not given a priority from the other inequalities. In order to assess the response of the police, CPS, and courts, the following discussions focus on the examination of the application of the SED on their policies and practice.

#### **4.5.1 *The Influence of the SED on the Police Response to IPA***

The government with the ‘Call to End Violence against Women and Girls: Action Plan’ aimed to provide support where violence transpires and decrease the risk to female victims of these crimes.<sup>703</sup> One of the policy changes resulting from this action plan and affecting the police response was the amendment of the VCOP<sup>704</sup> in 2013. This Code partly resulted from the consultation of the Ministry of Justice ‘Getting it Right for Victims and Witnesses’<sup>705</sup> issued in 2012 and the subsequent consultation ‘Improving the Code of Practice for Victims of Crime’<sup>706</sup> launched in 2013. The latter document claimed that the VCOP was outdated and therefore, its amendment and improvement constituted part of the government’s wider policy

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<sup>699</sup> HM Government, *The Equality Strategy-Building a Fairer Britain: Progress Report* (2012) 8-9, 16

<sup>700</sup> HM Government, *The Equality Strategy-Building a Fairer Britain* (2010).

<sup>701</sup> Equality and Human Rights Commission, *Equality and Human Rights Commission Guidance: Meeting the Equality Duty in Policy and Decision-Making: England (and Non-devolved Public Authorities in Scotland and Wales)* (2012) 14.

<sup>702</sup> Equalities and Human Rights Commission, *The Essential Guide to the Public Sector Equality Duty: England (and Non-Devolved Public Authorities in Scotland and Wales)* (2014) 16-17.

<sup>703</sup> Home Office, *Call to End Violence against Women and Girls: Action Plan* (2011) 3.

<sup>704</sup> Ministry of Justice, *Code of Practice for Victims* (2013).

<sup>705</sup> Ministry of Justice, *Getting it Right for Victims and Witnesses* (2012).

<sup>706</sup> Ministry of Justice, *Improving the Code of Practice for Victims of Crime* (2013).

strategy to reform the CJS and advance its support to victims.<sup>707</sup> Specifically, the VCOP stated that the purpose of the government is:

[T]o transform the criminal justice system by putting victims first, making the system more responsive and easier to navigate. Victims of crime should be treated in a respectful, sensitive and professional manner without discrimination of any kind. They should receive appropriate support to help them, as far as possible, to cope and recover and be protected from re-victimisation.<sup>708</sup>

These aims suggest the influence of the SED on the formation of the VCOP because it aimed to the protection of IPA victims from facing any discrimination by the CJA and receive a sensitive response to their needs.

As examined in section 3.3, the governmental strategy recognised the gender-based nature of IPA. This meant that a stronger response should be provided to IPA victims in order to balance the injustice caused to them by gender inequality. Such a stronger response could be achieved based on the feminist activists' views, presented in section 4.3.3, by providing to victims the automatic enhanced protection of the special measures. The government introduced this suggestion in the VCOP, which states 'A victim of domestic violence is eligible for enhanced services as a victim of the most serious crime, but may also qualify for enhanced services as a vulnerable or intimidated victim.'<sup>709</sup> Hence, this revision constitutes an improvement in the policy framework in order to promote a stronger response to gender inequality.

One of these 'special measures' is the Victim's Personal Statement (VPS),<sup>710</sup> which is a statement written in the victim's own words and gives them the chance to inform CJA about the effect of a crime in their lives. This helps CJA to fully understand the influence of the crime on the victims, so that they decide about the case.<sup>711</sup> The aim of the VPS is 'to provide an entitlement enabling all...(victims of serious crime, vulnerable and intimidated victims and the most persistently targeted) to make a VPS, giving them a stronger voice in the criminal justice process.'<sup>712</sup> Specifically, the police are responsible to collect the VPS from

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<sup>707</sup> *ibid* 7.

<sup>708</sup> Ministry of Justice, *Code of Practice for Victims* (2013) 1.

<sup>709</sup> *ibid* 9.

<sup>710</sup> Ministry of Justice, *Making a Victim Personal Statement Statement: A Guide for All Criminal Justice Professionals* (2013) 3.

<sup>711</sup> Ministry of Justice, *Making a Victim Personal Statement* (2013) 3.

<sup>712</sup> Ministry of Justice, *Improving the Code of Practice for Victims of Crime* (2013) 3.

the victims and then pass the information to victims' organisations for practical and emotional support.<sup>713</sup> Providing all IPA victims with the right to submit a VPS is important because the victims can provide insight on the specific barriers they face due to their gender and additional identities. Consequently, the VPS helps the police provide victims with a specific response to their needs, namely to challenge gender inequality by arresting the offender but also not to disregard their diverse needs by providing them with the necessary specialist support.

However, the implementation of the SED requires that public bodies 'Advance equality of opportunity between different groups'.<sup>714</sup> Based on this aim, the implementation of the SED in the police practice through the VPS places the statutory obligation to equally consider the diverse needs of the victims arising from their protected characteristics such as gender and religion. Thus, the police may have to decide not to arrest if the victim due to her religious beliefs opposes the arrest of the offender. In the case of IPA, the equal treatment of the protected characteristics does not ensure the challenging of gender inequality and therefore, the police practice does not send an appropriate message against IPA to society. In fact, it de-genders the police practice and affects the police culture to IPA. Particularly, the HMIC evaluation stated:

There is insufficient awareness and understanding of domestic abuse by the police and the attitudes of some police officers are unacceptable. Attitudes and cultural issues need to be challenged properly and addressed by force leaders and supervisors, and officers need to be better equipped with the right skills and knowledge.<sup>715</sup>

The limited police awareness can cause problems in the implementation of the VPS as a measure promoting equal opportunity between the victims to receive appropriate support to their needs. In fact, in some cases the police investigation did not address victims' issues properly.<sup>716</sup>

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<sup>713</sup> Ministry of Justice, *Victims of Crime: Understanding the Support You Can Expect* (2013) 3.

<sup>714</sup> Equality Act 2010 s.149.

<sup>715</sup> HMIC, *Everyone's Business: Improving the Police Response to Domestic Violence* (2014) 122.

<sup>716</sup> for examples of such failures see IPCC, 'Independent Investigation Commissioner's Report: Suffolk Police Response to Call from Mary Griffiths and Her Subsequent Murder' (2011) 5; IPCC, 'Independent Investigation Summary Response: Christine and Shania Chambers (Deceased)' (2012) 23; IPCC, 'Independent Investigation Commissioner's Report: Investigation into Contact with Lancashire Constabulary Regarding the Safety of Ms A on 7 September 2010' (2011) 6; IPCC, 'Commissioner's Report IPCC Independent Investigation: Greater Manchester Police Contact with Katie Boardman Prior to Her Death' (2009) 7.

The reason for this can be identified in the view of the Justice for Women, which is a feminist campaigning organisation,<sup>717</sup> that ‘Social beliefs and preconceptions about survivors of domestic...violence too often result in investigating officers failing to properly conduct investigations into complaints of male violence.’<sup>718</sup> These social beliefs and preconceptions of police officers that impact negatively the investigation of IPA can be a result of the limited training that frontline officers receive on IPA.<sup>719</sup> Therefore, the implementation of the SED de-genders the police response since all protected characteristics are treated as equal and has an impact on challenging the police culture on gender inequality and IPA.

#### **4.5.2 The Influence of SED on the CPS Response**

The limitations of the police practice through the implementation of the SED could also affect the response of the prosecution. The CPS took steps in implementing the SED in its policy, as illustrated in its Equality and Diversity Statement:

We recognise the importance of looking across the various protected characteristics from the perspective of victims, witnesses... who may belong to several different communities.... In order to encourage people from diverse communities to report crime, to give their best evidence and to stay with the prosecution process to its conclusion, the CPS needs to respond to the complex nature of how different people experience crime and the different impacts it can have on their lives.<sup>720</sup>

Based on this statement, the SED would be integrated in the CPS policies, as victims of a protected characteristic would not be discriminated and their different experiences would be considered by the CPS policies and practice.<sup>721</sup> This is further confirmed by the CPS, which stated that ‘To ensure that the duties imposed by equality legislation inform our day-to-day business, we will embed equality into our planning, our decisions and actions in relation to our prosecution....’<sup>722</sup> Since the CPS statements suggest the implementation of the SED in its policies, the question arising is how the SED was applied on the CPS policy in order to protect diverse victims.

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<sup>717</sup> Justice for Women, ‘About Justice for Women’ <<http://www.justiceforwomen.org.uk/about-us/>> accessed 15 December 2015.

<sup>718</sup> Joint Committee on Human Rights, *Violence against Women and Girls* (2014-15, HL 106 HC 594) 46.

<sup>719</sup> for failings of the police due to limited training of police officers see IPCC, ‘Commissioner’s Report: Independent Investigation into Police Contact with Joanna Michael Prior to her Death’ (2010) 5.

<sup>720</sup> CPS, *Crown Prosecution Service Equality and Diversity Statement* (2011) 2.

<sup>721</sup> see Equality and Human Rights Commission, *Objectives and the Equality Duty: A Guide for Public Authorities England (and Non-devolved Public Authorities in Scotland and Wales)* (2011) 6.

<sup>722</sup> CPS EDU, *CPS Equality and Diversity Objectives Annual Report 2012-13* (2013) 5.

In particular, the CPS launched in 2014 the consultation ‘The Prosecution of Domestic Violence Cases’,<sup>723</sup> in which it declared the adoption of a gender-neutral approach with the statement:

Though the majority of victims covered by VAWG offences are women, the CPS recognises that some offenders will be women, and a minority of victims will be men. As a result, the individual policies that sit within the VAWG framework, for example, for domestic violence...are gender neutral and are applied to all defendants and victims of crime irrespective of gender, or sexual orientation....<sup>724</sup>

This statement suggests that the CPS adopted a gender-neutral approach for the formation of the above policy document, despite recognising that women constitute the majority of IPA victims. This gender-neutral approach was also adopted despite the fact that the cross-governmental VAWG strategy<sup>725</sup> and the CPS VAWG strategy<sup>726</sup> recognised IPA crimes as gender-based. This gender-neutral approach of the ‘The Prosecution of Domestic Violence Cases’ document could have resulted from both of the VAWG documents because they did not state that gender inequality should be prioritised from the other inequalities caused by the additional identities of the victims. Consequently, this led to the de-gendering of the policy document and to an inconsistent policy response among the IPA documents.

The need of a gender-based approach in the formation of the above CPS document was reiterated by Women’s Aid that argued: ‘we believe that the gendered nature of domestic violence should be a theme which runs throughout this guidance – currently this analysis is absent from the guidance.’<sup>727</sup> Also, Refuge stated that ‘We must also express concern about the failure of the guidance to articulate more clearly that domestic violence is a gendered crime, with females...representing the overwhelming majority of its victims.’<sup>728</sup> Moreover, it added:

Refuge would recommend a more gender aware and gender specific approach to the guidance so that prosecutors are in no doubt that domestic violence predominantly affects women, girls...in particular ways, and that this knowledge is reflected in any training provided to ensure effective implementation. This is not to exclude other groups of victims nor to

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<sup>723</sup> CPS, *The Prosecution of Domestic Violence Cases* (2014).

<sup>724</sup> *ibid* 9-10.

<sup>725</sup> Home Office, *Call to End Violence against Women and Girls* (2010) 5.

<sup>726</sup> CPS EDU, *The Crown Prosecution Service Violence Against Women: Strategy and Action Plans* (2008) 11.

<sup>727</sup> Women’s Aid, *Women’s Aid Response to CPS Consultation on Prosecution of Domestic Violence* (2014) 13.

<sup>728</sup> Refuge, *Refuge’s Response to Consultation on CPS Guidance, The Prosecution of Domestic Violence Cases* (2014) 1.



minimize the impact of abuse upon them. We simply suggest that it seems important to develop targeted policy and practice which is specific to the group affected.<sup>729</sup>

These views acknowledged the need for the CPS to move away from a gender-neutral approach and adopt with its policies gender sensitivity.

Additionally, Imkaan stated:

We...urge the CPS not [to] address domestic violence...within gender neutral policies. Experiences of violence, risk to and safety of victims, their peers and families, following investigation and prosecution of domestic violence...are shaped by the gender, sexuality and age of the victim and defendant. These factors must therefore be recognised and considered in prosecuting cases, particularly when assessing risk and providing safety to victims.<sup>730</sup>

Based on this view, the CPS policies should not only promote gender sensitivity but it should also consider the gender, sexuality, and age of the victims. This view promotes the diversity intersectional approach because it does not refer to the prioritisation of the gender identity.

Despite these criticisms, the CPS produced its new 'Domestic Abuse Guidelines for Prosecutors', in which it repeated that 'the individual policies that sit within the VAWG framework...are gender neutral and are applied to all defendants and complainants of crime irrespective of gender, or sexual orientation, in accordance with Code for Crown Prosecutors.'<sup>731</sup> The gender-neutral approach of the CPS is argued to have resulted from the influence of the SED, as it can cause the de-gendering of the policies. This is supported by Women's Aid, which voiced their concern that the SED does not address gender-based violence as a consequence of gender inequality.<sup>732</sup> Therefore, the CPS policies, aiming to apply the SED, are at risk to address IPA within a gender-neutral approach.

The fact that the CPS adopted a gender-neutral Guideline suggests that its practice would also be affected. Such influence could increase the attrition of IPA cases since prosecutions are more likely to be successful if victims collaborate with the CPS due to satisfaction with their

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<sup>729</sup> *ibid* 2.

<sup>730</sup> MsUnderstood Partnership, *Response to the Response to Consultation on CPS Guidance* (2014) 2.

<sup>731</sup> CPS, *Domestic Abuse Guidelines for Prosecutors* (2014)

<[http://www.cps.gov.uk/legal/d\\_to\\_g/domestic\\_abuse\\_guidelines\\_for\\_prosecutors/#content](http://www.cps.gov.uk/legal/d_to_g/domestic_abuse_guidelines_for_prosecutors/#content)> accessed 30 August 2015

<sup>732</sup> Women's Aid, *Consultation Response: Advancing Equality for Men and Women* (2006)

<<http://www.womensaid.org.uk/domestic-violence-articles.asp?itemid=1193&itemTitle=Consultation+response%3A+advancing+equality+for+men+and+women&section=00010001002200260001&sectionTitle=Articles%3A+consultations>> accessed 25 July 2015

interaction.<sup>733</sup> However, the CPS in 2014-15 reached the highest volume ever for all domestic violence prosecutions and convictions.<sup>734</sup> This increase meant the prosecution of an additional 15,000 defendants during that year reaching the total of more than 92,000 while the convictions have been nearly 69,000 individuals which is over 10,000 more than the prior year.<sup>735</sup>

The increase of prosecutions occurred despite of the gender-neutral Guideline and Refuge's assessment that IPA victims are not treated fairly by the CPS.<sup>736</sup> This increase could be attributed to the victimless prosecutions that have been promoted by the local Police Crime Commissioners (PCC), which have been established in 2012 as a result of the Big Society Plan. The role of the PCC is 'to be the voice of the people and hold the police to account. They are responsible for the totality of policing. PCCs aim to cut crime and deliver an effective and efficient police service within their force area.'<sup>737</sup> For example, the Northumbria PCC has issued a strategy, in which it stated its aim to promote preventative work against IPA through initiatives such as the victimless prosecution that aims to support the investigation and prosecution of IPA cases. The investigating officer or the officer attending at the scene of an incident attempts to obtain evidence through digital photos of the scene of the incident, digital photos of the victims' injuries, audio of the 999 call, body worn camera or other video footage obtained at the scene of the incident.<sup>738</sup> This evidence can support the prosecution of a case without the testimony of the victim/witness. This can be beneficial for the victims because it removes the power and control of the offender over the victim from attempting to pressure her not to testify but also it is supportive to the victim's autonomy since she does not have to testify unwillingly.<sup>739</sup> The victimless prosecutions constitute an improvement, as they prioritise the gender identity by challenging gender

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<sup>733</sup> see Ministry of Justice, *Satisfaction and Willingness to Engage with the Criminal Justice System: Findings from the Witness and Victim Experience Survey, 2009/10* (2012) 62.

<sup>734</sup> CPS, *Violence against Women and Girls Crime Report 2014-2015* (2015) 3.

<sup>735</sup> CPS, 'Violence Against Women and Girls - DPP Speech to Women's Aid' (1 July 2015)

<[http://www.cps.gov.uk/news/articles/violence\\_against\\_women\\_and\\_girls\\_-\\_dpp\\_speech\\_to\\_women\\_s\\_aid\\_july\\_2015\\_/](http://www.cps.gov.uk/news/articles/violence_against_women_and_girls_-_dpp_speech_to_women_s_aid_july_2015_/)> accessed 4 August 2015

<sup>736</sup> Refuge, *A Public Consultation on CPS Equality and Diversity Objectives 2015-2018 Response Form* (2015) 4.

<sup>737</sup> Association of the Police Crime Commissioners, 'The Role of Police Crime Commissioners' <<http://www.apccs.police.uk/role-of-the-pcc/>> accessed 22 May 2017.

<sup>738</sup> Northumbria Police Crime Commissioner, *Violence Against Women and Girls Strategy* (2013) 25.

<sup>739</sup> Ellison L, 'Prosecuting Domestic Violence without Victim Participation' (2002) 65 (6) *The Modern Law Review* 834, 848-849.

inequality while also protecting victims of diverse needs from potential discriminations that might face from their involvement in the criminal justice process.

#### ***4.5.3 The SED Influence on the Courts through the Domestic Violence Perpetrators' Programmes***

The domestic violence perpetrators' programmes are examined as a case study of the courts' practice because entry onto a Probation Service programme can occur through referral from a court.<sup>740</sup> As part of the VAWG strategy, the Coalition government aimed in respect of IPA to reduce the risk to female victims and ensure that reoffending is effectively addressed through the rehabilitation programmes.<sup>741</sup> Providing competent rehabilitation services can contribute positively to the protection of victims and the prevention of IPA because if perpetrators are given the opportunity to reform, victims could be better protected from reoffending. One way to ensure that this aim is achieved through the SED is to foster good relations by tackling prejudice and promoting understanding between people who share a protected characteristic and others who do not share it.<sup>742</sup> Thus, rehabilitating perpetrators would promote the protection of the victims by fostering good relations between IPA offenders and victims. The analysis focuses on the feminist influence on the development of the perpetrators' programmes and the current programme, the Building Better Relationships (BBR). The implementation of the SED will be examined only on the BBR because this programme started in 2012<sup>743</sup> after the implementation of the SED.

#### ***4.5.4 The Feminist Contribution to the Perpetrators' Programmes***

Feminist theorists and activists have contributed to the development of perpetrators' programmes. Specifically, Jennings observed that rehabilitation programmes for male IPA perpetrators emerged directly out of the women's movement.<sup>744</sup> Women's support and treatment services were the first to offer counselling groups and services for male perpetrators. For example, in the UK, the Chiswick shelter was the first to provide services to

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<sup>740</sup> Select Committee on Home Affairs, *Domestic Violence, Forced Marriage and 'Honour'-Based Violence* (HC 2007-08, 263-I) para 312.

<sup>741</sup> HM Government, *Call to End Violence against Women and Girls: Action Plan* (2011) 29.

<sup>742</sup> see Government's Equalities Office, *Equality Act 2010: Public Sector Equality Duty What Do I Need to Know? A Quick Start Guide for Public Sector Organisations* (2011) 4.

<sup>743</sup> Ministry of Justice, *Accredited Programmes Annual Bulletin 2012/13, England and Wales* (2013) 9.

<sup>744</sup> Jennings J L, 'History and Issues in the Treatment of Battering Men: A Case for Unstructured Group Therapy' (1987) 2 *Journal of Family Violence* 193, 195.

abusive men with the establishment of the ‘Men’s Aid House’ in 1976. The Men’s Aid House provided group-based counseling for separated men and couples.<sup>745</sup>

Domestic violence perpetrator programmes emerged in the UK in the late 1980s with the Domestic Violence Intervention Programme (DVIP) in London. Initially, the DVIP delivered services for both self-referred and court-mandated men.<sup>746</sup> However, in 2005, the Probation Service in England and Wales moved away from this model and began delivering its own programmes for criminal justice mandated men: the Integrated Domestic Abuse Programme (IDAP) and the Community Domestic Violence Programme (CDVP).<sup>747</sup> The IDAP and CDVP were usually managed by probation or prison staff while the individuals treated were mandated referrals from the criminal courts as part of a sentence for a conviction.<sup>748</sup>

Despite this development, the self-referred programmes continued to operate as community-based programmes provided by voluntary organisations or part of a voluntary/statutory sector partnership.<sup>749</sup> The accreditation criteria for the voluntary programmes have been inclined to be group-based and offer their services to male perpetrators while also ensure support and safety for victims, and monitor the risk and violence.<sup>750</sup> The influence of feminism on these programmes is argued based on the Project Mirabal, a feminist initiative, which is a study of domestic violence perpetrators’ programmes in the UK that aimed to investigate, among others, their extent of reducing violence and increase safety for victims.<sup>751</sup> Kelly and Westmarland argued that ‘The techniques used by DVPPs that enable men to be self-reflective and question gendered assumptions about masculinity in relationships ... appeared to make a difference in enabling men to change.’<sup>752</sup> Based on this view, the perpetrators’ awareness on gender inequality contributes to their reform process. Thus, the use of

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<sup>745</sup> Deschner J P, *The Hitting Habit: Anger Control for Violent Couples* (Free Press/Collier - Macmillan 1984) 95.

<sup>746</sup> Dobash R E, Dobash R P, Cavanagh K and Lewis R, *Changing Violent Men* (Sage 2000) 48.

<sup>747</sup> Phillips R, Kelly L and Westmarland N, ‘Domestic Violence Perpetrator Programmes: A Historical Overview’ (London Metropolitan University and Durham University 2013) 12.

<sup>748</sup> Respect, ‘Evidence of Effects of Domestic Violence Perpetrator Programmes on Women’s Safety’ (2010) 1.

<sup>749</sup> *ibid*

<sup>750</sup> Farmer E and Callan S, ‘Beyond Violence: Breaking Cycles of Domestic Violence’ (Centre for Social Justice 2012) 71.

<sup>751</sup> Wistow R, Kelly L and Westmarland N, ‘“Time Out”: A Strategy for Reducing Men’s Violence Against Women in Relationships?’ (2016) *Violence Against Women* 1, 2.

<sup>752</sup> Kelly L and Westmarland N, ‘Domestic Violence Perpetrator Programmes: Steps Towards Change’ (London Metropolitan University and Durham University 2015) 46.

techniques that raise awareness on gender inequality suggests feminist influence on the voluntary programmes.

On the other hand, the criminal justice programme of the CDVP did not adopt a feminist approach. This is argued because the CDVP was a sequential, cognitive-behavioural intervention based on a family violence initiative within the Correctional Service of Canada.<sup>753</sup> The CDVP was available to adult, heterosexual males who had a history of IPA against female partners.<sup>754</sup> The CDVP identified perpetrators' 'self-control' discrepancies, which the cognitive-behavioural methods aimed to help them in handling. The primary focus of these methods was on re-educating men on their treatment towards women and relationships.<sup>755</sup> According to the cognitive behavioural model, violence is a learnt behaviour, and for this reason, non-violent alternative behaviours can also be learned.<sup>756</sup> Based on this model, non-violent alternative behaviours are taught that integrate social problem solving training, communication and negotiation skills training.<sup>757</sup> This programme did not involve a gender-based or intersectional analysis; therefore, it moved away from a feminist approach.

Further, the IDAP was developed in the UK as the first probation programme, otherwise known as the Duluth Project, to treat IPA offenders and support victims.<sup>758</sup> Initially, the Duluth project started in Duluth, Minnesota, United States in the 1980s. This project was a comprehensive, community-based programme that aimed to intervene in IPA cases.<sup>759</sup> The IDAP was influenced by feminist views because the Duluth model in these programmes adopted a strategy that teaches men to distinguish the impact of patriarchy in society and defy the sexist attitudes that are presupposed to cause their behaviour.<sup>760</sup> The programme aimed to teach perpetrators to critically assess their gender-based expectations of themselves and their

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<sup>753</sup> Bullock K, Sarre S, Tarling R and Wilkinson M, 'The Delivery of Domestic Abuse Programmes: An Implementation Study of the Delivery of Domestic Abuse Programmes in Probation Areas and Her Majesty's Prison Service' (Ministry of Justice 2010) 1.

<sup>754</sup> Bowen E, *The Rehabilitation of Partner-Violent Men* (Wiley & Blackwell 2011) 120.

<sup>755</sup> Bullock K, Sarre S, Tarling R and Wilkinson M, 'The Delivery of Domestic Abuse Programmes: An Implementation Study of the Delivery of Domestic Abuse Programmes in Probation Areas and Her Majesty's Prison Service' (Ministry of Justice 2010) 1.

<sup>756</sup> Wilson K J, *When Violence Begins at Home: A Comprehensive Guide to Understanding and Ending Domestic Violence* (2nd edn, Hunter House 2006) 282.

<sup>757</sup> Bowen E, *The Rehabilitation of Partner-Violent Men* (Wiley & Blackwell 2011) 89.

<sup>758</sup> Rivett M, 'Treatment for Perpetrators of Domestic Abuse: Controversy in Policy and Practice' (2006) 16 *Criminal Behavior and Mental Health* 205, 207.

<sup>759</sup> Bilby C and Hatcher R, 'Early Stages in the Development of the Integrated Domestic Violence Abuse Programme (IDAP): Implementing the Duluth Domestic Violence Pathfinder' (Home Office 2004) 2.

<sup>760</sup> Friedman M, *Autonomy, Gender, Politics* (Oxford University Press 2003) 155.

partners but also to change their attitudes, beliefs, and motivation.<sup>761</sup> Men were challenged to understand the impact of their violent behaviours and to take responsibility of their violent conducts.<sup>762</sup> This pro-feminist model defines IPA as a controlling behaviour, which aims to create and sustain a power imbalance between intimate partners.<sup>763</sup> Based on this approach, the rehabilitation intervention attempted to challenge the controlling tendencies of males towards their female partners through the use of physical and non-physical abuse.<sup>764</sup> Thus, feminism influence is argued in this programme because it aimed to help perpetrators reassessing their views on their patriarchal gender expectations in the context of their controlling behaviour that leads to physical and non-physical abuse.

#### **4.5.5 The BBR Programme**

The CDVP and the IDAP programmes have been replaced by the BBR.<sup>765</sup> The BBR is based on the Nested Model supplemented by the General Aggression Model.<sup>766</sup> This new model argued that IPA has multiple causes such as emotional, social, biosocial, psychological, and attitudinal factors.<sup>767</sup> For this reason, this new programme approached IPA from a psychological and sociological approach that moves away from a gendered analysis.<sup>768</sup> Therefore, this programme adopts a gender-neutral approach because it does not recognise gender inequality as the cause while other social and psychological identities as additional barriers whose combination affects the victimisation experiences.

The influence of the SED is argued on the BBR because it attempts to foster good relations between genders, as it tries to ‘help men develop practical and sustainable strategies for

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<sup>761</sup> Bullock K, Sarre S, Tarling R and Wilkinson M, ‘The Delivery of Domestic Abuse Programmes. An Implementation Study of the Delivery of Domestic Abuse Programmes in Probation Areas and Her Majesty’s Prison Service’ (Ministry of Justice 2010) 13.

<sup>762</sup> Westmarland N and Hester M, ‘Time for Change: An Assessment of Services for Domestic Abuse Perpetrators in Bristol’ (University of Bristol 2007) 5.

<sup>763</sup> Pence E and Paymar M, *Education Groups for Men Who Batter: The Duluth Model* (Springer Publishing Company 1993) 148.

<sup>764</sup> Bowen E, Brown L and Gilchrist E, ‘Evaluating Probation Based Offender Programmes for Domestic Violence Perpetrators: A Pro-Feminist Approach’ (2002) 41 (3) *The Howard Journal* 221, 232.

<sup>765</sup> HC Deb 5 Feb 2014 vol 575 col 287W.

<sup>766</sup> Lewis S, ‘Responding to Domestic Abuse: Multi-Agent Systems, Probation Programmes and Emergent Outcomes’ in Pycroft A and Bartolias C (eds), *Applying Complexity Theory: Whole Systems Approaches to Criminal Justice and Social Work* (Policy Press 2014) 223.

<sup>767</sup> *ibid*

<sup>768</sup> Phillips R, Kelly L and Westmarland N, ‘Domestic Violence Perpetrator Programmes: A Historical Overview’ (2013) 14.

maintaining change once they have departed from the programme'.<sup>769</sup> Acquiring the skills taught in the BBR programme would help to stabilise the relation of the offenders with their prior victims and any potential future victims. Moreover, the integration of the SED in the BBR programme is argued, as it is indicated by the Correctional Services Accreditation Panel (CSAP), which aimed to provide consistent programmes across the country with a rigid curriculum and delivery.<sup>770</sup> Specifically, the CSAP stated

The Panel is committed to ensuring that diversity and equality are valued and permeate every aspect of its role and responsibilities.... The Panel requires programme designers and providers to demonstrate evidence of due regard for equality, diversity and inclusiveness in terms of equality of access to programmes on the basis of need.<sup>771</sup>

The statement of the CSAP implies that the protected characteristics of the SED will be protected in its practice, as the rehabilitation programmes such as the BBR will be formed based on the diverse needs of the perpetrators. Furthermore, the NOMS stated that 'We are committed to fairness.... We deliver our services fairly and respond to individual needs. We insist on respectful and decent behaviour from staff, offenders and others with whom we work.'<sup>772</sup> These statements suggest the integration of the SED in the policies of NOMS and CSAP, which are responsible in forming and delivering the BBR programmes.

Further, the BBR programme is suitable for male offenders who have been violent in heterosexual relationships, and have been assessed as a medium to high risk of relationship violence on the Spousal Assault Risk Assessment.<sup>773</sup> The Spousal Assault Risk Assessment helps determine whether and to what extent an individual poses a risk to his intimate partner based on a checklist of questions such as the criminal history, spousal assault history, and social and psychological characteristics of the offenders.<sup>774</sup> These elements show a diversity of characteristics to be considered for determining the perpetrators admitted to the programme. However, the fact that the BBR excludes male and female offenders in same sex relationships suggests that the SED does not promote the fostering of good relationships

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<sup>769</sup> Ministry of Justice and NOMS, 'Building Better Relationships (BBR) Information for Sentencers' 3.

<sup>770</sup> See Select Committee on Home Affairs, 'Supplementary Memorandum Submitted by Respect' (2008) <<https://publications.parliament.uk/pa/cm200708/cmselect/cmhaff/263/263we84.htm>> accessed 25 July 2017.

<sup>771</sup> Ministry of Justice, *The Correctional Services Accreditation Panel Report 2010-2011* (2012) 5.

<sup>772</sup> NOMS, *National Offender Management Service: Business Plan 2014-2015* (2015) 32.

<sup>773</sup> Ministry of Justice and NOMS, 'Building Better Relationships (BBR) Information for Sentencers' 1.

<sup>774</sup> Select Committee on Home Affairs, 'Memorandum Submitted by the Probation Service' (2008) <<https://publications.parliament.uk/pa/cm200708/cmselect/cmhaff/263/263we66.htm>> accessed 25 July 2017.

between offenders and victims of combined identities such as gender and sexuality. This occurrence could be explained from the fact that the dual discrimination provision of the SED has not been implemented. Particularly, the dual discrimination or the intersectional discrimination could have increased the protection of IPA victims, as offenders with combined diverse identities could be included in the programme.<sup>775</sup> Thus, the implementation of the SED in the BBR can lead to the disregard of the combined intersection of discriminations.

To conclude, the implementation of the SED in the response of the CJA can de-gender their policies and practice, despite of the existence of a cross-governmental IPA VAWG strategy. This occurs because gender does not constitute the overarching identity protected in the context of IPA. Moreover, the influence of the SED can weaken the implementation of the intersectional gendered approach as the diverse identities are not protected in a combined intersectional way.

#### **4.6 The Contemporary Response of the CJA during the Conservative Government**

The Conservative government, as discussed in section 3.4, recognised IPA in its strategy as gender-based violence and framed it under a VAWG policy framework. In this strategy, it stated that ‘An effective criminal justice response is crucial to tackling VAWG’.<sup>776</sup> An effective criminal justice response includes an appropriate implementation of the new coercive control offence, which has been an improvement because it meant the legal recognition of the gendered nature of IPA. However, achieving a substantial improvement through this offence requires an implementation by the CJA that challenges gender inequality while protecting diverse victims.

##### **4.6.1 *The Police Response to Coercive Control***

In order to achieve an effective response, the coercive control offence needs to be consistently implemented in all police forces. The HMIC observed that the governmental policies are not implemented the same in all communities and there are different inadequacies in their response such as arrests, risk assessment, DVOs, training, and the

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<sup>775</sup> see HL 13 Jan 2010 col 540; see also Women’s Resource Centre, ‘Equality Act 2010 Briefing’ (2011) 15.

<sup>776</sup> HM Government, *Ending Violence against Women and Girls Strategy 2016 – 2020* (2016) 12.



implementation of the VCOP.<sup>777</sup> For example, EVAW reported on DVOs:

Specialist domestic violence officers, and specialist domestic violence units, whilst providing the framework for improved protection, are far too low in numbers across all police forces. The lack of investment in specialist officers and units is seriously hindering the effectiveness of this approach and undermining efforts to improve police protection and response.<sup>778</sup>

The inconsistent establishment of DVOs in all police forces could result to a gender-neutral implementation of the strategy and the coercive control offence. This means that female victims with diverse needs are not equally protected in different communities. The consistent implementation means that police forces in all communities should provide substantial equal protection to the victims by forming a specific practice to the victims' needs.

Further, in order to effectively respond to the coercive control offence, the police need to be aware on its nature. According to the Authorised Professional Practice:

Controlling or coercive behaviour can take a range of forms but often involves micro-managing the victim's daily life in an identifiable pattern. ... The behaviour is usually personalised, in that it means something to the victim even when the meaning is not apparent to anyone else. Individual characteristics such as a disability, membership of a closed or marginalised community, or being a non-English speaker can increase the risk of isolation for a victim and make it easier for a perpetrator to establish controlling or coercive behaviour.<sup>779</sup>

Hence, coercive control is an offence that can be manifested in various ways which are shaped based on the victims' identities. The College of Policing reported that the DASH model:

[M]ay not be appropriate or proportionate for some incidents classified as domestic abuse under the wide-ranging national definition. Coercive control is a high risk and high impact form of domestic abuse that involves multiple abusive tactics and behaviours of which physical violence is only one.<sup>780</sup>

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<sup>777</sup> See HMIC, *Increasingly Everyone's Business: A Progress Report on the Police Response to Domestic Abuse* (2015) 17-22.

<sup>778</sup> EVAW, 'Violence against Women and Girls in the UK EVAW Coalition Briefing for Rashida Manjoo: UN Special Rapporteur on Violence Against Women and Girls, its Causes and Consequences' (2014) 37.

<sup>779</sup> College of Policing, *Major Investigation and Public Protection Authorised Professional Practice on Domestic Abuse* (2016) <<https://www.app.college.police.uk/app-content/major-investigation-and-public-protection/domestic-abuse/context/>> accessed 25 December 2016.

<sup>780</sup> Myhill A, 'Risk Identification in Cases of Domestic Abuse Evaluation of a Pilot Project' (College of Policing, 2016) 1.

Consequently, since coercive control has a significant role on IPA crimes, the police should be able to identify its various forms manifested in diverse victims in order to provide an effective response.

The police response could also improve if it implements the new governmental measure proposed with its new consultation 'Revisiting the Victims' Code'<sup>781</sup> suggesting that 'all victims of... domestic violence will be offered the opportunity to have their interview conducted by a person of the same gender wherever possible, unless doing so is likely to prejudice the criminal investigation.'<sup>782</sup> Based on the new VCOP, this new measure is provided to coercive control victims of any of the prior categories (most serious crime and vulnerable/intimidated victims) but also as a persistently targeted victim that includes cases of victims targeted repeatedly over a period of time.<sup>783</sup> This could be beneficial to IPA victims because female officers can share more common experiences with female victims, and for this reason, they can better assess their needs and risks. Hence, this measure has a significant role for the successful arrest of the offender and the investigation of the case because if the victim is not satisfied by the police response, she might refuse to continue collaborating with the police.<sup>784</sup>

Additionally, the police response could improve by raising awareness on the needs of coercive control victims through training. This necessity is identified in the Refuge's statement:

Many of the women Refuge supports feel let down by the police response to their abuse. There are countless incidents where police fail to investigate, do not believe the victim or are verbally abusive to her, do not risk assess, do not safeguard children, do not arrest the perpetrator and do not capture evidence to enable the Crown Prosecution Service to charge. A 'canteen culture' of negative attitudes towards women still exists in forces where domestic violence is not taken seriously – 'it's just a domestic' is still a refrain heard today.<sup>785</sup>

This is further attested by Women's Aid observation:

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<sup>781</sup> Ministry of Justice, *Revisiting the Victims' Code* (2015).

<sup>782</sup> Ministry of Justice, *Revisiting the Victims' Code: Equalities Statement* (2015) 2.

<sup>783</sup> See Ministry of Justice, *Code of Practice for Victims of Crime* (2015) 14, 20.

<sup>784</sup> see Rights of Women, 'Reporting an Offence to the Police: A Guide to Criminal Investigations' (2013) 2-4.

<sup>785</sup> Refuge, 'Refuge Responds to the Home Secretary's Speech at the Police Federation Conference' (17 May 2016) <<http://www.refuge.org.uk/2016/05/17/refuge-responds-to-the-home-secretarys-speech-at-the-police-federation-conference-2/>> accessed 5 December 2016.

When a woman is already vulnerable and reaches out for help, she must know she can rely upon and trust the police. That is what makes the exploitation of survivors of domestic abuse, who are some of the most vulnerable members of our communities, for sexual gain so appalling.... More work needs to be done to ensure that survivors of domestic abuse are treated with dignity and respect. That is why we welcome ... the focus on ensuring that police officers and staff are not exploiting vulnerable victims for sexual gain. The culture within the police that allows these cases to happen must be robustly challenged; and it is essential that police forces recognise these cases as serious forms of corruption.<sup>786</sup>

These views illustrate an inadequate police practice to IPA against gender inequality due to the stereotypes and beliefs of police officers that are influenced by the patriarchal beliefs.

Similarly, the police culture has been problematic in respect of the diverse victims' needs.

Women's Aid has reported:

If you are a Black, Asian or minority ethnic woman trying to escape from domestic abuse, your experiences may be compounded by racism, which is pervasive in the UK. You may be unwilling to seek help from statutory agencies (such as the police...) because you are afraid of a racist response.... You may find that service providers are basing their responses on particular cultural, ethnic or religious stereotypes. In some cases, they may avoid intervening for fear of being perceived as racist. If your partner and abuser is Black, Asian or from another ethnic minority, you may wish to protect him or her (and the community) from police intervention due to your experiences of institutional racism.<sup>787</sup>

Therefore, the police response remains problematic not only in respect of challenging gender inequality but also regarding the combined effect of the intersection of the victims' diverse identities on their victimisation experiences. This might have resulted from the lack of appropriate training on coercive control, which is the essence of IPA, gender inequality and the diverse needs of the victims.

An opportunity to remedy this problematic practice has been developed by the College of Policing, which established new training to police officers and staff who investigate IPA in order to recognise and tackle coercive control. A specialist package of face-to-face training has been developed to teach frontline police officers, staff, and investigators to identify a pattern of coercive control in a report of abuse and collect sufficient evidence to support a

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<sup>786</sup> Women's Aid, 'Women's Aid Deeply Concerned by HMIC Figures on Police Abuse of Women' (9 December 2016) <<https://www.womensaid.org.uk/womens-aid-deeply-concerned-hmic-figures-police-abuse-women/>> accessed 14 December 2016.

<sup>787</sup> Women's Aid, 'Women from Black, Asian and Ethnic Minority Communities' <<https://www.womensaid.org.uk/the-survivors-handbook/women-from-bme-communities/>> accessed 14 December 2016.

prosecution.<sup>788</sup> Moreover, Women's Aid has developed the training course 'Evidencing Controlling and/ or Coercive Behaviour' delivered, among others, to police officers. This course focuses on issues related to coercive control such as in-depth understanding of its nature, its effect to the victims, how to identify coercive control, and the role of the police in its investigation.<sup>789</sup> The development of the police training by these initiatives could strengthen the police response to coercive control types of IPA if provided to all police officers involved with victims and provided consistently to the police forces of all communities. This is necessary because the arrest rate for domestic abuse crimes in different communities ranges from 25 percent to 83 percent.<sup>790</sup>

#### **4.6.2 The Prosecutorial Response to Coercive Control**

A problematic police investigation could be also detrimental to the prosecution of a case because the CPS would not have sufficient evidence to charge and prosecute the offender. Refuge reported that 'There are countless incidents where police fail to investigate, do not arrest the perpetrator and do not capture evidence to enable the CPS to charge. In this context, it is worrying that there has been a 4.1% reduction in referrals from the police to the CPS for domestic abuse crimes.'<sup>791</sup> This attrition problem can be further exacerbated by the prosecutorial response.

The CPS, in order to improve its response, launched in 2015 the 'Crown Prosecution Service Equality and Diversity Objectives 2015-2018: Consultation',<sup>792</sup> in which it stated its objective 'To consider the diverse needs of victims ... as we take decisions about policy and how this is implemented in a practical, inclusive and proportionate way.'<sup>793</sup> An example of such policy is the new Guidance that started to address controlling and coercive behaviours.<sup>794</sup> The CPS

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<sup>788</sup> College of Policing, 'New Training to Investigate Coercive Control' <[http://www.college.police.uk/News/Newsletter/January\\_2016/Pages/coercive\\_control.aspx](http://www.college.police.uk/News/Newsletter/January_2016/Pages/coercive_control.aspx)> accessed 27 December 2016.

<sup>789</sup> Women's Aid, 'CPD/ Facilitators Training Courses' <<http://www.nationaltrainingcentre.org.uk/short-courses/2013/7/5/domestic-violenceabuse-awareness>> accessed 27 December 2016.

<sup>790</sup> HMIC, *State of Policing – The Annual Assessment of Policing in England and Wales 2016* (2017) 50.

<sup>791</sup> Refuge, 'Refuge Welcomes Latest CPS Figures on Domestic Abuse Prosecutions' (6 September 2016) <<http://www.refuge.org.uk/2016/09/06/refuge-welcomes-latest-cps-figures-on-domestic-abuse-prosecutions/>> accessed 27 December 2016.

<sup>792</sup> CPS, *Crown Prosecution Service Equality and Diversity Objectives 2015-2018: Consultation* (2015).

<sup>793</sup> *ibid* 13.

<sup>794</sup> CPS, 'Violence Against Women and Girls - DPP Speech to Women's Aid' (1 July 2015)

<[http://www.cps.gov.uk/news/articles/violence\\_against\\_women\\_and\\_girls\\_-\\_dpp\\_speech\\_to\\_women\\_s\\_aid\\_july\\_2015/](http://www.cps.gov.uk/news/articles/violence_against_women_and_girls_-_dpp_speech_to_women_s_aid_july_2015/)> accessed 5 August 2015.

Guidance integrated the examples of coercive control listed in the governmental statutory guidance such as isolating the victim from their friends and family, monitoring her time, controlling facets of her daily life, degrading, threatening to hurt or kill, and assaulting her.<sup>795</sup> On these behaviours, the CPS guidance stated that ‘This is not an exhaustive list and prosecutors should be aware that a perpetrator will often tailor the conduct to the victim, and that this conduct can vary to a high degree from one person to the next.’<sup>796</sup> This recognition indicates the tendency of the CPS to address different types of IPA including emotional abuse, which can be manifested to female victims from diverse backgrounds.

The successful prosecution could be achieved if specialised training is consistently provided to prosecutors. Women’s Aid agrees with this view since it welcomed the CPS requirement for all prosecutors to have face-to-face training on domestic violence.<sup>797</sup> Particularly, the core domestic abuse training modules included two new e-learning modules on teenage relationship abuse and IPA experienced by older victims. Moreover, for 2016-17, the CPS approved the development of two new mandatory e-learning modules regarding prosecuting with evidence that have not been provided by the victim and training on how to implement the coercive control offence.<sup>798</sup> This enrichment of prosecutorial training shows an attempt to address coercive control manifested to victims of diverse identities; therefore, this mandatory training constitutes an improvement and could result to the reduction of attrition.

Regarding the prosecutorial practice, in 2015-16 the number of referrals from the police was 117,882 while the completed prosecutions were 100,930.<sup>799</sup> Women’s Aid noted that ‘There is an overall increase in the amount of domestic abuse being reported to police and being prosecuted; figures from [CPS] VAWG report show that this year prosecutions overall were at the highest level ever, with 92.4% of defendants being men and 7.6% women.’<sup>800</sup> EVAW explained that ‘The increase in prosecutions likely shows that more women are seeking

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<sup>795</sup> See Home Office, *Controlling or Coercive Behaviour in an Intimate or Family Relationship Statutory Guidance Framework* (2015) 4.

<sup>796</sup> CPS, *Guidance on Controlling or Coercive Behaviour in an Intimate or Family Relationship* <[http://www.cps.gov.uk/legal/a\\_to\\_c/controlling\\_or\\_coercive\\_behaviour/](http://www.cps.gov.uk/legal/a_to_c/controlling_or_coercive_behaviour/)> accessed 25 December 2016.

<sup>797</sup> Women’s Aid, *Women’s Aid Consultation Response Speaking to Witnesses at Court: Draft CPS Guidance for Consultation* (2016) 2.

<sup>798</sup> CPS, *Violence against Women and Girls Crime Report 2015-16* (2016) 35.

<sup>799</sup> *ibid* 5.

<sup>800</sup> Women’s Aid, ‘Women’s Aid Responds to New Statistics on Female Perpetrators of Domestic Abuse’ (21 September 2016) <<https://www.womensaid.org.uk/womens-aid-responds-new-statistics-female-perpetrators-domestic-abuse/>> accessed 28 December 2016.

justice and that the CPS is doing a more effective job. We know that more women than ever are seeking help from support services as well as justice through the courts....<sup>801</sup> This increase in prosecutions implies improvement in the satisfaction of the victims' diverse needs. Further to this improvement, the CPS in its new 'Violence against Women and Girls (VAWG) Strategy 2017–2020' issued in 2017 has committed to improve the victimless prosecutions and to demonstrate its understanding of the victims' diverse needs.<sup>802</sup> This CPS commitment suggests an aim to send a message to society against gender inequality by increasing the prosecutions while protecting the diverse needs of the victims including protecting them from discrimination. This protection could be improved through the victimless prosecutions since victims such as BAME women will not have to provide evidence against their abuser and have to face discrimination from their social environments.

#### **4.6.3 The Courts' Response to Coercive Control**

The facilitation of victims' access to the CJS through the police, prosecution, and the multiagency partnerships could increase the conviction of IPA cases in courts. This result is aimed by the SDVCs' goal 'to increase confidence in the justice system, to improve conviction rates and, crucially, to prevent harm to victims.'<sup>803</sup> According to Bowen and Whitehead:

The evidence on the impact of problem-solving domestic violence courts on outcomes for victims, such as victim safety and satisfaction, is good. The evidence on their ability to reduce the frequency and seriousness of a perpetrator reoffending is promising. This is encouraging when set against the lack of other effective options for reducing reoffending by perpetrators of domestic violence.<sup>804</sup>

Based on this evaluation, the results of the SDVCs practice suggest that the satisfaction of victims, convictions, and the prevention of harm to victims have improved. From this outcome, it could be inferred that the courts have improved their awareness on victims' diverse needs, and for this reason, they obtain victims' participation in the criminal justice process.

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<sup>801</sup> EVAW, 'New Prosecution Figures for Violence against Women & Girls' (6 September 2016) <<http://www.endviolenceagainstwomen.org.uk/news/252/new-prosecution-figures-for-violence-against-women-girls>> accessed 28 December 2016.

<sup>802</sup> CPS, *Violence against Women and Girls (VAWG) Strategy 2017–2020* (2017) 3.

<sup>803</sup> Bowen P and Whitehead S, 'Better Courts: Cutting Crime through Court Innovation' (Centre for Justice Innovation 2013) 13.

<sup>804</sup> Bowen P and Whitehead S, 'Problem-solving Courts: An Evidence Review' (Centre for Justice Innovation 2016) iii.

A stronger response against coercive control could be achieved if the recommendation of Women's Aid that 'SDVCs which integrate criminal, civil and family applications should be developed'<sup>805</sup> is forwarded. The lack of this measure limits the protection of victims by providing them a coordinated response to satisfy their needs. A similar innovation in the SDVCs has been recommended by Bowen and Whitehead who argued that 'We believe that the first round of pilots should include existing problem-solving courts as well as new ones, and cut across both youth and adult criminal courts. ... This could allow areas to develop new problem-solving approaches to issues like domestic abuse.'<sup>806</sup> Due to the expansion of the domestic violence definition, young offenders of 16 years old could be charged for the offence of coercive control; therefore, young victims and offenders do not receive a specialised SDVC response as they are referred to youth courts. Therefore, based on the above view, the implementation of the coercive control offence could be strengthened by the development of SDVCs for young victims.

Further, the SDVCs can be beneficial for coercive control victims if the majority of judges are females and combine additional identities. However, this is not the case with courts' judges because by April 2017, female judges in the Court of Appeal constitute the 24 percent, in the High Court 22 percent, and in the courts judiciary 28 percent. From all court judges, 49% aged under 40 are female while BAME judges are 7 percent.<sup>807</sup> These statistics show that female judges are significantly less than male judges while only a minor number of judges come from minority communities and the age group below 40 years old. Since female judges with diverse identities constitute the minority of judges, this suggests that judges might have limited awareness on the needs of IPA victims.

Although female judges with diverse identities constitute a minority, the courts' response could be improved by raising awareness among the judiciary regarding the victims' diverse needs. Specifically, Vera Baird QC, the Northumbria PCC asserted:

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<sup>805</sup> Select Committee on Home Affairs 'Memorandum Submitted by Women's Aid Federation of England' (2008) para.4.2.3 <<http://www.publications.parliament.uk/pa/cm200708/cmselect/cmhaff/263/263we33.htm>> accessed 28 December 2016.

<sup>806</sup> Bowen P and Whitehead S, 'Problem-solving Courts: A Delivery Plan' (Centre for Justice Innovation 2016) 10.

<sup>807</sup> Lord Chief Justice of England and Wales and Senior President of Tribunals, 'Judicial Diversity Statistics 2017' (2017) <<https://www.judiciary.gov.uk/about-the-judiciary/who-are-the-judiciary/diversity/judicial-diversity-statistics-2017/>> accessed 10 September 2017.

[T]here is still an implicit assumption of a patriarchal society. There is an implicit assumption that domestic violence is some sort of squabble between parties in a private context, and that it is possible to at least devalue or undervalue domestic violence and violence against women generally in that context. Of course, we are still very much belaboured by the fact that we have a highly male-dominated judiciary who frankly are not, as I understand it, trained in domestic violence and in my experience do not get it at all.<sup>808</sup>

These views demonstrate that the judiciary culture to IPA is still problematic regarding their awareness on the specific needs of victims from diverse social backgrounds.

The reason for this limited awareness is that

[J]udges are required to be authorised and trained to hear serious sexual offences and will attend a dedicated training seminar run by the Judicial College. However, there is no dedicated training or specific authorisation required for non-sexual offences of assault or violence. Crimes such as domestic abuse will feature within the normal continuation training available to Crown Court judges particularly as a sentencing exercise.<sup>809</sup>

Thus, the available training is not sufficient to raise awareness regarding IPA and the specific needs of the victims. On this point, the Joint Committee on Human Rights observed that training for the judiciary is limited and not compulsory. For this reason, training on the diverse types of IPA should be available to both criminal and civil judges and magistrates.<sup>810</sup> Such training to the judiciary of civil and criminal courts could provide a more consistent and coordinated response to IPA from the courts.

In conclusion, additionally to the persistent problems of the CJA response, there is the new challenge to implement successfully the coercive control offence. New measures have been introduced in order to provide an adequate response such as providing training on coercive control to the police and CPS, applying the special measures to coercive control victims, and integrating coercive control on the CPS policy. The feminist activists have contributed to these developments by raising the need of such improvements. However, it remains to be seen how the implementation of these measures in practice will benefit victims of diverse identities.

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<sup>808</sup> Joint Committee on Human Rights, *Violence against Women and Girls* (2014–15, HL 106 HC 594) 21.

<sup>809</sup> *ibid* 22.

<sup>810</sup> *ibid* 21-22.



## **4.7 Conclusion**

The purpose of this chapter was to examine the development of the CJA (police, CPS, courts) response from 1997 to 2017. This examination is important as the CJA implement the governmental strategies and criminal laws, analysed in Chapter 3. For this reason, examples of policies and practice of the CJA were discussed in order to show to what extent they have challenged gender inequality, considered the victims' diverse identities, and promoted the transformation of the social perception against IPA.

The chapter examined the developments on IPA from 1997 to 2010 that occurred during the Labour government. During this period, feminist theorists and activists provided important contributions such as critiques, campaigning, and training. Despite these contributions, the examination showed that the CJA did not consistently oppose gender inequality and protect the diverse needs of female victims in all of its policies and practices. Although their policies gradually improved, this was not reflected consistently in practice. The reason for this could be that the policies did not provide a strong response against gender inequality by prioritising it in comparison to the other inequalities caused by the diverse identities of the victims. The problematic response of each CJA can affect the overall response of the CJS due to their collaboration in the multi-agency partnerships. Hence, a problematic response from one of the CJA is detrimental to the protection of victims and the prevention of IPA, as it causes the problem of attrition.

The examination of the CJA response during the Coalition government demonstrated that the influence of the SED can weaken the CJA response by de-gendering their policies and practice. This occurs because it does not incorporate gender equality and difference as the intersectional gendered approach suggests; namely, it does not treat gender as the dominant identity in the context of IPA and does not consider the effect of the intersection of diverse identities in the victimisation experiences.

The examination of the contemporary developments on the response of the CJA showed that the CJA have introduced measures in order to improve their response to the coercive control offence. Such changes have been promoted by feminist activists who have criticised the CJA on issues such as their training, culture, and failings to prosecute. Although it is preliminary to critique the effect of these measures, they constitute an improvement as they could

increase the protection of coercive control victims, which constitute the majority of IPA victims. Moreover, they can be beneficial for the prevention of IPA as they can send a message against coercive control to society. The creation of an effective response by the CJA against coercive control would oppose gender inequality, which is the cause of the intimate terrorism and mutual violent control types of IPA.

Overall, an inconsistent response from the CJA does not only affect the efficiency of the CJS on the prevention of IPA and the protection of female victims but it also affects the whole-system response and the social reaction to IPA and its victims. This occurs due to the reciprocal influence of the CJS with the social perception, which is influenced by the messages sent by the CJA response. For this reason, the combined effect of these issues will be addressed in Chapter 6, where recommendations will be provided for the improvement of the CJS and the whole-system response.

## **Chapter 5. The Governmental Response to IPA through Social Welfare Mechanisms**

### **5.1 Introduction**

The purpose of this chapter is to examine the development of the governmental response through social welfare mechanisms provided by the whole-system response to IPA. As discussed in Chapter 3, the whole-system response involves the utilisation of social welfare mechanisms, which can contribute to the prevention of IPA and the protection of its victims due to the limited power of the law. The chapter focuses on the early intervention to young people through education, specialist refuges and legal aid because they have been main concerns of feminist activists involved with lobbying and campaigning. The examination occurs through the intersectional gendered approach, namely whether and to what extent the equal protection of victims with diverse needs and the transformation of the social perception on IPA and the victims' diversity have been successfully promoted. Furthermore, the feminist engagements with the discussed issues are identified.

The chapter examines the response of the Labour government from 1997 to 2010 on early intervention to young people through education and specialist refuges. Moreover, it focuses on the developments occurring on specialist refuges, education, and legal aid from 2010 to 2015 during the Coalition government and on the most current developments on education, refuges, and legal aid occurring during the Conservative government. The issues discussed in each section were selected based on main issues identified by feminist activists regarding IPA victims during the respective chronological periods.

The chapter argues that the governmental response has improved progressively. However, a stronger consideration of gender inequality as the cause of IPA but also of the diversity of victims by the social welfare mechanisms could further improve the prevention of IPA and the protection of its victims. This could be achieved because victims of diverse needs would be better facilitated in accessing the CJS and a stronger message would be sent to society against IPA in order to promote the transformation of the social perception. For example, a stable and long-term funding support of specialist refuges could help victims with housing needs to escape their abusive environments and seek the support of the CJS. Moreover, a stronger legal aid support could help victims with financial needs to have legal representation

in family law proceedings. If such support is provided to them, victims could be less reluctant to escape abuse and seek the support of the CJS.

## **5.2 The Response of the Labour Government to IPA through Social Welfare Mechanisms**

Chapter 2 argued that the prevention of IPA and the substantially equal protection of its victims can be increased if the specialised and individual needs of each victim are considered not only through the CJS response but from a whole-system response. As argued in Chapter 3, the Labour government promoted a whole-system response through its policy aims stated in its ‘Living without Fear: An Integrated Approach to Tackling Violence against Women’ strategy. Particularly, the aims of prevention of IPA and the protection of its victims were promoted through the statement: ‘The Government’s first priority must be to ensure that women experiencing violence get the help they need. The first person they see should either be able to provide the service they need or guide them directly to it.’<sup>811</sup> Moreover, it aimed to promote prevention and protection by stating: ‘Our long-term goal is to reduce crime by tackling its causes as well as its effects.’<sup>812</sup> Based on this policy document, the aims of protection and prevention could be facilitated through early intervention to young people and providing support to victims through refuges.<sup>813</sup> Similarly, these aims were repeated by the Labour government with its strategies ‘Safety and Justice: The Government’s Proposals on Domestic’,<sup>814</sup> the ‘Domestic Violence: A National Report’,<sup>815</sup> and the ‘Together We Can End Violence against Women and Girls: A Strategy’.<sup>816</sup>

### **5.2.1 Early Intervention to Young Individuals through Education**

Intervening early to young individuals in order to influence their perception on IPA, gender inequality, and diversity are important because, as Lombard argued, the preservation of gender stereotypes is more likely to influence young people. For this reason, she thought important to ‘Encourage the promotion of positive, respectful relationships and the

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<sup>811</sup> Home Office and Women’s Unit, *Living without Fear: An Integrated Approach to Tackling Violence against Women* (1999) <<http://webarchive.nationalarchives.gov.uk/20010714051016/http://www.cabinet-office.gov.uk:80/womens-unit/fear/04.htm>> accessed 2 February 2017.

<sup>812</sup> *ibid*

<sup>813</sup> *ibid*

<sup>814</sup> HM Government, *Safety and Justice: The Government’s Proposals on Domestic Violence* (Cmd 5847, 2003) 16.

<sup>815</sup> Home Office, *A National Report* (2005) 12, 15.

<sup>816</sup> HM Government, *Together We Can End Violence against Women and Girls: A Strategy* (2009) 6-7.

prevention of violence through engaging with the [school] [c]urriculum, in particular the elements which draw upon healthy relationships, issues of control and sex education.<sup>817</sup> Similarly, EVAW argued that ‘Education work in schools is key to effectively preventing VAWG. Education settings are places where gendered stereotypes and power dynamics are learned, reinforced and institutionalised but at the same time are location where change can begin.’<sup>818</sup> The discussion of IPA as gender-based violence in the school curriculum is necessary in order to challenge the perception of young people regarding gender inequality<sup>819</sup> because as studies have argued, gender inequality influences their perception towards IPA.<sup>820</sup>

Intervening early through primary education could contribute to the prevention of IPA because as Fox and others argued: ‘schools should introduce prevention education on domestic abuse to young people before they start to form intimate relationships (e.g., ages 11–12 years), and on a yearly basis.’<sup>821</sup> Moreover, it could contribute to the prevention because ‘The enhancement of awareness and understanding is a significant achievement as it allows young people to identify personal experiences as abusive. This is the first stage in the process of identifying behaviour as problematic and avoiding it or seeking help.’<sup>822</sup> In fact, young people become victims of physical and emotional abuse.<sup>823</sup> For this reason, young individuals need to be educated regarding IPA being manifested in different relationships such as in same sex relationships.<sup>824</sup> The role of education to decrease IPA among young people could have an important contribution for their welfare due to the social implications of

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<sup>817</sup> Lombard N, ‘Young People’s Attitudes about Violence’ (Centre for Research on Families and Relationships 2011) 2.

<sup>818</sup> EVAW, ‘A Different World is Possible’ (2011) 8.

<sup>819</sup> See Sundaram V, *Preventing Youth Violence: Rethinking the Role of Gender and Schools* (Palgrave Macmillan 2014) 17.

<sup>820</sup> Burton S, Kitzinger J, Kelly L and Regan L, ‘Young People’s Attitudes towards Violence, Sex and Relationships: A Survey and Focus Group Study’ (1998) 9; see also McCarry M, ‘Becoming a ‘Proper Man’: Young People’s Attitudes about Interpersonal Violence and Perceptions of Gender’ (2010) 22 (1) *Gender and Education* 17, 27.

<sup>821</sup> Fox L C, Corr M L, Gadd D and Sim J, ‘Evaluating the Effectiveness of Domestic Abuse Prevention Education: Are Certain Children More or Less Receptive to the Messages Conveyed?’ (2016) 21 *Legal and Criminological Psychology* 212, 224.

<sup>822</sup> Bell J and Stanley N, ‘Learning about Domestic Violence: Young People’s Responses to a Healthy Relationships Programme’ (2006) 6 (3) *Sex Education* 237, 247.

<sup>823</sup> Barter C, McCarry M, Berridge D and Evans K, ‘Partner Exploitation and Violence in Teenage Intimate Relationships’ (2009) 178; see also Claire Louise Fox, Mary-Louise Corr M L, Gadd D and Butler I, ‘Young Teenagers’ Experiences of Domestic Abuse’ (2014) 17 (4) *Journal of Youth Studies*, 510, 522-523.

<sup>824</sup> Redfern C and Aune K, *Reclaiming the F Word: Feminism Today* (Zed Books 2013) 61.

IPA between young people such as alcohol and substance abuse,<sup>825</sup> running away from home and homelessness.<sup>826</sup>

The Labour government attempted to early intervene to young individuals' perception regarding IPA in schools through the framework of the Personal, Social and Health Education (PSHE) and Citizenship.<sup>827</sup> Specifically, the government in its strategy 'Living without Fear: An Integrated Approach to Tackling Violence against Women' stated that the PSHE

[P]rovides the opportunity to give young people behavioural and relationship education in schools. This can benefit many aspects of their lives, including confirmation of the unacceptability of violence within relationships. ... PSHE addresses sex education and relationship studies, encouraging self-respect, empathy, respect for others and non-violent conflict resolution.<sup>828</sup>

These aspects of PSHE were addressed within the SRE programme, which is rooted within the PSHE framework of the National Curriculum developed for the primary and secondary education in 1999.<sup>829</sup> The guidance issued for the delivery of SRE stated that 'The objective of sex and relationship education is to help and support young people through their physical, emotional and moral development.'<sup>830</sup> Despite this improvement from the government to shape young individuals perception on relationships, IPA was not taught in the context of gender inequality.

This is further attested by the critique of Women's Aid, which recommended:

Any work with young people about domestic violence must start at a very young age, in all primary schools because, by age 13, attitudes that condone gender violence are already entrenched, particularly amongst boys. This work needs to focus on gender stereotypes, on mutual respect in intimate relationships, and on challenging the condoning of gendered violence, within a broader context of work on respect, safety and conflict resolution. This

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<sup>825</sup> Itzin C, 'Tackling the Health and Mental Health Effects of Domestic and Sexual Violence and Abuse' (Home Office 2006) 17.

<sup>826</sup> Itzin C, Taket A and Barter-Godfrey S, *Domestic and Sexual Violence and Abuse: Tackling the Health and Mental* (Routledge 2010) 61.

<sup>827</sup> HC Deb 19 September 2003 vol 410 cols 1130-1W.

<sup>828</sup> Home Office and Women's Unit, *Living without Fear: An Integrated Approach to Tackling Violence against Women* (1999) <<http://webarchive.nationalarchives.gov.uk/20010714051016/http://www.cabinet-office.gov.uk:80/womens-unit/fear/06.htm>> accessed 10 January 2017.

<sup>829</sup> See Department for Education and Employment and Qualifications and Curriculum Authority, *The National Curriculum Handbook for Primary Teachers in England* (1999) 138; see also Department for Education and Employment and Qualifications and Curriculum Authority, *The National Curriculum Handbook for Secondary Teachers in England* (1999) 135, 217.

<sup>830</sup> Department for Education and Employment, *Sex and Relationship Education Guidance* (2000) 3.

overall non-violence approach can usefully incorporate work on racist and homophobic abuse,... but must always retain a gendered content as an essential element.<sup>831</sup>

Based on this view, the SRE did not appropriately address IPA and its gendered nature, and for this reason, the shaping of the social perception on IPA through education was limited.

Further to the PSHE curriculum, the government claimed that the Citizenship education, introduced in schools in 2002, could offer valuable skills in listening, expressing views, resolving disagreements constructively, and building confidence and self-esteem.<sup>832</sup>

However, Refuge critiqued that the Citizenship curriculum, although it is valuable, does not develop skills that can lead by itself to the reduction or prevention of IPA. There is need to address this problem at its root by recognising the gendered nature of VAW and develop programmes that are shaped based on this perspective.<sup>833</sup> Moreover, Refuge recommended that '[the] government needs to challenge social tolerance/approval of domestic violence by raising awareness of the issue and dispelling the myths surrounding it. Education should play a pivotal role, working towards changing the attitudes and beliefs which underpin and maintain [VAW]....'<sup>834</sup> These views suggest that the SRE and Citizenship programmes did not challenge IPA in the context of gender inequality, and for this reason, the government needed to adopt a more challenging response through education in order to successfully raise awareness on these issues.

This inadequacy is further supported by a review of the SRE that was conducted in 2008 by an external steering group that published its report 'Review the Delivery of Sex and Relationships Education (SRE) in Schools'. The external steering group suggested:

There needs to be a stronger focus in SRE on 'relationships' and the skills and values that young people need as they progress through childhood and adolescence, into adulthood. ... Work on SRE should be within a clear and explicit values framework of mutual respect, rights and responsibilities, gender equality and acceptance of diversity. ... PSHE should be made a statutory subject in Key Stages 1-4 and that it should be underpinned by a statutory

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<sup>831</sup> Women's Aid, *Consultation Response: Safety and Justice, the Government Consultation Paper on Domestic Violence* (2003) 17.

<sup>832</sup> HM Government, *Safety and Justice: The Government's Proposals on Domestic Violence* (Cmd 5847, 2003) 16-17.

<sup>833</sup> Refuge, *Refuge Response to Safety and Justice Government Consultation Paper* (2003) 7.

<sup>834</sup> Refuge, *Comprehensive Spending Review 2007 Refuge's Submission to the Children and Young People's Review* (2006) 6.

programme of study that sets out a common core of knowledge and skills that all young people should be taught.<sup>835</sup>

This recommendation to make PSHE statutory was also supported by Refuge, which suggested that ‘the delivery of the PSHE framework (including teaching on domestic violence) should become statutory for both primary and secondary schools.’<sup>836</sup> Moreover, the government acknowledged that a new SRE guidance should be developed that considers the needs of all young people, including young people with disabilities, from the LGBT community, and from diverse ethnic and faith backgrounds.<sup>837</sup>

These findings suggest that the PSHE framework did not challenge efficiently young individuals’ perception on IPA because it did not address its gendered nature and the diverse experiences of the victims formed by their combined identities. Also, the lack of a mandatory delivery of PSHE to all schools indicates the government’s reluctance to use education in order to send a strong message to society against IPA. This is argued because the statutory status of PSHE could promote to society, especially to young individuals, the idea that IPA is a serious issue. This view is supported by the Home Affairs Committee Inquiry, which identified in 2008 that

There is no explicit statutory requirement for schools to educate pupils about domestic ... violence.... Schools are encouraged to cover the issues within discussion of relationships under ...[PSHE], or within citizenship classes. However, PSHE is not a curriculum requirement for schools and informal feedback from voluntary sector organisations suggests that in practice many schools who do teach PSHE do not opt to cover domestic violence.<sup>838</sup>

Therefore, although the government attempted to integrate some discussions on IPA through the school curriculum, its non-statutory status led to an inefficient practice as many schools chose not to raise awareness among students on IPA.

Feminist activists contributed to the Home Affairs Committee findings. In particular, Women’s Aid recommended that ‘Domestic violence issues, gender inequality and sexual stereotyping be included as a mandatory part of the PHSE curriculum in all schools;

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<sup>835</sup> External Steering Group, ‘Review of Sex and Relationship Education (SRE) in Schools A report by the External Steering Group’ (2008) 2-3.

<sup>836</sup> Refuge, *Response to the Government’s 2005/6 Progress Report on the National Domestic Violence Delivery Plan* (2006) 3.

<sup>837</sup> Department for Children, Schools and Families, *Government Response to the Report by the Sex and Relationships Education (SRE) Review Steering Group* (2008) 11.

<sup>838</sup> Home Affairs Committee, *Domestic Violence, Forced Marriage and ‘Honour’-Based Violence* (HC 2007-08, 263-I) 30.



integrated with work on anti-bullying, conflict resolution and healthy relationships.’<sup>839</sup>

Similarly, Horley, from Refuge, testified that ‘More ... prevention work needs to be done in schools on these issues and PSHE must become a mandatory part of the school curriculum.’<sup>840</sup> Also, Refuge argued that since the Living without Fear strategy, the government’s commitment to address IPA through education in schools was not sufficiently implemented.<sup>841</sup> Based on these suggestions, the solution to increase awareness through schools would be not only to make PSHE compulsory but also to link the teaching of IPA with gender inequality. Although such step would be important, the teaching on IPA should be delivered based on the diverse needs of the students such as age-appropriate material and raise awareness on the different experiences of IPA as manifested to victims with diverse identities.

However, the mandatory status of PSHE and the teaching of the gendered nature of IPA would not be sufficient to ensure its adequate delivery. As explained by Harwin:

The actual barriers to the issue are that teachers themselves feel unable to address the issue. They do not feel they have enough information. We are in the process of producing an educational toolkit for use in schools by teachers, and through that Women's Aid has carried out research with teachers, and a lot of it is they are worried that they do not have enough understanding or knowledge. The curriculum is already extremely crowded, particularly the PSHE curriculum. The lessons are not mandatory, they cover a huge range of subjects, and that is the area in which, if you are talking about in schools, that information would be delivered. There is no requirement to tackle it.<sup>842</sup>

Similarly, Refuge argued:

[M]any professionals held common myths about domestic violence, believing that it is caused by alcohol, drugs and difficulties controlling anger with little recognition that gender inequality lies at the heart of violence against women. It is therefore vital that teachers receive training about domestic violence both in terms of what it is and the impact it has on children. This training must recognise the gendered nature of violence against women....<sup>843</sup>

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<sup>839</sup> Home Affairs Committee, *Select Inquiry into Domestic Violence Evidence from Women’s Aid Federation of England* (2007) 3.

<sup>840</sup> Home Affairs Committee, *Domestic Violence, Forced Marriage and ‘Honour’-Based Violence* (HC 2007-08, 263-II) 32.

<sup>841</sup> Refuge, ‘Starting in Schools’ (2008) 1-2.

<sup>842</sup> Home Affairs Committee, *Domestic Violence, Forced Marriage and ‘Honour’-Based Violence* (HC 2007-08, 263-II) 30.

<sup>843</sup> Refuge, ‘Department for Children, Schools and Families Review of Sex and Relationship Education (SRE)’ (2008) 2-3.

For this reason, the compulsory teaching of the gendered nature of IPA on the PSHE could not be successfully delivered if teachers are not trained to address gender inequality as the cause of IPA and the diverse experiences formed by the victims' characteristics.

### **5.2.2 The Influence of the VAWG Strategy on Education**

The government attempted to improve its response to IPA in a policy level through its consultation 'Together We Can End Violence against Women and Girls', in which the government stated:

Schools ... have a crucial role to play...in helping children and young people to develop healthy relationships, deal with their emotions, and challenge the way in which some young men behave towards young women. What is taught in the classroom, the school's values and ethos and the way in which it deals with ... inappropriate behaviour towards girls could all have an important impact.<sup>844</sup>

This approach promoted the Social and Emotional Aspects of Learning which is 'a comprehensive, whole-school approach to promoting the social and emotional skills that underpin effective learning, positive behaviour, regular attendance, staff effectiveness and the emotional health and wellbeing of all who learn and work in schools'.<sup>845</sup> The Social and Emotional Aspects of Learning promotes the development and implementation to learning of the following social and emotional skills: self-awareness, self-regulation, motivation, empathy, and social skills.<sup>846</sup> This whole-school system approach could contribute to the improvement of the delivery of PSHE by developing the above skills and ethos to students.

However, this whole-school system approach could be a useful supplement to the teaching of PSHE and SRE if the teaching of IPA became statutory and was taught in the context of gender inequality. In fact, the Labour government proceeded to a significant improvement with its VAWG strategy, in which it stated that 'Gender equality and violence against women and girls will be included in the school curriculum for PSHE Education and [SRE].'<sup>847</sup> As a result of this commitment, the government launched the consultation 'Public Consultation on

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<sup>844</sup> Home Office, *Together We Can End Violence against Women and Girls: A Consultation Paper* (2009) 6.

<sup>845</sup> Department for Children, Schools and Families, *Social and Emotional Aspects of Learning for Secondary Schools* (DCSF Publications 2007) 4.

<sup>846</sup> Humphrey N, Lendrum A and Wigelsworth M, 'Social and Emotional Aspects of Learning (SEAL) Programme in Secondary Schools: National Evaluation' (Department for Education 2010) 5.

<sup>847</sup> Home Office, *Together We Can End Violence against Women and Girls: A Strategy* (2009) 21.

Curriculum Reform’,<sup>848</sup> in which it recognised that PSHE should become statutory. However, in respect of the SRE it stated that

Within the current non-statutory guidelines for the teaching of sex and relationships education parents have the right to withdraw their children from this aspect of learning. The proposals are that parents should continue to be allowed to withdraw their children from the sex and relationships education aspect of PSHE education.<sup>849</sup>

Although the suggestion to make PSHE mandatory is important, this does not strengthen the aims of prevention and protection through education because it gives the right to parents to withdraw their children from SRE. On this issue, Women’s Aid responded:

Preventative work on violence against women and girls within schools should not be optional. Allowing parents and carers the option to withdraw pupils from this scheme of work will increase risks to children and young people and undermines the necessary message that violence against women and girls must be addressed as it concerns us all.<sup>850</sup>

The optional participation at the SRE could be detrimental to the aim of transforming the social perception, as for example, parents from BAME communities could withhold their children from the SRE teaching. Such action would deny to these students the chance to reflect on gender equality and IPA.

Additionally, the governmental suggestions in the consultation did not address whether gender inequality would be taught in relation to IPA as the cause or as one of the causes of IPA. On this point, Refuge challenged ‘the assumption ... that violence against women is somehow an expression of anger or frustration which young men “resort” to in an attempt to resolve conflict’<sup>851</sup> and asserted that ‘specific, gendered teaching on domestic violence (as a form of violence against women) is required within PSHE.’<sup>852</sup> Therefore, the adequate teaching of SRE would require addressing gender inequality as the cause of IPA.

Finally, the government introduced the Children, Schools and Families Bill 2009-10,<sup>853</sup> in which it proposed ‘to make PSHE education part of the statutory national curriculum in both

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<sup>848</sup> Department for Children, Schools and Families, *Public Consultation on Curriculum Reform: Consultation Overview* (2009) 6.

<sup>849</sup> *ibid* 7.

<sup>850</sup> Women’s Aid, *Government Consultation Together We Can End Violence against Women and Girls Response from Women’s Aid (England)* (2009) 17.

<sup>851</sup> Refuge, *Together We Can End Violence against Women and Girls: A Consultation Paper* (2009) 6.

<sup>852</sup> Refuge, *Public Consultation on Curriculum Reform* (2009) 2.

<sup>853</sup> Children, Schools and Families Bill

<<http://www.publications.parliament.uk/pa/cm200910/cmbills/008/10008.i-iii.html>> accessed 15 January 2017.

the primary and secondary phases.’<sup>854</sup> It concluded that ‘parents’ right to withdraw their children from SRE should continue until their children reach the age of 15.’<sup>855</sup> However, immediately before the dissolution of parliament for the general election, the compulsory PSHE provision and the provision that all children receive at least one year of SRE were removed by the Lords Amendments.<sup>856</sup> For this reason, the Children, Schools and Families Act 2010<sup>857</sup> was enacted without making PSHE mandatory.<sup>858</sup> Consequently, the Labour government concluded its administration without making the PSHE mandatory for all primary and secondary schools and without giving the proper context of gender inequality as the cause of IPA in the teaching of PSHE.

### **5.2.3 Specialist Refuges**

The specialist IPA services provided by women’s organisations such as Women’s Aid and Refuge have an important contribution to victims’ of diverse needs because they assist them with their housing problems through the refuges.<sup>859</sup> The support of the Labour government on these specialist refuges, at a policy level, is argued based on its 1997 manifesto, which stated its commitment on homelessness: ‘We will impose a new duty on local authorities to protect those who are homeless through no fault of their own and are in priority need.’<sup>860</sup> This commitment was significant for IPA female victims because their access to independent housing is critical as ending violence can lead them in losing their homes. They are usually unable to afford owner occupation and are more likely to rely on social housing.<sup>861</sup> For this reason, in 1998 Women’s Aid with its campaign ‘Families without Fear’ asserted that the

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<sup>854</sup> Gillie C, Gheera M, Strickland P and Bolton P, ‘Children, Schools and Families Bill’ (2009) 25.

<sup>855</sup> *ibid*

<sup>856</sup> Long R, ‘Sex and Relationships Education in Schools (England)’ (2016) 10; see also PBC, *Children, Schools and Families Bill: Committee Stage Report* (2010) 13.

<sup>857</sup> Children, Schools and Families Act 2010

<sup>858</sup> Children, Schools and Families Act 2010 <<http://services.parliament.uk/bills/2009-10/childrenschoolsandfamilies.html>> accessed 10 April 2017.

<sup>859</sup> See Women’s Aid, ‘Directory of Domestic Violence Multi-Agency Fora 2000 England & Wales’ <<https://web.archive.org/web/20000601120709/http://www.womensaid.org.uk:80/dvforum/foramain1.htm>> accessed 4 June 2017; Refuge, ‘About Refuge’

<<https://web.archive.org/web/20031202151048/http://www.refuge.org.uk:80/about.htm>> accessed 4 June 2017.

<sup>860</sup> Labour Party, ‘Labour Party Manifesto: New Labour Because Britain Deserves Better’ (1997)

<<http://www.politicsresources.net/area/uk/man/lab97.htm>> accessed 27 January 2017.

<sup>861</sup> Morley R, ‘Domestic Violence and Housing’ in Hanmer J and Itzin C (eds), *Home Truths About Domestic Violence: Feminist Influences on Policy and Practice: A Reader* (3rd edn, Routledge 2013) 229.

Housing Act 1996 should be repealed or amended to improve provision for women fleeing violence.<sup>862</sup>

Concerning IPA, the government acknowledged in its strategy 'Living without Fear: An Integrated Approach to Tackling Violence against Women':

It is usually - and should be - a last resort for a woman to have to leave her own home. In these circumstances we should recognise that she is a double victim. If a woman is experiencing violence, or the threat of violence in her relationship she may need to leave home, either temporarily or permanently. Leaving home can be an immediate response to a crisis situation, or a more planned response to a long period of abuse or violence. Local authorities have a responsibility to provide assistance.<sup>863</sup>

As a result of this commitment, the government issued the consultation 'Quality and Choice: A Decent Home for All The Housing Green Paper'<sup>864</sup> in which it proposed to 'ensure that unintentionally homeless people in priority need are provided with temporary accommodation until they obtain suitable settled accommodation...'.<sup>865</sup> This led to the enactment of the Homelessness Act 2002, which amended the Housing Act 1996.<sup>866</sup>

The 1996 Act had an important contribution to IPA victims with housing needs in order to provide them with the adequate support for escaping abuse and accessing the CJS. This is argued because the access of women in housing is of critical significance for their autonomy in relationships as women tend to have care responsibilities, and lower incomes than men, which increase dependence on men and reduce their resources for housing.<sup>867</sup> Charles reported that: 'The major issues to emerge from the women's accounts are that women need housing, both temporary and permanent, which provides them with safety and support'.<sup>868</sup> For this reason, the 1996 Act constituted an improvement in comparison to the Housing Act

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<sup>862</sup> Women's Aid, 'Families without Fear: More Detailed Recommendations on Key Policy Areas' (1998) <<https://www.webarchive.org.uk/wayback/archive/20080618222826/http://www.womensaid.org.uk/page.asp?section=000100010009000100010001#6>> accessed 26 January 2017.

<sup>863</sup> Home Office and Women's Unit, *Living without Fear: An Integrated Approach to Tackling Violence against Women* (1999) <<http://webarchive.nationalarchives.gov.uk/20010714051016/http://www.cabinet-office.gov.uk:80/womens-unit/fear/04.htm>> accessed 26 January 2017.

<sup>864</sup> Department of the Environment, Transport and the Regions, *Quality and Choice: A Decent Home for All The Housing Green Paper* (2000).

<sup>865</sup> *ibid* 87.

<sup>866</sup> Explanatory Notes to the Homelessness 2002, para.4.

<sup>867</sup> Pascall G, Lee S-J, Morley R and Parker S, 'Changing Housing Policy: Women Escaping Domestic Violence' (2001) 23 (3) *Journal of Social Welfare and Family Law* 293, 293.

<sup>868</sup> Charles N, 'The Housing Needs of Women and Children Escaping Domestic Violence' (1994) 23 (4) *Journal of Social Policy* 465, 485.

1986 which did not extend its protection to women without dependent children as being in ‘priority need’.<sup>869</sup> Due to this gap, the Housing Act 1996 strengthened the housing legislation for IPA victims with s.149, which provided housing to women that ‘The dwelling-house was occupied (whether alone or with others) by a married couple or a couple living together as husband and wife and—... (c) one partner has left the dwelling-house because of violence or threats of violence by the other towards—(i) that partner’.<sup>870</sup> This provision provided the duty to local authorities to secure appropriate accommodation for IPA victims that were unable to remain in the family home and were assessed as being unintentionally homeless and in priority need.<sup>871</sup> Individuals are considered unintentionally homeless if someone used or threatened violence against them and were forced to leave their home.<sup>872</sup> Moreover, a victim in priority need<sup>873</sup> is ‘A person who is vulnerable as a result of ceasing to occupy accommodation by reason of violence from another person or threats of violence from another person which are likely to be carried out.’<sup>874</sup> Therefore, IPA victims are entitled to be provided with housing since they are considered as unintentionally homeless and in priority need.

Despite this improvement, Hague and Malos critiqued that the Housing Act 1996 aimed to:

[R]emove the legal duty permanently to rehouse statutorily homeless people. Under the 1996 Act, the homeless have to compete with other housing applicants on a unified housing list and permanent accommodation no longer has to be secured. There is merely a duty to provide temporary accommodation for up to two years, possibly on a recurring basis.<sup>875</sup>

Similarly, Women’s Aid noted that this Act removed the automatic duty of local authorities to provide permanent housing to people who were unintentionally homeless and in priority need while it provided a renewable duty to secure temporary accommodation.<sup>876</sup> The

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<sup>869</sup> Housing Act 1985 s.59 (1)(b).

<sup>870</sup> Housing Act 1996 s.149.

<sup>871</sup> Office of the Prime Minister, *The Provision of Accommodation and Support for Households Experiencing Domestic Violence in England* (2002) 1.

<sup>872</sup> Rights of Women, ‘Domestic Violence, Housing and Homelessness’ (2012) 2.

<sup>873</sup> Housing Act 1996 s. 189 (1)(c).

<sup>874</sup> Homeless Persons (Priority Need for Accommodation) (England) Order 2002, SI 2002/2051 2; see also *R v Kensington and Chelsea LBC, ex p Kihara* (1996) 29 HLR 147.

<sup>875</sup> Hague G and Malos E, *Domestic Violence: Action for Change* (2nd edn, New Clarion Press 1998) 106.

<sup>876</sup> Women’s Aid, ‘Protection against Domestic Violence under Housing Law’ (2006)

<<https://www.webarchive.org.uk/wayback/archive/20080618205408/http://www.womensaid.org.uk/domestic-violence-articles.asp?section=00010001002200150001&itemid=1004&itemTitle=Protection+against+domestic+violence+under+housing+law#temporary>> accessed 3 February 2017.

Homelessness Act 2002 did not change this by providing an automatic duty to local authorities to provide permanent housing to victims.<sup>877</sup>

This practice was adopted despite that temporary accommodation could not provide permanent solution to the housing needs of the victims. ROW noted that IPA victims when left their households were eligible to temporary housing such as bed and breakfast or hostel accommodation;<sup>878</sup> however, refuges often were more preferable for women than other forms of temporary accommodation.<sup>879</sup> Particularly, Binney and others observed:

The length of time women wanted to stay in the refuge varied. Some women found it difficult to adapt to refuge life and left within a few days. Others, however, stayed for months and felt they had changed dramatically while they were there. Given the advantages and disadvantages of refuge life, women felt that a stay of two months was the ideal length of time. On average three to four months was stated as the longest time they should have to stay in a refuge. ... Refuges were set up to provide emergency accommodation. Neither women nor groups felt that they were suitable for long term stays....<sup>880</sup>

Although refuges were established to provide temporary accommodation to IPA victims, Mama observed:

Initially intended to be emergency temporary accommodation to support women while they obtained their own homes, refuges now find themselves housing women and their children for as long as two or even three years. ... The increasing difficulty of getting women rehoused has the devastating effect of keeping the system entirely clogged up, so that there is no space for women seeking to escape from violence. ... This has the effect of circumventing the most immediate aims of the refuge movement - to provide emergency support for women who have been assaulted by their partners.<sup>881</sup>

Hence, the removal of the duty to rehouse victims is problematic since refuges do not constitute adequate places for permanent housing and it heavily burdens the refuge system, so that other victims cannot receive this support in order to escape abuse.

This practice can be detrimental to victims with diverse needs. For example, according to Schneider:

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<sup>877</sup> Housing, Planning, Local Government and the Regions Committee, *Homelessness* (HC 2003-04, 1116-II) 88.

<sup>878</sup> Rights of Women, 'Guide to Domestic Violence, Housing and Homelessness' (2014) 3.

<sup>879</sup> Levison D and Harwin N, 'Reducing Domestic Violence ...What Works? Accommodation Provision' (Crime Reduction Research Series 2000) 3.

<sup>880</sup> Binney V, Harkell G and Nixon J, *Leaving Violent Men: A Study of Refuges and Housing for Abused Women* (2nd edn, Women's Aid Federation 1988) 59-60.

<sup>881</sup> Mama A, 'Violence against Black Women: Gender, Race and State Responses' (1989) 32 *Feminist Review* 30, 41.

The intersection of racism and sexism exacerbates many of the problems commonly faced by white women in a battering relationship. The racial bias inherent in the housing market, for example, and the disparity between the earning power of black and white women, intensify the difficulties that confront a woman of colour who is attempting to leave a battering relationship.<sup>882</sup>

Based on this view, excluding victims from BAME communities to receive timely and adequate support from refuges can lead them to remain in the abusive environment, as they do not have equal opportunities with other social groups to obtain other accommodation. Moreover, this practice can lead women to homelessness which causes financial instability to women and they could end up in prostitution.<sup>883</sup>

The support provided from the refuges can be described with the following statement:

Refuges provide safe, supportive surroundings where women can overcome their fear and isolation. Unfortunately Temporary Accommodation may not be a safe place to stay when the man is violent-and other occupants who have been made homeless for other reasons can be frightened and endangered. It has been found that women who have been battered gain a great deal from sharing their experiences with others who have suffered the same treatment.<sup>884</sup>

Therefore, specialist refuges have a significant contribution for the well-being of victims, and for this reason they should be supported by the government in order to provide proper assistance to victims of diverse needs.

Local authorities did not have a duty to provide a permanent solution to the victims, as they were not considered homeless when living in the refuge and they were not longer at risk of IPA.<sup>885</sup> However, this has changed with the HL judgment in *Moran v Manchester* (2009),<sup>886</sup> which held that women in refuges are homeless and they remain homeless, even if they leave the refuge, until they obtain accommodation in which they can continue to live in the long-term.<sup>887</sup> This constituted an improvement, as by recognising the homelessness status of the victims living in refuges, they could assert their right to obtain permanent accommodation.

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<sup>882</sup> Schneider M E, *Battered Women & Feminist Lawmaking* (2nd edn, Yale University Press 2003) 63.

<sup>883</sup> see Stark C and Hodgson C, 'Sister Oppressions: Comparison of Wife Battering and Prostitution' in Farley M (ed), *Prostitution, Trafficking, and Traumatic Stress* (2nd edn, Routledge 2012) 24.

<sup>884</sup> Select Committee, *Violence in Marriage together with the Proceedings of the Committee* (HM Stationery Office 1975) 59.

<sup>885</sup> *Manchester City Council v Moran* [2008] EWHC Civ 378.

<sup>886</sup> *Moran v Manchester* [2009] UKHL 36.

<sup>887</sup> Women's Aid, 'House of Lords Judgement Allows Women and Children in Women's Aid Refuges to Retain Homeless Status' (1 July 2009)



## 5.2.4 Supporting People Programme

The SPP is an example to examine the governmental response to support IPA victims with their housing problems. Before the creation of the SPP, the specialist services were funded from various sources such as housing benefit, local authorities, health authorities, housing associations, rent from users, charities, the National Lottery and private donations. The government observed that this structure did not allow proper consideration of value for money, quality of service provision, or transparency in the use of resources.<sup>888</sup> The lack of appropriate funding for refuges was also attested by the feminist magazine *Spare Rib*, which reported that cutbacks in local government spending caused women's refuges to have their funding cut drastically despite refuges experiencing overcrowding in their establishments.<sup>889</sup> Such an example is the cut of financial support to the Wansworth Women's Aid Refuge, which would have meant its possible closure or cuts in its staff and less support for women such as the counseling and emotional support that victims receive upon entering a refuge.<sup>890</sup> Also, specialist refuges for BAME communities in London were severely under-funded than general refuges.<sup>891</sup> These inefficiencies suggest that the governmental response was inadequate to support victims from diverse social backgrounds.

The Labour government attempted to overcome these inadequacies by launching the consultation 'Supporting People: A New Policy and Funding Framework for Support Services'<sup>892</sup> in 1998 in order to address the funding support of refuges. In this document, the Government proposed the adoption of a new coordinated approach for funding support services, based on which the central government would allocate resources to local authorities depending on their needs and expenditure.<sup>893</sup> According to the evaluation of Ashton and

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<<http://www.webarchive.org.uk/wayback/archive/20091218215444/http://www.womensaid.org.uk/domestic-violence-press-information.asp?itemid=2117&itemTitle=House+of+Lords+judgement+allows+women+and+children+in+Women%92s+Aid+refuges+to+retain+homeless+status&section=0001000100150001&sectionTitle=Press+releases>> accessed 22 January 2017.

<sup>888</sup> Home Office and Women's Unit, *Living without Fear: An Integrated Approach to Tackling Violence against Women* <<http://webarchive.nationalarchives.gov.uk/20010714051016/http://www.cabinet-office.gov.uk:80/womens-unit/fear/04.htm>> accessed 26 January 2017.

<sup>889</sup> *Spare Rib*, 'Woman to Woman Dealing with Domestic Violence' (1990) 216 *Spare Rib* 8, 8.

<sup>890</sup> De Santis M, 'Women's Refuge Faces Funding Cut' (1990) 217 *Spare Rib* 1, 45.

<sup>891</sup> Mama A, *The Hidden Struggle: Statutory and Voluntary Sector Responses to Violence against Black Women in the Home* (London Race and Housing Research Unit 1989) 281.

<sup>892</sup> Inter-Departmental Review of Funding for Supported Accommodation, *Supporting People: A New Policy and Funding Framework for Support Services* (1998).

<sup>893</sup> *ibid* para 22.

Hempenstall, the programme provides support to a wide range of vulnerable client groups, including individuals with longer-term and shorter-term intervention needs in order to help them gain independence or support them through a crisis.<sup>894</sup>

In fact, IPA victims could receive this support based on the government's indicative list of potentially overlapping social groups that could need the support of this programme. Such social groups are vulnerable individuals due to their young age, homelessness, addiction to drugs or alcohol, psychological trauma (as IPA victims experience), and mental health problems.<sup>895</sup> Hence, IPA victims could receive the support of this programme due to the psychological trauma experienced by the abuse but also due to their diverse identities forming their victimisation experience such as age, addiction, or mental problems.

As a result of the above consultation, the SPP was introduced with s. 93 of the Local Government Act 2000<sup>896</sup> that enabled the Secretary of State to pay grants to local authorities in England. Since 2003, most refuge-based services were funded by a Supporting People stream that the government ring-fenced for domestic violence. However, this ring-fence was removed in 2006, causing insecurity for the funding of these services.<sup>897</sup> According to Coy and others, the removal of the ring fence on the Supporting People fund, which was the main funding source for refuges and housing related support, and integration into local authority budgets meant that 'there is no longer a guarantee of funding for domestic violence... services. Provision will be dependent on local authorities defining the existence of a local need.'<sup>898</sup> Refuge<sup>899</sup> and Women's Aid were opposed to this change. Specifically, Women's Aid stated:

Funding of existing local refuge and ancillary support services should be urgently secured. Existing mechanisms for funding must be co-ordinated and rationalised. Resources should be ring-fenced by central government for maintaining the existing network of refuges and developing new services.... A long term strategic plan for the development and funding of

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<sup>894</sup> Ashton T and Hempenstall C, 'Research into the Financial Benefits of the Supporting People Programme' (Department for Communities and Local Government 2009) 5.

<sup>895</sup> Inter-Departmental Review of Funding for Supported Accommodation, *Supporting People: A New Policy and Funding Framework for Support Services* (1998) 19–20.

<sup>896</sup> Local Government Act 2000 s.93

<sup>897</sup> Coy M, Kelly L and Foord J, 'Map of Gaps: The Postcode Lottery of Violence Against Women Support Services' (EVAW and EHRC 2007) 25.

<sup>898</sup> Coy M, Kelly L and Foord J, 'Map of Gaps 2: The Postcode Lottery of Violence Against Women Support Services in Britain' (EVAW and EHRC 2008) 33.

<sup>899</sup> See Refuge, 'Creating Sustainable Communities: Supporting Independence' (2006) 3; see also, Refuge, 'Refuge's Feedback on the Draft "Supporting People Guidance"' (2006) 2.

local and national refuge, outreach and helpline services should be drawn up by government ... based on a national mapping exercise of current provision and unmet service needs, to deliver carefully targeted and appropriate services.<sup>900</sup>

This view supports the ring-fenced funding of refuges and called for a long-term strategic plan in order to adequately sustain refuges.

The involvement of local authorities to the funding of refuges and specialist services could be identified as an improvement because local authorities might be more familiar with the needs of their communities; however, Bowstead argued:

[W]omen stay put if they can, stay local if they do have to relocate, and only cross local authority boundaries if they have to. ... Women's domestic violence refuges are not local services, and should not be planned or funded as if they are. They are an essential national service that needs to be distributed regionally in all types of places and hosted locally. Currently they are increasingly subject to local funding cuts by local authorities that cannot take into account the informal reciprocity they all benefit from. Funding decisions are therefore being taken by the wrong level of government, which is dealing with it by either cutting services that are essential to women elsewhere, or restricting services to only local women, thereby distorting the distinctive role of refuges. Forcing refuges to operate at the wrong scale will never be effective in meeting women's ... needs, and the effect across the country will be the loss of the services that enable women ... to escape domestic violence as far as they need to.<sup>901</sup>

Based on this view, local authorities are not appropriate to decide on the funding of refuge services in their communities because victims in the refuges come from different communities; hence, they are not able to determine the needs of the victims and the funds provided to the refuges.

This inadequacy is furthered due to the local authority procurement practices which disadvantage specialist refuges. Specifically, in the evaluation of the domestic violence response conducted in 2008 by the Select Committee on Home Affairs, Women's Aid argued:

Local authorities are choosing to put contracts for existing domestic violence services out to competitive tender, under the premise of needing to evidence value for money. Smaller specialist domestic violence organisations are comparatively disadvantaged in the tendering

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<sup>900</sup> Women's Aid, 'More Detailed Recommendations on Key Policy Areas' <<http://www.webarchive.org.uk/wayback/archive/20080618222826/http://www.womensaid.org.uk/page.asp?section=000100010009000100010001#2>> accessed 20 January 2017.

<sup>901</sup> Bowstead C J, 'Why Women's Domestic Violence Refuges Are Not Local Services' (2015) 35 (3) Critical Social Policy 327, 343-344.

process, which is resource-intensive and highly bureaucratic. Smaller specialist service providers are unable to compete, and are losing contracts to larger, generic service providers who may achieve marginally lower unit costs but have no experience of supporting domestic violence survivors.<sup>902</sup>

Similarly, Imkaan observed:

Supporting People teams prefer to contract with large mainstream charities to deliver BAMER services rather than continuing funding arrangements with smaller agencies that evidence a long history and expertise in working with BAMER women, even where these organisations performed well in SP [Supporting People] terms.<sup>903</sup>

As a result, BAME women's refuges were pressured to merge with generic refuges.<sup>904</sup> This result could be attributed, according to Refuge, to the fact that the commissioning process is supervised by LSPs in which women's organisations are significantly under represented, namely constituting less than 2 per cent of representation although it consists 7 per cent of the voluntary sector.<sup>905</sup> Therefore, this policy endangered the funding of specialist services to meet the diverse needs of the victims caused by their identities.

This could be detrimental to IPA victims with diverse needs, as generic refuges are often unable to provide the high level of support required for IPA victims such as victims with drug and alcohol problems because of a lack of resources and of specialist staff.<sup>906</sup> Such service was promoted by the feminist initiative, AVA's Stella Project, to support IPA victims with addiction and mental problems facing homelessness. This developed work around multiple disadvantages 'refers to those people who face multiple and intersecting inequalities including gender based violence and abuse, substance use, mental ill health, homelessness....'<sup>907</sup> Since victims with such needs are not provided with specialist services on their combined multiple disadvantages, AVA issued guidance, in which it provided advice

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<sup>902</sup> Select Committee on Home Affairs, 'Supplementary Memorandum Submitted by Women's Aid' (2008) <<http://www.publications.parliament.uk/pa/cm200708/cmselect/cmhaff/263/263we104.htm>> accessed 20 January 2017.

<sup>903</sup> Mouj A, 'A Right to Exist-A Paper Looking at the Eradication of Specialist Services to BAMER Women and Children Fleeing Violence: Experiences of BAMER Refuges' (Imkaan 2008) 6.

<sup>904</sup> Women's Resource Centre, 'The State of the Women's NGO Sector Shadow Report Submitted to the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) in Response to the United Kingdom's 6th Periodic Report' (2008) 23.

<sup>905</sup> Refuge, *Together We Can End Violence against Women and Girls A Consultation Paper* (2009) 37.

<sup>906</sup> Home Affairs Committee, *Domestic Violence, Forced Marriage and 'Honour'-Based Violence* (HC 2007-08, 263-II) 338.

<sup>907</sup> AVA, 'Multiple Disadvantage' <<https://avaproject.org.uk/ava-services-2/multiple-disadvantage/>> accessed 25 January 2017.

for the refuge sector on how to support these victims.<sup>908</sup> Hence, the merging of specialist with generic refuges undermines initiatives as the Stella Project, based on which they can focus on the needs of victims with multiple and intersecting disadvantages.

Additionally, the problematic governmental practice on providing adequate housing to IPA victims is argued based on the SBS assertion that

We are currently facing threat of closure as a result of our local authority's (Ealing) decision to withdraw our funding as of April 2008.... The local authority's decision is based on the view that there is no need for specialist services for black and minority women and that services to abused women in the borough need to be streamlined.... The attempt to compel us to meet the needs of all women will mean that we will have to reduce our services to black and minority women across London and the country. Abused black and minority women, who already face considerable racism, discrimination and cultural pressures, will no longer have access to a specialist service. We have never denied our services to any woman who contacts SBS but our focus has out of necessity, and in recognition of the demographic composition of the area, been on meeting the needs of black and minority women who continue to be one of the most disempowered sections of our society.<sup>909</sup>

This statement indicated that the government did not provide an adequate response to BAME victims who need specialist support.

The SBS identified that a reason for the reduction of specialist services to BAME victims is:

[T]he implementation of flawed 'equality' and 'cohesion' policies also threatens the existence of long standing reputable organisations such as SBS. The rationale behind these policies is the need to recognise, create and support single faith (Muslim) groups and enable them to build their capacity to address social issues. ... The ultimate danger of such 'cohesion' strategies is that it will be highly divisive and the gains that have been achieved by secular black and minority women's groups will be severely undermined. Many social issues will be addressed within a religious framework which will inevitably reduce the options that black and minority women and children will have in the face of violence and abuse.<sup>910</sup>

This practice suggests that religious discrimination prevailed gender inequality in respect of IPA services. For this reason, it is argued that the government did not consider gender as the dominant identity.

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<sup>908</sup> See AVA, 'Stella Project Toolkit: Domestic Abuse and Substance Use' (2007) 59.

<sup>909</sup> Southall Black Sisters, 'Southall Black Sisters Is Under Threat of Closure' (2008) 1.

<sup>910</sup> Select Committee on Home Affairs, 'Memorandum Submitted by Southall Black Sisters' (2008) <<http://www.publications.parliament.uk/pa/cm200708/cmselect/cmhaff/263/263we62.htm>> accessed 21 January 2017.

The importance of gender inequality for IPA victims was opposed by other social inequalities, which although important, they were of secondary importance to gender in the context of IPA. De-gendering the IPA policies can be detrimental for the victims, as Imkaan argued in its campaign against the under-funding of refuges:

[I]nitiatives such as the Supporting People funding system and attempts to promote 'community cohesion' and 'mainstreaming' are leading to an acute lack of funding for specialist BAMER services, resulting in a devastating loss of skills and the closure or 'decommissioning' of some services. 'Community cohesion' and 'mainstreaming' are doing exactly the opposite - creating a system where women and children with specialist needs are significantly disadvantaged in their recovery from domestic violence and are less likely to be able to contribute to the community once more.<sup>911</sup>

Therefore, the governmental response needs to prioritise gender inequality because it is the cause of IPA while other inequalities should be additionally protected in a combined manner. If refuges do not provide adequate protection to the victims, then victims' encouragement to access the CJS is undermined. As Imkaan pointed, 'Services are focused more on the CJS process without adequately resourcing services that are needed to help women make decisions about whether to pursue criminal or civil action—we know women prioritise safe housing over and above anything else when they leave....'<sup>912</sup> Hence, even a CJS response will be jeopardised due to the inadequate temporary housing support of the victims.

The governmental practice, in respect of refuges was problematic, as it did not support them properly through legislation and funding. The housing legislation, although it has been improved, it tends to burden refuges by avoiding to secure permanent accommodation to victims. Moreover, the funding of refuges is inadequate since the SPP, as implemented by local authorities, tends to promote a gender-neutral approach that favours generalist services rather than the specialist provided by refuges.

To conclude, during this period the Labour government attempted to support victims through refuges by recognising at a policy level the importance of refuge services. Feminist activists and theorists argued that in reality this support was not provided effectively because of the housing legislation undermining specialist refuges and the funding provided by local

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<sup>911</sup> Imkaan, 'Re: EDM 693, Black, Minority Ethnic and Refugee Women and Domestic Violence' (14 January 2008) 1-2.

<sup>912</sup> Select Committee on Home Affairs, 'Supplementary Memorandum Submitted by Imkaan' (2008) <<http://www.publications.parliament.uk/pa/cm200708/cmselect/cmhaff/263/263we101.htm>> accessed 20 January 2017.

communities that tended to support generalist services. Despite the feminist arguments, the government did not proceed to any changes in order to improve the housing support to IPA victims. Additionally, the government recognised the importance of early intervention to young individuals through education in order to improve the prevention of IPA and the protection of victims. For this reason, it introduced the SRE in the school curriculum. Feminist activists argued that the governmental practice was not effective because it did not make mandatory the teaching of PSHE and did not address IPA in the context of gender inequality. The Labour government concluded its administration without integrating these recommendations.

### **5.3 The Prevention of IPA and the Protection of Its Victims from the Coalition Government**

The Coalition government in its VAWG strategy continued to aim to the prevention of IPA and the protection of its victims through a whole-system response. Specifically, it aimed to ‘prevent such violence from happening by challenging the attitudes and behaviours which foster it and intervening early where possible to prevent it; provide adequate levels of support where violence does occur.’<sup>913</sup> These would have been promoted by ‘challenging the attitudes, behaviours and practices which cause women and girls to live in fear’<sup>914</sup> and ‘by continuing to provide a core of stable funding. Through this, we want to encourage local decision-makers to take account of violence against women and girls as a national priority when determining local ones.’<sup>915</sup> These aims of prevention and protection are promoted through measures such as early intervention to young people, legal aid, and refuges.

#### **5.3.1 Early Intervention through Education**

The Coalition government continued treating the PSHE and SRE in the same way as the Labour government because in 2012 the EVAW asserted with its ‘Schools Safe 4 Girls’ campaign that VAWG and gender equality should be addressed throughout the school curriculum<sup>916</sup> and pointed that:

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<sup>913</sup> HM Government, *Call to End Violence against Women and Girls* (2011) 5.

<sup>914</sup> *ibid* 9.

<sup>915</sup> *ibid* 15.

<sup>916</sup> EVAW, ‘Schools Safe 4 Girls’ <<http://www.endviolenceagainstwomen.org.uk/education>> accessed 25 October 2016.

Education policy needs to address two inter-related factors; attitudes to gender and to VAWG are formed early, and young people are particularly at risk of specific forms of VAWG. Therefore schools ... are critical, both for supporting young people at risk of, or experiencing abuse, as well as helping to shape healthy, equal and respectful attitudes and behaviours to prevent abuse in the first place.<sup>917</sup>

This view promoted the idea that the prevention of IPA can be achieved with early intervention through the education of young individuals that challenges IPA within the context of gender inequality.

The lack of an appropriate representation of gender inequality in the SRE is further evidenced in the Ofsted report 'Not Yet Good Enough',<sup>918</sup> published in 2013. In this report, Ofsted identified regarding the teaching of SRE:

Sex and relationships education required improvement in over a third of schools. In primary schools this was because too much emphasis was placed on friendships and relationships.... In secondary schools it was because too much emphasis was placed on 'the mechanics' of reproduction and too little on relationships, sexuality, the influence of pornography on students' understanding of healthy sexual relationships, dealing with emotions and staying safe.<sup>919</sup>

This report illustrated the need of improving the SRE provided both in secondary and primary schools as the SRE curriculum did not raise adequately awareness among young individuals on IPA in order to transform their perception. Due to the negative influence that young people receive on relationships from social beliefs and attitudes, including pornography, the government should have strongly intervened through the SRE to support them shape healthy views on relationships and intolerance for IPA.

After the Ofsted report, in 2013 questions were raised in the HL regarding the quality of the SRE<sup>920</sup> while during the discussions occurring in the HC for the Children and Families Bill, the SRE was considered to be included in the Bill;<sup>921</sup> however, this attempt was unsuccessful on a division by 303 votes to 219.<sup>922</sup> Moreover, the HC Education Committee launched an

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<sup>917</sup> EVAW, 'Deeds or Words? Analysis of Westminster Government Action to Prevent Violence against Women and Girls' (2013) 9.

<sup>918</sup> Ofsted, *Not Yet Good Enough: Personal, Social, Health and Economic Education in Schools* (2013).

<sup>919</sup> *ibid* 6-7.

<sup>920</sup> HL Deb 11 June 2013 vol 745 cols 1512-1513.

<sup>921</sup> HC Deb 11 June 2013 vol 564 col 255.

<sup>922</sup> *ibid* 270.



inquiry in 2014 on whether, among others, PSHE education should be statutory and whether the governmental new guidance on SRE is suitable.<sup>923</sup> Women's Aid responded:

PSHE education should be made a statutory part of the National Curriculum.... Just as children need to learn to read and write, they need to learn the skills of being responsible and respectful, no matter their own gender, ethnicity, religion, culture or socio-economic status or that of others.... Within PSHE education, education is needed to end Violence Against Women and Girls (VAWG) with the key themes of healthy relationships, gender equality and safety embedded across the whole curriculum, using a whole school approach and addressing the core issues. It is vital that teachers be given comprehensive training directly on PSHE education and not as an add-on to their existing subject(s).<sup>924</sup>

According to this view, the PSHE should become statutory in order to make it compulsory for all students, despite their identities, and give it equal status with the other subjects of the national curriculum. If IPA is targeted in a statutory module, this would send a strong message of intolerance against IPA and gender inequality and would help raise awareness and contribute to the shaping of the perception of young people on these issues.

Further, the prevention of IPA and protection of victims with diverse needs can be appropriately promoted by requiring the training of the professionals involved in the implementation of a policy or law. However, such training provided to the teachers continued to be limited because as EVAW critiqued:

Resources on sex and relationships for teachers working with children and young people with special and additional needs remain lacking, which should be a particular concern as these children are often more vulnerable and therefore more likely to be targeted by abusers. Recent materials also fail to adequately address forms of... abuse experienced by black and minority ethnic girls....<sup>925</sup>

The importance of taking into account victims' specific needs in order to prevent them from victimisation can be inferred by the EVAW statement because the SRE needs to be provided in an equal manner to all young individuals, including BAME women.

The above views were also supported by the Education Committee's recommendations that 'the DfE develop a workplan for introducing age-appropriate PSHE and RSE [Relationships and Sex Education] as statutory subjects in primary and secondary schools, setting out its

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<sup>923</sup> HC Education Committee, *Life Lessons: PSHE and SRE in Schools* (HC 2014–15, 145) para 2.

<sup>924</sup> Women's Aid, 'Women's Aid Submission to Education Select Committee Inquiry on PSHE Education and SRE in Schools' (2014) para 1.1-1.3.

<sup>925</sup> EVAW, 'Written Evidence from End Violence Against Women Coalition' (2014) para 7.2-7.3.

strategy for improving the supply of teachers able to deliver this subject....<sup>926</sup> EVAW agreed with these recommendations, as it stated:

We warmly welcome this report and its recommendation that ...(SRE) as part of PSHE... be compulsory in all primary and secondary schools (1)... Our members, who provide support services for women and girls who have experienced...domestic violence... have long said that compulsory SRE, which talks about ... respect, is the key long-term way of preventing future abuse.... The Education Committee recognises that young people have a right to information about relationships and sex which can help keep them healthy and safe – especially learning about consent, equality, respect and abusive behaviours. It also notes that more vulnerable children, including those who are looked after, those with special educational needs and LGBT young people are the most vulnerable to exploitation without good SRE.<sup>927</sup>

Despite these critiques and recommendations, the governmental practice did not improve as the ‘Sex and Relationships Education (Curriculum) Bill 2014-15’, introduced by Diana Johnson MP, aiming to include SRE in the National Curriculum<sup>928</sup> did not receive a Second Reading.<sup>929</sup> For this reason, the Coalition government completed its administration without covering these gaps in its crime prevention approach to IPA through education, despite the fact that feminist activists continued to reiterate their arguments.

The mandatory teaching of SRE could be beneficial for the prevention of IPA because based on Refuge’s study, 48 per cent of the young women questioned have experienced IPA through emotional abuse and physical violence. From these victims, 61 per cent chose not to reveal their victimisation for various reasons, including feeling responsible for their partners’ behaviour while 59 per cent did not know where to receive support.<sup>930</sup> These findings suggest a limited awareness among young people on IPA and the necessity of raising awareness among students in order to improve the prevention of IPA. This can be further attested by Fox and others that evaluated the Relationships without Fear programme, which was provided for 6 weeks to students, aged 13-14, through the PSHE.<sup>931</sup> Specifically, they found

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<sup>926</sup> HC Education Committee, *Life Lessons: PSHE and SRE in Schools* (HC 2014–15, 145) para 23.

<sup>927</sup> EVAW, ‘MPs Call for Compulsory Relationships & Sex Education’ (17 February 2015) <<http://www.endviolenceagainstwomen.org.uk/news/193/mps-call-for-compulsory-relationships-sex-education>> accessed 29 September 2016.

<sup>928</sup> HC 21 Oct 2014 vol 586 cols 764-765.

<sup>929</sup> Sex and Relationships Education (Curriculum) Bill 2014-15 <<http://services.parliament.uk/bills/2014-15/sexandrelationshipseducationcurriculum.html>> accessed 22 October 2016.

<sup>930</sup> Refuge, ‘Starting in Schools’ (2008) 6.

<sup>931</sup> Fox L C, Corr M L, Gadd D and Sim J, ‘Evaluating the Effectiveness of Domestic Abuse Prevention Education: Are Certain Children More or Less Receptive to the Messages Conveyed?’ (2016) 21 *Legal and Criminological Psychology* 212, 216.

that although this programme promoted a change the students' attitude towards IPA, there were not any changes in help-seeking. For this reason, they argued that young people should be provided with more than a one-off programme in order to persuade them in seeking help.<sup>932</sup>

### 5.3.2 Legal Aid

Legal aid facilitates women's access to justice;<sup>933</sup> for this reason, it contributes to the prevention of IPA and the protection of victims. IPA victims were provided with legal aid with the Access to Justice Act 1999<sup>934</sup> in cases such as disputes about the division of assets, divorce, disputes about contact and residence of children, and injunctions against ex-partners.<sup>935</sup> Towers and Walby reported that for the cases receiving legal aid, women constituted the 65% of family law cases, 60% of housing cases, and 33% on divorce cases.<sup>936</sup> In fact, ROW argued that legal aid facilitated women who were unable to pay for legal advice and representation in order to be protected from IPA in the civil courts, terminate an abusive relationship, receive welfare benefits and housing support, and protect their children from abuse.<sup>937</sup> The legal aid provision is particularly important for BAME victims for whom marriage is often their unique source of financial support while employment, housing or means of maintenance may be absent.<sup>938</sup>

Despite the importance of legal aid for IPA victims, the austerity measures introduced by the Coalition government affected the provision of legal aid.<sup>939</sup> Specifically, the government in order to review legal aid launched the consultation 'Proposals for the Reform of Legal Aid in England and Wales',<sup>940</sup> in which it recognised that

[I]n domestic violence cases involving, for example, non-molestation orders and occupation orders, the victim is at risk of physical harm and we therefore view these proceedings as at

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<sup>932</sup> *ibid* 224.

<sup>933</sup> Troup M, 'Cuts to Legal Aid: The Impact on Women's Access to Justice' (1997) 9 (1) *Australian Feminist Law Journal* 151, 151.

<sup>934</sup> See Access to Justice Act 1999 Sch.2 s.2 (3)(h).

<sup>935</sup> Justice Committee, *Government's Proposed Reform of Legal Aid* (HC 2010-11, 681-I) para 72.

<sup>936</sup> Towers J and Walby S, 'Measuring the Impact of Cuts in Public Expenditure on the Provision of Services to Prevent Violence against Women and Girls' (2012) 22.

<sup>937</sup> Rights of Women, 'Women's Access to Justice: A Research Report' (2011) 3.

<sup>938</sup> The Legal Services Commission, 'Domestic Abuse – Access to Justice Report on Black, Asian and Minority Ethnic (BAME) Women' (2009) 4-5.

<sup>939</sup> Women's Resource Centre, 'Surviving the Crisis: The Impact of Public Spending Cuts on Women's Voluntary and Community Organisations' 8.

<sup>940</sup> Ministry of Justice, *Proposals for the Reform of Legal Aid in England and Wales* (Cmd 7967, 2010).

the high end of the spectrum in terms of importance of the issues at stake. ... And while it is possible for litigants to represent themselves in these proceedings, we consider that victims of abuse may be particularly vulnerable. We have therefore concluded that the importance of the issue and the characteristics of the litigants are such that funding is justified.... We recognise that domestic violence may also be an important element of certain ancillary relief cases (disputes about money and property on divorce) and private law children and family cases (such as child contact and residence disputes). Given the need to direct resources at the issues of highest importance in a fair and balanced way, we consider ... that legal aid is not routinely justified for ancillary relief proceedings and private law family and children proceedings. But we recognise that where there is an ongoing risk of physical harm from domestic violence, different considerations apply. In these cases, we consider that the provision of legal aid is justified where the client may be unable to assert their rights and may face intimidation because of risk of harm.<sup>941</sup>

Through this policy document, the government expands the availability of legal aid to victims with diverse needs such as victims with children, housing needs, and financial needs; however, this support is limited only to victims of physical violence since it excludes victims of emotional abuse.

Regarding the exclusion of emotionally abused victims, ROW responded:

[W]e consider that legal aid must be available to women who experience any form of domestic violence, not just physical violence. Legal aid not only enables a woman to protect herself from violence through the use of injunctions, it also enables her to leave a violent relationship and protect her children from abuse.<sup>942</sup>

Consequently, the Government responded that for the increase of victims' protection, the criteria for the domestic violence exception originally proposed in the consultation need to be widened.<sup>943</sup>

As a result, the government introduced the Legal Aid Sentencing and Punishment of Offenders Act 2012 (LASPO).<sup>944</sup> Although LASPO deprived most family proceedings from legal aid, it exempted legal aid in IPA cases<sup>945</sup> but required specific evidence for the abuse that needed to be obtained 24 months prior to the legal aid application.<sup>946</sup> According to Baroness Scotland of Asthal, from the Labour party, the requirement of specific evidence

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<sup>941</sup> *ibid* 41-42.

<sup>942</sup> Rights of Women, *Rights of Women's Response to the Consultation 'Proposals for the Reform of Legal Aid in England and Wales'* (2011) 6.

<sup>943</sup> Ministry of Justice, *Reform of Legal Aid in England and Wales: The Government Response* (2011) 15.

<sup>944</sup> Legal Aid Sentencing and Punishment of Offenders Act 2012.

<sup>945</sup> Grimwood G G, 'Legal Aid for Victims of Domestic Violence' (2016) 3.

<sup>946</sup> Legal Aid Agency, 'The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO)-Evidence Requirements for Private Family Law Matters' (2014) 4, 25.

would cause problems in the implementation of the law because ‘The evidence gateway ignores the fact that most women do not seek or obtain statutory measures when fleeing domestic violence.’<sup>947</sup> Moreover, ROW, which has been campaigning for the improvement of IPA victims’ access to legal aid,<sup>948</sup> has argued that the new requirement of specific evidence caused significant challenges to victims in evidencing non-physical forms of violence, including coercive control.<sup>949</sup> Similarly, Women’s Aid reported ‘in a survey that we did last year of over 1,000 survivors of domestic violence, 80% of them experienced emotional and psychological abuse.... It is those sorts of abuses ...that are very difficult to evidence.’<sup>950</sup> The inability of this law to protect emotionally abused victims is inconsistent with the aim of the statute to make legal aid available to any IPA victim since the new domestic violence definition that includes coercive control has been integrated in the Act.<sup>951</sup>

The Coalition government attempted to resolve this problem in 2014 by introducing new evidential criteria with regulation 33 of the LASPO.<sup>952</sup> Despite this amendment, Refuge stated that ‘we are concerned that barriers still exist which will prevent women from accessing legal aid, and we recommend that action is taken to further widen the ‘gateway’ to legal aid for victims of domestic violence....’<sup>953</sup> Similarly, ROW, Women’s Aid, and Welsh Women’s Aid argued:

[B]y broadening the domestic violence evidence criteria the Government has made a step towards its promise to make family law legal aid available for those affected by domestic violence. ...Despite the amendments the evidence criteria remains too restrictive and continues to deny women affected by violence access to the legal remedies which would afford them safety.<sup>954</sup>

One of these restrictions, according to ROW, is the 24 months time limit since it does not reflect the real experiences of female victims, who may remain at risk of further abuse from

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<sup>947</sup> HL Deb 27 Mar 2013 vol 744 col 1106.

<sup>948</sup> see Rights of Women, ‘Our campaigns: Legal Aid’ <<http://rightsofwomen.org.uk/about-us/herstory/our-campaigns-2/#Legal%20aid>> accessed 17 October 2016.

<sup>949</sup> Rights of Women, ‘Rights of Women’s Evidence to the Justice Select Committee on the Impact of Changes to Civil Legal Aid under the Legal Aid, Sentencing and Punishment of Offenders Act 2012’ (2014) 3.

<sup>950</sup> Justice Committee, *Impact of Changes to Civil Legal Aid under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012* (HC2014- 15, 311) para 66.

<sup>951</sup> See Legal Aid Sentencing and Punishment of Offenders Act 2012 Schedule 1 s.12 (9).

<sup>952</sup> Civil Legal Aid (Procedure) Regulations 2012, SI 2012/3098, reg 33.

<sup>953</sup> Refuge, ‘Refuge Submission to the Justice Committee Inquiry into the Impact of Changes to Civil Legal Aid under the Legal Aid, Sentencing and Punishment of Offenders Act 2012’ (2014) 1.

<sup>954</sup> Rights of Women, Women’s Aid and Welsh Women’s Aid, ‘Evidencing Domestic Violence: Reviewing the Amended Regulations’ (2014) 8.

their perpetrator for many years after the end of the relationship.<sup>955</sup> This 24-month restriction does not consider the ongoing risks and the dynamics of abusive relationships.<sup>956</sup> In fact, research conducted by ROW identified that from the victims who met the financial eligibility criteria for legal aid, 51.8% of them did not have the prescribed evidence for family law legal aid, partly because of the 24 month restriction.<sup>957</sup>

The inadequate support of IPA victims from legal aid due to the austerity cuts promotes gender inequality.<sup>958</sup> These restrictions do not only affect women generally but they specifically affect women with specific identities such as of a low financial income. This is argued because the legal aid cuts affect mostly women who are financially disadvantaged and without the support of legal aid, they will have to either represent themselves or not continue with legal proceedings.<sup>959</sup> Since IPA victims might feel intimidated to represent themselves in court, they could choose to stay in the abusive relationships or not seek the support of the legal system. Therefore, the legal aid cuts promote a gender-neutral approach to the response against IPA.

Further, improving the law on legal aid would not have been sufficient in order to ensure equal protection of the victims in a practical level. There is need, as ROW and others recommended, that ‘Training, guidance and awareness raising must be improved in order to improve the responses of the gatekeepers ... to ensure that women affected by violence are appropriately assessed for eligibility for legal aid and supported to obtain the appropriate evidence.’<sup>960</sup> This training is necessary because professionals involved with the process of legal aid need to be aware of the issues affecting the victims and how they should support them in order to provide them with equal access to legal aid.

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<sup>955</sup> Rights of Women, ‘Rights of Women’s Evidence to the Justice Select Committee on the Impact of Changes to Civil Legal Aid under the Legal Aid, Sentencing and Punishment of Offenders Act 2012’ (2014) 3.

<sup>956</sup> Camplin H and Scott E, “‘We Are a Group of Feminist Lawyers Doing What We Can’”: An Interview with Emma Scott, Director of Rights of Women’ (2015) 23 *Feminist Legal Studies* 319, 323.

<sup>957</sup> Rights of Women, ‘Evidencing Domestic Violence: A Barrier to Family Law Legal Aid’ (2013) 7-8.

<sup>958</sup> See Morrow M, Hankivsky O and Varcoe C, ‘Women and Violence: The Effects of Dismantling the Welfare State’ (2004) 24 (3) *Critical Social Policy* 358, 365.

<sup>959</sup> Fawcett Society, ‘The Impact of Austerity on Women’ (2012) 20.

<sup>960</sup> Rights of Women, Women’s Aid and Welsh Women’s Aid, ‘Evidencing Domestic Violence: A Year On’ (2014) 1.

### 5.3.3 Specialist Refuges

The impact of the legal aid restrictions can further exacerbate women's vulnerability to abuse with the closure of refuges due to the funding cuts caused by the austerity measures taken by the Coalition government. These austerity measures of the government have impacted the refuge support to IPA victims due to the cuts on the funding of the SPP provided to the local authorities.<sup>961</sup> The closure of specialist refuges due to funding cuts can lead to provide gender-neutral services to victims because it undermines the expert, long-term, and holistic support provided by specialist refuges.<sup>962</sup> Towers and Walby suggested that the specialist refuges would face funding cuts, as the SPP would have been subject to an 11.5% budget cut between 2011 and 2014.<sup>963</sup>

This practice was opposed by Women's Aid with its 'Save Survivors' Services' campaign,<sup>964</sup> which attempted to raise public awareness on the issue of the cutting of funds for specialist services resulting to the reduction of refuge and outreach services provided to IPA victims. Through this campaign, Women's Aid raised its concern that the cuts were unfair and disproportionate because they reduced refuge spaces that were never sufficient to meet demand in the first place.<sup>965</sup> Similarly, ROW argued that 'The Government needs to fund specialist support services for survivors so that all women affected by violence can access a place of safety and life saving services'.<sup>966</sup> The preservation of specialist refuges has significant importance since these organisations endeavor to promote social change by supporting victims, changing public attitudes, raising professional awareness, educating

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<sup>961</sup> Women's Resource Centre, 'The Impact of Austerity Measures upon Women: A Case Study of the North East of England' (2013) 19.

<sup>962</sup> Baird V, 'Every Woman Safe Everywhere: Labour's Commission into Women's Safety' (2012) 19.

<sup>963</sup> Towers J and Walby S, 'Measuring the Impact of Cuts in Public Expenditure on the Provision of Services to Prevent Violence against Women and Girls' (Northern Rock Foundation and Trust for London 2012) 26.

<sup>964</sup> Women's Aid, 'Save Survivors' Services Campaign: Stop the Cuts to Specialist Domestic and Sexual Violence Services'

<<http://www.webarchive.org.uk/wayback/archive/20120124150106/http://www.womensaid.org.uk/page.asp?section=0001000100100017&sectionTitle=Saving+Survivors%27+Services+Campaign#background>> accessed 4 October 2016.

<sup>965</sup> Women's Aid, 'Women's Aid's Survey Reveals Fear that Over Half of Refuge and Outreach Services Could Face Closure' (7 March 2011)

<<http://www.webarchive.org.uk/wayback/archive/20120124150110/http://www.womensaid.org.uk/domestic-violence-press-information.asp?itemid=2599&itemTitle=Women%92s+Aid%92s+survey+reveals+fear+that+over+half+of+refuge+and+outreach+services+could+face+closure&section=0001000100150001&sectionTitle=Press+releases>> accessed 4 October 2016.

<sup>966</sup> Rights of Women, 'Ending Domestic Abuse Rights of Women's Position Statement on Domestic Violence' (2009) 2.

children and young people, and preventing violence.<sup>967</sup> Moreover, BAME led services engage marginalised individuals who may experience multiple barriers to accessing the CJA such as the police, the CPS, and the courts by improving their access and reducing their isolation.<sup>968</sup> For this reason, the support of these specialist services would promote gender equality and diversity because specialist refuges provide services to different social groups of women and attempt to raise public awareness on IPA.

On this point, Women's Aid repeated its concern that 'the removal of ring fenced funding for [SPP]... coupled with cuts to local authority budgets has created a situation where councils across the country are making disproportionate cuts and rash decisions at the expense of protecting some of the most vulnerable people in society.'<sup>969</sup> Due to this, Women's Aid reported that in 2012 'nearly 30,000 women were turned away from refuge services last year because there was no bed space at the service they contacted and now 1 in 5 of our members are being forced to reduce their level of provision, with some being forced to close completely.'<sup>970</sup> Thus, the closure of refuges and the reduction of their services has not been caused only due to the local authorities' practice to prefer generalist rather than specialist IPA refuges but also due to the governmental cuts on the local authorities budgets.

The government aimed to improve the support of specialist services as it stated '...we must ensure that victims who do not wish to formally report offences receive the support and services they need.'<sup>971</sup> However, its aim was not successfully implemented as it can be inferred by the fact that Women's Aid launched in 2014 the 'SOS: Save Refuges, Save Lives' campaign whose purpose was to put pressure on the government not to cut funds from

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<sup>967</sup> Women's Aid and Imkaan, 'Successful Commissioning: A Guide for Commissioning Services that Support Women and Children Survivors of Violence' (2014) 5.

<sup>968</sup> *ibid*

<sup>969</sup> Women's Aid, 'Women's Aid's Survey Reveals Fear that Over Half of Refuge and Outreach Services Could Face Closure' (7 March 2011)

<<https://www.webarchive.org.uk/wayback/archive/20111218232135/http://www.womensaid.org.uk//domestic-violence-press-information.asp?itemid=2599&itemTitle=Women%92s+Aid%92s+survey+reveals+fear+that+over+half+of+refuge+and+outreach+services+could+face+closure&section=0001000100150001&sectionTitle=Press+releases>> accessed 11 March 2017.

<sup>970</sup> Women's Aid, 'Cuts in Refuge Services Putting Vulnerable Women and Children at Risk' (27 November 2012)

<<https://www.webarchive.org.uk/wayback/archive/20121218230706/http://www.womensaid.org.uk//domestic-violence-press-information.asp?itemid=2944&itemTitle=Cuts+in+refuge+services+putting+vulnerable+women+and+children+at+risk&section=0001000100150001&sectionTitle=Press+releases>> accessed 11 March 2017.

<sup>971</sup> HM Government, *A Call to End Violence against Women and Girls: Action Plan 2014* (2014) 14.



refuges and to preserve the national network of specialist refuges.<sup>972</sup> Moreover, Refuge reported that the refuge provision was seriously threatened due to the continuous cuts to local funding and poor commissioning practices.<sup>973</sup>

Although the Government announced to provide a £10 million fund for local housing authorities to help them strengthen refuge services,<sup>974</sup> Women's Aid asserted that 'We are calling on the government to Save Our Services by committing to preserving the national network of specialist refuges and to exploring a new model of funding and commissioning for refuges which supports a sustainable service and high quality care.'<sup>975</sup> Despite this funding, the support of victims with diverse needs was not adequate since this funding did not constitute a permanent solution.

The importance of supporting specialist refuges is argued based on Women's Aid research, which showed that 43.7% from the 953 victims using refuges reported their cases to the police.<sup>976</sup> Moreover, the support of specialist refuges can be beneficial for the support of victims because generic services were four times more likely to be unable to meet victims' needs than specialist services.<sup>977</sup> The significance of specialist services is also apparent for female victims with diverse needs, as Imkaan reported that 91% of female victims felt better supported by a specialist women-only service and BAME-women-only services.<sup>978</sup>

Therefore, the prioritisation of specialist refuges can provide a stronger support to IPA victims than generalist refuges and help them escape abuse and/or seek the support of the CJS.

Overall, the practice of the Coalition government has not been more effective than the Labour government. Feminist activists raised concerns on the governmental response to IPA

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<sup>972</sup> Women's Aid, 'Help Us Save Lives, Save Refuges' (2014) <<https://web.archive.org/web/20141009223750/http://www.womensaid.org.uk:80/page.asp?section=0001000100100022&sectionTitle=SOS>> accessed 4 October 2017.

<sup>973</sup> Refuge, 'Refuge Response to the All-Party Parliamentary Group on Domestic and Sexual Violence Inquiry: The Changing Landscape of Domestic and Sexual Violence Services' (2014) 5.

<sup>974</sup> Home Office, 'Government Action to Help Eliminate Violence against Women and Girls' (25 November 2014) <<https://www.gov.uk/government/news/government-action-to-help-eliminate-violence-against-women-and-girls>> accessed on 10 August 2017.

<sup>975</sup> Women's Aid, 'SOS Save Refuges, Save Lives: Why We Need to Save Our Services' (2014) 9.

<sup>976</sup> Women's Aid, 'Survival and Beyond: The Domestic Abuse Report 2017' (2018) 22.

<sup>977</sup> Women's Aid, 'A Growing Crisis of Unmet Need' (2013) 14.

<sup>978</sup> Imkaan, 'Beyond the Labels: Women and Girls' Views on the 2013 Mayoral Strategy on Violence against Women and Girls' (2013) 10.

through education, legal aid, and refuges. Despite these concerns, the issue of early intervention through education continued to be problematic since SRE was not given a statutory status and gender inequality was not addressed in its teaching. Moreover, the funding of refuges remained problematic, as refuges continued to close due the funding cuts while the legal aid reform caused barriers to the victims in accessing justice.

#### **5.4 The Contemporary Developments on IPA during the Conservative Government**

Despite the problematic practice of the Coalition government, the Conservative party in its 2015 Election Manifesto stated its aim to ensure the future of refuges.<sup>979</sup> This shift towards IPA was a political consensus among several political parties. For example, the Labour Party in its Manifesto also acknowledged the problem of cutting funds for refuges and the legal aid access to IPA victims; particularly, it stated that ‘We will...provide more stable central funding for women’s refuges and...widen access to legal aid for victims of domestic violence.’<sup>980</sup> Similarly, the liberal democrat party’s aim was to ‘Improve the provision of...refuges for victims of domestic violence with a national network and national sources of funding’<sup>981</sup> while the Green party committed to ‘provide proper funding for Women’s Refuges for survivors of domestic violence’.<sup>982</sup> All these political commitments from different parties suggest that significant improvements could have been expected.

This political consensus could be possibly attributed to the efforts of feminist activists. For example, the EAW included in its Women’s Safety Manifesto all of the above issues<sup>983</sup> and wrote to the parties’ leader requesting to include in their policies the protection of IPA victims by adopting the recommendations of their Manifesto. These recommendations included raising the issue of cutting specialist services for IPA victims, especially BAME victims, and the issue of cutting legal aid as these cuts cause further risk to victims.<sup>984</sup> Furthermore, feminist activists attempted to raise social awareness on the funding cuts for refuges and to support the specialist services on IPA through social media campaigning. Such

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<sup>979</sup> Conservative Party, ‘The Conservative Party Manifesto 2015’ (2015) 59.

<sup>980</sup> Labour Party, ‘Britain Can Be Better: The Labour Party Manifesto 2015’ (2015) 53.

<sup>981</sup> Liberal Democrats, ‘Manifesto 2015’ (2015) 121.

<sup>982</sup> Green Party, ‘For the Common Good: General Election Manifesto 2015’ (2015) 76.

<sup>983</sup> see EAW, ‘Women and Girls’ Safety Manifesto: Priorities for the General Election 2015’ (2015) 4.

<sup>984</sup> see EAW, ‘Your Policies to End Violence Against Women and Girls’ (Letter to David Cameron, 2 April 2015) 2; EAW, ‘Your Policies to End Violence Against Women and Girls’ (Letter to Ed Miliband, 2 April 2015) 2.

examples of feminist activist groups are the Go Feminist<sup>985</sup> and the Sisters Uncut that have been campaigning against the funding cuts on the specialist services provided to female victims. Sisters Uncut focuses on women's violent experiences impacted by their race, class, disability, sexuality and immigration status.<sup>986</sup> Further to these campaigns, the Everyday Sexism project,<sup>987</sup> which operates on the Internet, campaigned against IPA as a form of gender inequality and discrimination against women, by voicing the everyday experiences of women with sexism.<sup>988</sup>

As presented in section 3.4, the Conservative government continued its work on IPA through its strategy, which promoted the prevention of IPA by stating:

Preventing violence and abuse from happening in the first place will make a significant difference to overall prevalence of these crimes. We will continue to challenge the deep-rooted social norms, attitudes and behaviours that discriminate against and limit women and girls across all communities.<sup>989</sup>

Moreover, the government aimed to improve the protection of victims, as it stated 'We will ensure that victims get the help they need when they need it. This needs a collaborative response both between Government and local areas, and between all local agencies in each area.'<sup>990</sup> Based on these statements, the government recognised the need of a whole-system response that includes the collaboration of the government with the local multi-agency partnerships in order to achieve prevention and substantial equal protection of the victims that is based on their specific needs. Main important issues to achieve these aims, as identified by the feminist activists mentioned above, are the problems with SRE, refuges, and legal aid.

#### **5.4.1 Education**

The prior examination of education identified that the social perception of young individuals towards IPA was not sufficiently challenged by the Coalition government through education. Although the Conservative Government did not specify whether it would make PSHE or SRE

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<sup>985</sup> see Go Feminist <<http://www.gofeminist.org.uk/>> accessed 14 May 2015.

<sup>986</sup> Sisters Uncut <<https://sistersuncut.wordpress.com/feministo/>> accessed 14 May 2015.

<sup>987</sup> see The Everyday Sexism Project <<http://everydaysexism.com/>> accessed 14 May 2015.

<sup>988</sup> Bates L, *Everyday Sexism* (Simon & Schuster UK Ltd 2014) 278.

<sup>989</sup> HM Government, *Ending Violence against Women and Girls Strategy 2016-2020* (2016) 9.

<sup>990</sup> *ibid* 10.

statutory, it claimed that it intended to improve significantly PSHE during this administration.<sup>991</sup>

Despite this commitment, the government did not use the compulsory teaching of PSHE and SRE as a measure to strengthen its preventative response against IPA. This is argued because in January 2016, the Chairs of the education, health, home affairs and business, innovation and skills Commons select committees wrote to the Education Secretary, arguing that it was ‘clear to the four of us that there is a need to work towards PSHE and SRE becoming statutory in all schools.’<sup>992</sup> Despite this view from part of the legislators to make PSHE and SRE compulsory in all schools, in February 2016, the Education Secretary Nicky Morgan replied to the Education Committee Chair:

The vast majority of schools already make provision for PSHE and while the Government agrees that making PSHE statutory would give it equal status with other subjects, the Government is concerned that this would do little to tackle the most pressing problems with the subject, which are to do with the variable quality of its provision, as evidenced by Ofsted’s finding that 40% of PSHE teaching is less than good. As such, while we will continue to keep the status of PSHE in the curriculum under review, our immediate focus will be on improving the quality of PSHE teaching in our schools.<sup>993</sup>

This statement suggests that the government’s continuous approach is to deny giving statutory status to PSHE.

Feminist activists opposed this governmental approach arguing in favour of compulsory SRE provided to primary and secondary education that places IPA in the context of gender inequality. Specifically, EVAW criticised this governmental position:

We are deeply disappointed that the Education Secretary has confirmed today that the Government is not currently minded to make Sex and Relationships Education compulsory in all schools.... Young people cannot achieve their best, nor develop strong ‘character’, unless they are empowered to name, challenge and reject abusive behaviour which too often stops young people getting the best out of their education.<sup>994</sup>

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<sup>991</sup> Department for Education, *Government Response: Life Lessons: PSHE and SRE in Schools* (Cm 9121, 2015) 9.

<sup>992</sup> Education Committee, ‘Letter from Neil Carmichael MP, Dr Sarah Wollaston MP, Rt Hon Keith Vaz MP, and Iain Wright MP, to Rt Hon Nicky Morgan MP’ (8 January 2016).

<sup>993</sup> Education Committee, ‘Letter from Rt Hon Nicky Morgan MP to Neil Carmichael MP’ (10 February 2016).

<sup>994</sup> EVAW, ‘Deep Disappointment at Government Refusal to Make Sex & Relationships Education Compulsory’ (10 February 2016) <<http://www.endviolenceagainstwomen.org.uk/news/226/deep-disappointment-at-government-refusal-to-make-sex-relationships-education-compulsory>> accessed 29 September 2016.

Similarly, Women's Aid reiterated:

SRE is an essential part of any strategy to prevent domestic... violence. ...[W]e believe that age-appropriate SRE should be provided from the start of primary school until the end of full-time education. If we are ever to prevent domestic abuse, we must recognise that its roots are in inequality between men and women and the gender roles that are accepted and promoted everywhere we look.<sup>995</sup>

These views promote the idea of early intervention to young people's perception through education as a necessary preventative measure in order to challenge the social perception on IPA and gender roles. Furthermore, Imkaan argued:

We want to see compulsory ...SRE and we want this to be a Government priority.... Programmes need to have a clear analysis of gender and other intersecting factor such as 'race', sexuality, class and disability. We cannot simply teach respect without recognising the different ways that some groups are disrespected.<sup>996</sup>

Imkaan's view pointed not only on raising awareness on gender inequality but also on the intersecting factors influencing the victimisation of IPA victims. The adoption of the combined feminist views in the delivery of SRE could lead to recognising the different victimisation experiences formed by the intersection of identities such as gender, race, age, and class.

The governmental reluctance to strengthen the delivery of PSHE and SRE has been opposed by Caroline Lucas MP, who presented the Personal, Social, Health and Economic Education (Statutory Requirement) Bill 2016-17 in 2016.<sup>997</sup> This Bill aimed to a statutory PSHE including SRE and VAWG education, and to provide to teachers initial and continuing education and best practice guidance. However, the Bill did not progress due to the dissolution of the parliament for the general election.<sup>998</sup> The statutory status of SRE linked with VAWG could have contributed significantly in raising awareness to the IPA problem,

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<sup>995</sup> Women's Aid, 'Women's Aid Welcomes New Report from the Women and Equalities Committee' (13th September 2016) <<https://www.womensaid.org.uk/womens-aid-welcomes-new-women-equalities-committee-report/>> accessed 4 October 2016.

<sup>996</sup> Imkaan, 'Sex and Relationships Education in Schools, #SREnow' (18 August 2016) <<http://imkaan.org.uk/post/149100538731/sex-and-relationships-education-in-schools>> accessed 25 October 2016.

<sup>997</sup> Personal, Social, Health and Economic Education (Statutory Requirement) Bill 2016-17 <<http://services.parliament.uk/bills/2016-17/personalsocialhealthandeconomiceducationstatutoryrequirement.html>> accessed 25 October 2016.

<sup>998</sup> *ibid*

prevent young people from being victimised, and prevent them from further victimisation by encouraging them to seek the support of the CJS.

Additionally, the reluctant governmental approach has been opposed by the EVAW, which sent a letter to the Education Secretary, Justine Greening, ‘to ask the government to bring forward legislation that will help give young people the knowledge and skills to have respectful, healthy loving relationships throughout their lives.’<sup>999</sup> It further reiterated that ‘You have an opportunity to better protect children by bringing forward new legislation in the Children and Social Work Bill to ensure children are taught at school about what makes a healthy loving relationship.’<sup>1000</sup> Following these initiatives, in March 2017, Justine Greening announced:

I am today announcing my intention to put Relationships and Sex Education on a statutory footing, so every child has access to age appropriate provision, in a consistent way. I am also announcing my intention to take a power that will enable me to make PSHE statutory in future, following further departmental work and consultation on subject content. The amendments that the Government will table to the Children and Social Work Bill place a duty on the Secretary of State for Education to make regulations requiring: All primary schools in England to teach age-appropriate ‘relationships education’; and All secondary schools in England to teach age-appropriate ‘relationships and sex education’.<sup>1001</sup>

The government has proposed the primary school subject of ‘Relationships Education’ (RE) to suggest a focus on building healthy relationships and safety. However, in secondary school, the subject is renamed ‘Relationships and Sex Education’ (RSE) to highlight the vital importance for students to start developing their understanding of healthy adult relationships in more depth.<sup>1002</sup>

The above governmental suggestions illustrate an improved governmental attempt to improve the policy framework of PSHE and RSE. This is further evidenced by the Education Secretary’s statement: ‘Schools will have flexibility over how they deliver these subjects, so they can develop an integrated approach that is sensitive to the needs of the local

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<sup>999</sup> EVAW, ‘Ensuring Young People Develop the Knowledge and Skills to Form Healthy Relationships’ (2017) 1.

<sup>1000</sup> *ibid*

<sup>1001</sup> Department for Education, ‘Sex and Relationships Education: Written statement - HCWS509’ (2017) <<http://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2017-03-01/HCWS509/>> accessed 8 March 2017.

<sup>1002</sup> Department for Education, ‘Schools to Teach 21st Century Relationships and Sex Education’ (1 March 2017) <<https://www.gov.uk/government/news/schools-to-teach-21st-century-relationships-and-sex-education>> accessed 8 March 2017.

community....<sup>1003</sup> As each community is composed by different individuals with specific needs, such practice could be beneficial if it does not oppose the aim to challenge gender inequality. However, the Department for Education Policy Statement indicated that the RSE includes themes such as teaching on:

Different types of relationships... and, at secondary school, intimate relationships; How to recognise, understand and build healthy relationships, including self-respect and respect for others, commitment, tolerance, ...and how to manage conflict, and also how to recognise unhealthy relationships; How relationships may affect health and wellbeing, including mental health;...<sup>1004</sup>

Although these suggestions constitute improvements for raising awareness on IPA, it does not address gender inequality as the cause of IPA. Therefore, it is suggested that the diversity intersectional approach is adopted through the new suggested improvements of RSE because gender is not the dominant identity considered.

Women's Aid agrees that gender inequality should be placed at the centre of the RSE, as it stated:

[W]e strongly welcome the news today that the Government is pledging to deliver statutory sex & relationships education across the UK.... In order to prevent domestic abuse & violence against women and girls, we must examine and address its root causes, challenging the misogyny and sexism that underpin it.<sup>1005</sup>

Similarly, the EAW has called for:

[C]hildren and young people to be given age appropriate lessons about all forms of violence against women and girls, and the misogyny which drives this violence, so that they are able to recognise and challenge it. This should be supported by training for teachers and a review of safeguarding measures to ensure that whenever children and young people disclose abuse there is support.<sup>1006</sup>

Based on these views, the compulsory teaching of the RSE constitutes an improvement of the governmental response to IPA. However, this needs to be strengthened by pointing on gender

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<sup>1003</sup> HC Deb 1 March 2017 col 509WS.

<sup>1004</sup> Department for Education, *Policy Statement: Relationships Education, Relationships and Sex Education, and Personal, Social, Health, and Economic Education* (2017) 3.

<sup>1005</sup> Women's Aid, "'Delighted': Our Statement on Statutory SRE Education Announcement" (1 March 2017) <<https://www.womensaid.org.uk/delighted-statement-statutory-sre-education-announcement/>> accessed 8 March 2017.

<sup>1006</sup> EAW, 'Government Announces Compulsory Relationships & Sex Education in All Schools' (1 March 2017) <<http://www.endviolenceagainstwomen.org.uk/news/285/government-announces-compulsory-relationships-sex-education-in-all-schools>> accessed 8 March 2017.

inequality as the cause of this violence. Moreover, in order for the government to ensure a successful practice, teachers need to be trained to be able to provide an adequate delivery of the RSE. The feminist suggestions on including the teaching of gender inequality as the cause of IPA and the training of the teachers on the diverse intersecting factors contributing to the IPA victimisation experiences could raise adequate awareness among diverse students.

Following these discussions, the Children and Social Work Act was enacted in March 2017. Section 34 (1) of the Act stated that ‘All primary schools in England to teach age-appropriate “relationships education”; and [a]ll secondary schools in England to teach age-appropriate “relationships and sex education”.’<sup>1007</sup> Moreover, section 34(3) regulated that the students will learn about ‘(i) safety in forming and maintaining relationships,(ii) the characteristics of healthy relationships, and(iii) how relationships may affect physical and mental health and well-being...’<sup>1008</sup> Although the mandatory teaching of these issues in primary and secondary schools constitutes an improvement, there is not mention regarding the teaching of VAWG, and more specifically IPA, gender inequality, and diversity such as the diverse experiences of IPA victims with different identities.

Further, section 34 (3) regulated that the teaching of the RSE and RE will be considerate of the students’ age and the religious background.<sup>1009</sup> Although it is important to consider the diverse needs of the students arising from their identities, sometimes this can conflict with the aim to challenge gender inequality. The above provision gave statutory status to the flexibility of faith schools to address relationships and abuse based on their religion. Therefore, if IPA is taught in these schools, it might be addressed in a way that sustains gender inequality. This occurred because of the lack of the VAWG strategy to recognise that gender inequality should be prioritised in comparison to other inequalities in the context of IPA. The findings suggest that overall the Conservative government started to promote some improvements; however, further improvements need to be made in order to substantially challenge the social perception against IPA.

#### **5.4.2 Legal Aid**

The examination of the Conservative government’s commitments showed that revising the

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<sup>1007</sup> Children and Social Work Act 2017 s. 34 (1).

<sup>1008</sup> *ibid* s. 34 (3).

<sup>1009</sup> *ibid*



legal aid was not included in its agenda despite the limited support of LASPO provided to IPA victims that can impact their access to the CJS. On this point, ROW and Women's Aid argued that 'the legal aid regulations continue to act as a dangerous barrier for women. Too many women at risk of violence are still unable to access legal advice and representation on family law remedies that could afford them safety and justice.'<sup>1010</sup> For this reason, ROW attempted through the court to challenge the barriers to IPA victims in the case *Rights of Women v The Lord Chancellor and Secretary of State for Justice*<sup>1011</sup> arguing that the defendant exceeded the statutory powers conferred upon him by section 12 of the LASPO. However, the court held that the discretion exercised by the defendant was legitimate in implementing the legislative intent to exclude family law proceedings from the scope of legal aid while reserving legal aid for IPA victims, as an exceptional category in need of protection. Although the required evidence standard may be ineffective in practice, this does not concern the defendant's case, but it is a matter for the parliament to address.

This decision was overruled by the Appeal Court,<sup>1012</sup> which held that 'I would conclude that ... regulation 33 does frustrate the purposes of LASPO in so far as it imposes a requirement that the verification of the domestic violence has to be dated within a period of 24 months before the application for legal aid...'<sup>1013</sup> Bishop commented that this decision is significant for IPA victims since without the support of legal aid, they could be compelled to self-represent in family courts and being cross-examined by their abusive former partner if he is also unrepresented.<sup>1014</sup> Thus, since LASPO aims to protect IPA victims, the fact that this 24-month period results in excluding a significant number of them, it does not meet the statutory purpose.

As a result, Shailesh Vara, the Minister for the Courts and Legal Aid, stated in the HL that 'we are taking immediate action, through interim regulations laid before Parliament today, to change our arrangements. ... We believe that these arrangements address the court's

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<sup>1010</sup> Rights of Women, Women's Aid and Welsh Women's Aid, 'Evidencing Domestic Violence: Nearly 3 Years On' (2015) 1.

<sup>1011</sup> *Rights of Women v The Lord Chancellor and Secretary of State for Justice* [2015] EWHC 35 (Admin)

<sup>1012</sup> *Rights of Women v The Lord Chancellor and Secretary of State for Justice* [2016] EWCA Civ 91

<sup>1013</sup> *ibid* para 47.

<sup>1014</sup> Bishop C, 'Rule That Proof of Domestic Violence for Legal Aid Purposes Must Be Less than 24 Months Old Declared Invalid' (2016) 38 (3) *Journal of Social Welfare and Family Law* 330, 331.

concerns while work continues to find a sustainable longer-term solution.’<sup>1015</sup> The government regulated that the time limit of 24 months is increased to 60 months, which will expand access to legal aid for those in genuine need of such assistance whilst maintaining the necessary control of the legal aid management.<sup>1016</sup>

The above amendment constitutes an improvement of the governmental response to IPA because the expansion of the time limit provides increased support to victims with diverse needs. However, ROW argued:

Our research shows that even with the 24 month time limit removed, 14% of domestic violence victims/survivors will not have the required documentation to evidence domestic violence. The regulations do not identify as victims of abuse those women who are seeking to leave long term coercive and controlling relationships where the abuse has not been reported to the police or where it has been reported but the police have considered they do not have enough evidence to pursue the allegations.<sup>1017</sup>

The lack of the regulations to recognise the coercive character of IPA is a significant limitation, as it does not provide the support of legal aid to coercive control victims; therefore, this limitation does not provide the necessary support to IPA victims to access the CJS.

Despite this problem, improvements are expected to be made because the Ministry of Justice announced to remove the time limits for IPA victims from obtaining legal aid for court hearings.<sup>1018</sup> This announcement was welcomed by ROW because:

[U]nfair legal aid rules for survivors of, or those at risk of, domestic violence are finally to be replaced. ... The purpose of Legal Aid is to ensure everyone in society can equally access safety and justice through the law. The current rules are so restrictive that they fail to assist a large number of victims – the majority of whom are women. Our evidence showed that up to 40% of women could not meet the requirements.<sup>1019</sup>

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<sup>1015</sup> HL Deb 21 Apr 2016 vol 770 col 668WS.

<sup>1016</sup> Explanatory Memorandum to the Civil Legal Aid (Procedure) (Amendment) Regulations 2016(2016) 3.

<sup>1017</sup> Rights of Women, ‘Evidence to the Bach Commission on Access to Justice’ (2016) 2.

<sup>1018</sup> Bowcott O, ‘Legal Aid Shakeup Hands Lifeline to Domestic Violence Victims’ (The Guardian, 23 February 2017).

<sup>1019</sup> Rights of Women, ‘Domestic Violence Legal Aid Changes Welcomed as a “Victory for Women’s Rights”’ (23 February 2017) <<http://rightsofwomen.org.uk/news/domestic-violence-legal-aid-changes-welcomed-as-a-victory-for-womens-rights/>> accessed 9 March 2017.

The removal of the time limits could help IPA victims with diverse needs to qualify for legal aid. Therefore, the removal of time limit is a positive improvement that could facilitate more victims to be freed from abuse.

### **5.4.3 Specialist Refuges**

The Conservative government's commitment to support refuges is illustrated in its statement: 'We are committed to ensuring that no victim of domestic abuse is turned away from the support they need. That is why in the Summer Budget we launched a £3 million fund to increase provision of safe accommodation with specialist support, including refuges....'<sup>1020</sup> In fact, the government, in the July 2015 Budget, announced a £3.2 million fund to support IPA services, including refuges. Specifically, it stated that 'The fund will be open to proposals from local partnerships that demonstrate how the needs of victims could be met in innovative ways, working through collaboration and helping to address any gaps in the delivery of services in the short term.'<sup>1021</sup> For example, the Women's Aid and SafeLives received £2 million from the government to develop a joint intervention project, 'Sooner the Better', which aims to support victims and their children at an earlier stage.<sup>1022</sup>

The funding initiative was welcomed by Women's Aid:

We warmly welcome today's news of a new £3.2 million fund for refuges: a direct response from the government to our Give Me Shelter campaign with The Sun. We are grateful that the government has listened to the voices of women in crisis. This money will help refuges continue to save lives – but with so many women and children needing refuge spaces to escape domestic violence, this fund will be exhausted in a matter of months. What we must have now is a commitment from government to a new and different funding system for refuges, in which they are no longer vulnerable to local authorities who decide they will only protect women and children from their local area, or that they'd rather buy cheaper homelessness hostels instead of domestic violence refuges.<sup>1023</sup>

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<sup>1020</sup> PQ 17255 (1 December 2015) <<http://www.parliament.uk/written-questions-answers-statements/written-question/commons/2015-11-23/17255>> accessed 8 March 2017.

<sup>1021</sup> Home Office, '£3.2 Million Funding to Help Victims of Domestic Violence and Abuse' (9 July 2015) <<https://www.gov.uk/government/news/32-million-funding-to-help-victims-of-domestic-violence-and-abuse>> accessed 9 March 2017.

<sup>1022</sup> Women's Aid, 'Women's Aid and SafeLives Welcome Government £2 Million for Domestic Abuse Intervention' (25 November 2015) <<https://www.womensaid.org.uk/government-2-million-for-domestic-abuse-intervention/>> accessed 4 October 2016.

<sup>1023</sup> Women's Aid, 'Women's Aid Welcomes New Fund for Refuges in Response to Give Me Shelter Campaign but Calls for Commitment to Long-term National Funding Solution' (7 July 2015) <<https://www.womensaid.org.uk/womens-aid-welcomes-new-fund-for-refuges/>> accessed 9 March 2017.

According to Women's Aid, the new fund from the government is a positive measure; however, in reality this funding can be jeopardised due to the involvement of the local authorities, whose commissioning system tend to de-gender the practical use of the funds. In fact, the bidding from the local communities created 710 new bed spaces in a range of safe accommodation offering shelter, including specialist IPA refuges for young women aged 16-25; however, these funds were shared among specialist and generalist accommodation services.<sup>1024</sup>

The governmental commitment to support IPA victims is further evident in the Spending Review and Autumn Statement 2015, with which the government committed to provide '£40 million for services for victims of domestic abuse, tripling the dedicated funding provided compared to the previous four years and complementing the wider violence against women and girls strategy'.<sup>1025</sup> Women's Aid commented on this financial support:

Women's Aid warmly welcomes the news that £40 million of local government funding will be going towards domestic abuse services, following a long period of campaigning by Women's Aid to highlight the dangers to women of these services closing and being severely cut back.... It is vital that a considerable portion of this funding is invested in securing the long-term sustainability of domestic abuse refuges. We are delighted the government has been exploring how best to secure and sustain the national network of refuges, and that they have taken our extensive campaigning work on the issue seriously. These services not only save lives; they also help women and their children rebuild their lives and enjoy independent futures that are free from violence.<sup>1026</sup>

Although this financial support constitutes a significant practical support to the victims, it does not provide them with a long-term solution. The formation of a stable long-term solution to the funding of refuges has been constantly suggested by feminist activists; however, the government continued avoiding to adopt these suggestions. Moreover, this funding aimed to support VAWG specialist services in general and it did not clarify the proportion of this funding that would have been devoted to specialist refuges.

Further, the government attempted to resolve the problem of the gender-neutral use of funding through the commissioning system that favours generalist services and compromises

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<sup>1024</sup> Home Office, '£3.5 Million Awarded to Make Sure Domestic Abuse Victims Get Help' (11 December 2015) <<https://www.gov.uk/government/news/35-million-awarded-to-make-sure-domestic-abuse-victims-get-help>> accessed 9 March 2017.

<sup>1025</sup> HM Treasury, *Spending Review and Autumn Statement 2015* (Cm 9162, 2015) 42.

<sup>1026</sup> Women's Aid, 'Women's Aid Welcomes £40 Million of DCLG Funding for Domestic Abuse Services' (27 November 2015) <<https://www.womensaid.org.uk/womens-aid-welcomes-40-million-of-dclg-funding-for-domestic-abuse-services/>> accessed 8 March 2017.

the specialised services of refuges by issuing the Statement of Expectations. Specifically, Marcus Jones, the Secretary of State for Communities and Local Government, announced:

In the strategy to end violence against women and girls..., we set out our ambition to improve services for women suffering from domestic abuse committing to a new Statement of Expectations to set out for the first time what we expect from local areas. To support this, we are launching a new two year fund, which will be open to local authorities across the country including those from rural areas, to bid for funding for refuges and other forms of accommodation based support and to help local areas take the steps they need to meet the National Statement.<sup>1027</sup>

Based on this Statement of Expectations, the rules for providing funding to the local communities are: ‘We expect to see local strategies and services that: 1. Put the victim at the centre of service delivery;...3. Take a strategic, system-wide approach to commissioning acknowledging the gendered nature of VAWG;....’<sup>1028</sup> The application of these expectations on the refuges could increase their protection since the acknowledgement of the gendered nature of IPA in the commissioning process suggests that specialised refuges will be given priority in comparison to the generalist refuges.

Additionally, the government announced the funding of local authorities with £20 million to support IPA victims by increasing refuge spaces and other accommodation.<sup>1029</sup> The government regulated regarding the use of this funding:

The Fund will support proposals for the provision of core support for refuges and other accommodation-based services, helping local areas ensure that no woman is turned away from the support she needs, and welcomes bids which can demonstrate a) that there is a need for this type of support locally, and b) that the solution proposed is designed to meet the needs of victims. We recognise that victims of domestic abuse will have different needs – so your bid could be for specialist refuge places or for specific groups (ie for women with mental health problems, substance abuse problems, or particular needs of different ethnic communities), or, where this best meets local need, other accommodation based services with specialist support, or other services that enable victims to access this support. We also recognise that there will be demand for some specialist services in particular local areas from

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<sup>1027</sup> Department for Communities and Local Government, ‘Domestic Violence: Rural Areas: Written Question-38492’ (08 June 2016) <<http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2016-05-25/38492>> accessed on 15 August 2017.

<sup>1028</sup> Home Office, *Violence Against Women and Girls National Statement of Expectations* (2016) 4.

<sup>1029</sup> Department for Communities and Local Government, ‘New £20 Million Fund Now Open to Help Victims of Domestic Abuse’ (3 November 2016) <<https://www.gov.uk/government/news/new-20-million-fund-now-open-to-help-victims-of-domestic-abuse>> accessed 10 March 2017.

across the country (e.g. refuges which cater for the needs of women from particular BME [Black and Minority Ethnic] communities) which serves a broader need.<sup>1030</sup>

This funding was assigned to local authorities in order to finance refuges and other accommodation services in general. Although this is a positive development for the support of refuges, the funding of specialist refuges is not specified but it depends on the local authorities. Moreover, this funding still does not provide a long-term solution.

Women's Aid agrees with the view for the need of a long-term solution, as it argued that:

The £20 million will make a huge difference to the projects that won funding – but without a long-term funding solution to secure a lasting future for refuges, these projects will be put at risk again. Many of the refuges that have been able to increase the number of beds they have, and the number of women and children they support, will be forced to close. This investment in them will have been meaningless.<sup>1031</sup>

Similarly, Refuge argued:

Over the last few years, specialist domestic violence services across the country have experienced severe funding cuts. In some local authority areas, refuges have been totally lost. ... Refuge hopes that the Government will develop a sustainable funding strategy for refuge provision. Only then will women and children be able to access the safety and support they deserve.<sup>1032</sup>

Based on these views, the governmental support to specialised refuges, which have a significant contribution to support female victims with their specific needs, could be improved through a sustainable funding strategy that will provide a long-term solution.

The government, through the Statement of Expectations, seems to be in a direction that addresses the issue raised by feminist activists regarding the local authorities disadvantaging specialist refuges in comparison to generalist refuges. Moreover, although the government has not promoted any measures to resolve the second major argument of feminist activists

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<sup>1030</sup> Department for Communities and Local Government, *2016/18 Fund for Specialist Accommodation Based Support and Service Reform to Meet the Priorities for Domestic Abuse Services* (2016) 4-5.

<sup>1031</sup> Women's Aid, 'Women's Aid Welcomes Domestic Abuse Funding-But Warns of Continued Threat to Refuges' (17 February 2017) <<https://www.womensaid.org.uk/womens-aid-welcomes-domestic-abuse-funding-warns-continued-threat-refuges/>> accessed 10 March 2017.

<sup>1032</sup> Refuge, 'Refuge Welcomes News of £20 Million Funding to Address Domestic Violence' (8 March 2017) <<http://www.refuge.org.uk/2017/03/08/refuge-welcomes-news-of-20-million-funding-to-address-domestic-violence/>> accessed 10 March 2017.

regarding providing a long-term solution for the funding of refuges, it announced its aim to review the funding for refuges.<sup>1033</sup>

Overall, the Conservative government made some improvements in the areas of education, legal aid, and specialist refuges. These improvements reflect some of the arguments of feminist activists such as the mandatory teaching of RSE, the amendment of the time limit for providing legal aid, and the funding support of the specialist refuges. However, these are preliminary findings of its practice and there are still more changes that need to be made in order to significantly improve the prevention and protection measures.

## **5.5 Conclusion**

The Chapter examined the governmental response to IPA through social welfare mechanisms. Specifically, it examined main issues affecting IPA victims that have been raised by feminist activists. These issues, during the Labour government, were education and specialist refuges. During the examination of the Coalition and Conservative governments, the mechanisms examined were legal aid, education, and specialist refuges. Their investigation occurred in order to identify the extent that the prevention of IPA and the victims' protection have been promoted by challenging gender inequality, considering the victims' needs, and attempting to transform the social perception on IPA.

The examination of the Labour government's response identified that it was unable to promote effectively awareness among young individuals through the teaching of PSHE and SRE. Although feminist activists continued to lobby for the mandatory teaching of PSHE and SRE to all primary and secondary schools and for the teaching of IPA in the context of gender inequality, the government did not adopt these suggestions. Moreover, the government did not assign an automatic duty to the local authorities, through its housing legislation, to provide permanent accommodation to victims. According to feminist activists, this was detrimental to the victims because refuges were meant to be only temporary solutions and because it excluded other victims from using their services due to the lack of space. Furthermore, the funding system of refuges through the SPP was problematic as local authorities tended to favour one-size fits all refuges.

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<sup>1033</sup> Conservative Party, 'Forward, Together-Our Plan for a Stronger Britain and a Prosperous Future: The Conservative and Unionist Party Manifesto 2017' (2017) 58.

The Coalition government's response is also problematic in some aspects. For example, feminist activists continued to assert the compulsory teaching of the SRE to all primary and secondary schools and the improvement of its content by addressing gender inequality; however, the government did not integrate these suggestions. Also, regarding the funding of specialist refuges, their funding deteriorated due to the funding cuts of the government to the local authorities. Feminist activists raised concern on the impact of this austerity measure to specialist refuges and they argued that a long-term funding solution should be provided. Although the government made some efforts to help them by providing additional funds, it did not introduce a long-term solution. Moreover, the government, through the reform of legal aid, excluded from its protection a wide range of IPA victims.

Due to the continuous efforts of feminist activists, the Conservative government attempted to improve the deficiencies of the legal aid by expanding the eligibility criteria for IPA victims. Moreover, the government attempted to strengthen the protection of specialist refuges from the practice of the local authorities by creating the 'Statement of Expectations' and by providing additional funding to refuges to protect them from closure. Further, its approach to education has started to change, as the RSE and RE have become mandatory to students of secondary and primary schools respectively. This change reflects the argument promoted by feminist activists asserting the mandatory status of this module; however, it did not integrate the teaching of VAWG in the context of gender inequality. These constitute improvements in all three areas; however, there are more changes that need to be made. Also, the results of these changes are not apparent yet and they constitute preliminary findings.

The above findings indicate an inconsistent response from the governments at a policy and practice level. This might have been caused due to the slow improvements occurring by the governments and their reluctance to promote changes that challenge the gender-neutral structures forming the IPA response. The problematic responses provided by the discussed mechanisms constitute factors that negatively affect the CJA response, examined in Chapter 4, as victims do not have the necessary support that challenges gender inequality and meets their individual needs. Therefore, victims are more reluctant to escape the abuse and access the CJS. For this reason, in Chapter 6, an overall discussion of the raised problems will be provided and suggestions will be made based on the identified issues.



## **Chapter 6. Conclusion**

The aim of the thesis was to examine the development of the CJS response (policies, laws, practice) in England and Wales regarding the prevention of IPA and the protection of female victims from 1997 to 2017. Specifically, this critique of the CJS was based on the intersectional gendered approach framed in Chapter 2. This meant that the main research question addressed in the thesis is to what extent the CJS promoted the prevention of IPA and the protection of female victims with diverse identities and the transformation of the social perception towards IPA and the diverse needs of the victims.

The IPA problem has contemporary significance because even today victims face barriers that affect their willingness to be freed from abuse and/or access the CJS. Although IPA affects male victims, the thesis focused on female victims since the majority of victims are women. In order to address the purpose of the thesis, Chapter 2 framed a criminological theoretical perspective by examining whether, how, and why this framework can constitute an efficient theoretical approach for the improvement of the prevention of IPA and the protection of its victims. Based on this framework, the intersectional gendered approach, Chapter 3 aimed to identify to what extent the crime prevention strategies and substantive criminal laws have promoted the prevention of IPA and the protection of female victims by challenging gender inequality, considering the victims' diverse needs, and promoted the transformation of the social perception. These themes of gender inequality, diversity, and transformation of the social perception were also examined in Chapter 4 in relation to the policies and practice of the police, CPS, and courts. Moreover, they were examined in Chapter 5 in relation to the whole-system response provided by social welfare mechanisms through case studies (the specialised domestic violence refuges, early intervention to young individuals through the SRE, and legal aid).

### **6.1 The Adoption of the Intersectional Gendered Approach in the CJS Response**

The examination of the CJS response occurred based on the intersectional gendered approach, which is a feminist criminological perspective. Chapter 2 contributes to the literature by forming the theoretical framework of the intersectional gendered approach. Although this framework is built from prior feminist theories, it originally contributes by combining different feminist theories in order to form a framework that can provide an

adequate theoretical basis to address IPA. For this reason, Chapter 2 argued that the intersectional gendered approach should be adopted for the prevention of IPA and the protection of victims.

Initially, it was argued that a feminist criminological perspective can provide a more adequate insight to women's victimisation on IPA because feminist criminology focuses on women, which constitute the majority of IPA victims.<sup>1034</sup> According to Stark, men become violent and abusive towards their partners in order to maintain their power and control over them.<sup>1035</sup> For this reason, it was argued that gender inequality is the cause of the IPA types of intimate terrorism and mutual violent control because these types are manifested due to coercive control either from one partner or both partners. Moreover, gender inequality is the cause of the type of violent resistance because this is manifested as a violent reactive incident to intimate terrorism. In the case of situational couple violence, gender inequality can be one of the factors causing IPA but it is not the only potential cause. Since gender inequality is the cause of the majority of cases, IPA should be recognised as gender-based crime; thus, gender neutral theories cannot adequately address IPA.

The intersectional gendered approach constitutes an appropriate framework because it focuses on the intersection of the diverse identities of the victims such as race, age, class, ethnicity, and sexuality. Since IPA victims have diverse identities that influence their victimisation experiences, consideration of their needs arising from these identities can be beneficial in the formation of the CJS response. However, the question arising is which identity should be prioritised since sometimes they can be competing to each other. Consequently, it was argued that the intersectional gendered approach can be more efficient because it falls within the asymmetric mutual shaping framework, according to which gender is the dominant identity that needs to be prioritised in comparison to the other identities. Gender needs to be prioritised in the case of IPA because gender inequality is its cause; therefore, in order to tackle the cause of IPA proper attention needs to be given to gender inequality. The additional identities of the victims should be secondary to gender but equal among them and victims should be supported with their needs arising from the combination of their intersecting identities.

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<sup>1034</sup> See Office for National Statistics, *Domestic Abuse, Sexual Assault and Stalking* (2017) 9.

<sup>1035</sup> Stark E, *Coercive Control: How Men Entrap Women in Personal Life* (Oxford University Press 2007) 172; see also Stark E, 'Rethinking Coercive Control' (2009) *Violence against Women* 1, 3.

Further, the intersectional gendered approach constitutes an appropriate framework because it argues that due to the diverse needs of the victims and the limited power of the law, the CJS alone cannot address all their needs but a whole-system response is needed. For this reason, although the adoption of the intersectional gendered approach in the formation of policies, laws, and practice of the CJS is beneficial, it is necessary to provide support to diverse victims through social welfare mechanisms. These mechanisms not only can provide support to diverse victims but they also contribute to the transformation of the social perception by promoting initiatives that aim to raise awareness on IPA, gender inequality, and diversity.

## 6.2 Main Findings on the IPA Response during the Labour Government

The examination of the CJS response during the Labour government identified that the influence of the intersecting identities in the victimisation experiences of the victims was recognised at a policy level by the Labour government by promoting a whole-system response through the multi-agency partnerships. Feminist activists contributed to these partnerships by participating through their support to the victims with campaigning, refuge and outreach services, and their suggestion to create a strategy that would coordinate the work of these partnerships.<sup>1036</sup> This suggestion was integrated by the governmental response, as it issued strategies that framed the aims of the whole-system response against IPA.

In fact, the government issued the strategies ‘Living without Fear: An Integrated Approach to Tackling Violence Against Women’<sup>1037</sup> the ‘Safety and Justice: The Government’s Proposals on Domestic Violence’,<sup>1038</sup> and the ‘National Report’.<sup>1039</sup> However, a gender-neutral approach was adopted because gender inequality was not recognised as the cause of IPA.

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<sup>1036</sup> See Women’s Aid, ‘Directory of Domestic Violence Multi-Agency Fora 2000 England & Wales’ <<https://web.archive.org/web/20000601120709/http://www.womensaid.org.uk:80/dvforum/foramain1.htm>> accessed 4 June 2017; Refuge, ‘About Refuge’ <<https://web.archive.org/web/20031202151048/http://www.refuge.org.uk:80/about.htm>> accessed 4 June 2017; Women’s Aid, ‘Families without Fear, the Women’s Agenda for Action on Domestic Violence’ (1998) <<http://www.webarchive.org.uk/wayback/archive/20080618205810/http://www.womensaid.org.uk/page.asp?section=00010001000900010001>> accessed 30 October 2016.

<sup>1037</sup> Home Office and Women’s Unit, *Living without Fear: An Integrated Approach to Tackling Violence against Women* (1999) <<http://webarchive.nationalarchives.gov.uk/20010714051016/http://www.cabinet-office.gov.uk:80/womens-unit/fear/04.htm>> accessed 2 February 2017.

<sup>1038</sup> Home Office, *Safety and Justice: The Government’s Proposals on Domestic Violence* (Cmd 5847, 2003).

<sup>1039</sup> Home Office, *A National Report* (2005).

This approach changed with the ‘Together We Can Tackle Domestic Violence’<sup>1040</sup> strategy, which by framing IPA under a VAWG strategy implicitly recognised gender inequality as the cause of IPA.

A gender-neutral strategy can affect the whole-system response and weaken the message sent against gender inequality, which promotes the transformation of the social perception towards IPA. This can explain the fact that the government did not promote any changes to the SRE despite the arguments of feminist activists requesting the SRE to acquire statutory status and to address IPA within the context of gender inequality. The whole-system response was also compromised in practice by the local authorities’ commissioning practice that favoured generalist rather than specialist refuges and the housing law that burdened refuges due to the lack of duty for local authorities to re-house the victims. Based on the intersectional gendered approach, this occurred because the gender-neutral strategies did not recognise gender inequality as the cause of IPA while the VAWG strategy did not recognise gender as the dominant inequality to be considered in IPA cases. If such approach was taken, the government would have to provide adequate funding for specialist refuges and the local authorities would have to prioritise them in comparison to generalist refuges. Moreover, BAME or LGBT domestic violence refuges would have been also supported because the intersectional gendered approach considers the combined effect of the additional identities of the victims.

The critique of the CJS originally contributed with the examination of the criminal law through the familial homicide offence. It was argued that the gender-neutral approach of the strategies influenced the formation of the familial homicide offence because although the creation of this offence was an improvement for capturing the repetitive pattern of IPA, it did not include the coercive nature of IPA. The adoption of a gender-neutral approach does not recognise gender inequality as the cause of IPA; thus, this can lead to the lack of integrating the pattern of coercive control in the commission of IPA crimes. Similarly, the gender-neutral approach weakens the implementation of the criminal law by the CJA. For example, the weakening of the police response was identified through the limited availability of DVOs and DVUs. If gender inequality was recognised through the strategies as the cause of IPA, this could lead to the increase of DVUs.

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<sup>1040</sup> HM Government, *Together We Can End Violence Against Women and Girls: A Strategy* (2009).

Additionally, it was originally argued that the police response could be improved by adopting the mandatory arrest because this way gender will be prioritised in comparison to the other identities sending a strong message against gender inequality. This does not mean that the victims' diverse needs will be disregarded but they will be supported by improving the police culture and awareness through appropriate training on IPA and risk assessments that provide insight to the victims' diverse needs. Moreover, the involvement of female police officers from diverse backgrounds could be beneficial for victims of diverse identities to encourage them reporting their victimisation. For this reason, it is proposed that the mandatory arrest should replace the pro-arrest policy.

Further, the pro-prosecution policy integrates the intersectional gendered approach, in theory, because it prioritises gender in comparison to the other identities by proceeding with a case despite of the consequences that a victim can face due to her additional identities. However, this priority to gender should be given when there is insufficient alternative evidence to support the prosecution; for this reason, the CPS should promote victimless prosecutions that are based on alternative evidence.

The implementation of the intersectional gendered approach would be promoted through the mandatory arrest and victimless prosecutions because this way gender inequality would be targeted and the identity of gender would be prioritised in comparison to the other identities. However, the additional identities of the victims need to be considered by providing appropriate support to the victims through social welfare mechanisms. In practice, the implementation of mandatory arrests and victimless prosecutions can create problems to victims of diverse identities because it can endanger them with further victimisation by their perpetrators or social environments without the establishment of proper social welfare mechanisms to provide them with adequate support to overcome the difficulties they face. For this reason, it is suggested that prior to enhancing the targeting of gender inequality through initiatives such as mandatory arrest and victimless prosecutions, the social welfare mechanisms should be improved to provide appropriate support to the victims. For example, the mandatory arrest and the victimless prosecution of the perpetrator could create conflict in a couple regarding the parental responsibility of the children. For a victim without sufficient financial resources, this would cause her problems to assert the parental responsibility of her children in family court. For this reason, there is need to increase social welfare mechanisms

such as legal aid prior to a stronger targeting of gender inequality through mandatory arrests and victimless prosecutions. In terms of applying the theoretical approach in practice, this means that sometimes the consideration of the diverse identities of the victims through the establishment of adequate social welfare mechanisms needs to be promoted before the targeting of gender inequality. Hence, legal aid and specialist refuges need to be strengthened before the establishment of mandatory arrest and victimless prosecutions.

The adoption of the intersectional gendered approach needs to be consistently promoted to all policies and practice in order to improve the prevention of IPA and the protection of victims. For example, although the intersectional gendered approach is theoretically integrated in the pro-prosecution policy, this did not occur at a practical level. Specifically, it was observed in the CPS practice through the ‘special measures’ that they were provided automatically only to high risk victims. This limitation towards IPA victims suggests that in practice gender was not the dominant identity as the selection of high risk victims was not based on the victims’ gender but on other identities that made them vulnerable such as ethnicity, religion, and age. Therefore, in order to decrease the gap between theory and practice, the intersectional gendered approach needs to be adopted consistently to all policies, laws, and practice that affect the response on IPA.

### **6.3 Main Findings on the IPA Response during the Coalition Government**

The Coalition government provided an improved strategy<sup>1041</sup> because it did not only recognise gender inequality as the cause of IPA by framing it under a VAWG strategy but also by mentioning in its language that IPA is gender-based crime. This development integrates the prior argument promoted by women’s organisations for such recognition in the strategies. This improvement could have influenced the formation of the new domestic violence definition that integrated the concept of coercive control pattern. This is an important improvement since this definition aimed to coordinate the multi-agency response against IPA. Thus, the whole-system response would target not only incidents of IPA but also the coercive pattern of IPA. The inclusion of coercive control in the definition suggests the recognition of gender inequality as one of the causes of IPA because it also includes single incidents of IPA that can result from the situational couple violence. Moreover, feminist

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<sup>1041</sup> See Home Office, *Call to End Violence against Women and Girls* (2010) 5.

theorists Kelly and Westmarland argued for the creation of a definition that is specific for IPA and it does not include other familial relationships.<sup>1042</sup> Based on the intersectional gendered approach, the creation of a statutory IPA definition could be beneficial because it can recognise IPA as gender-based crime at a legal level. This could provide a more specific coordinated response from the multi-agency partnerships. Although single incidents of IPA can be cases of situational couple violence, a gender-based definition could be beneficial even in these cases because gender inequality can be one of the factors causing this type of IPA.

Further, the recognition of the gender-based nature of IPA in the strategy and the integration of coercive control in the domestic violence definition could have influenced the improvement of the law with the creation of the coercive control offence. This development recognises through the law that coercive control is the essence of IPA. In fact, the creation of this law targets gender inequality, which is the cause of the coercive control types of IPA, namely intimate terrorism, mutual violent control, and violent resistance. This law constitutes an example of the influence that the intersectional gendered approach could have in the formation of the criminal laws. The intersectional gendered approach promotes the creation or the amendment of laws that aim to strengthen the protection of female victims with diverse identities and to send a message against gender inequality and IPA in order to influence the transformation of the social perception.

The adoption of the intersectional gendered approach not only requires recognition of IPA as gender-based crime and the consideration of the victims' diverse needs but also the acknowledgement that gender inequality will be prioritised from the other inequalities if their interests are opposing. For this reason, the application of the intersectional gendered approach could be undermined due to the duty of the CJA to implement the SED, which provides protection to individuals that have one of its protected characteristics, in their policies and practice. Such an example of the SED undermining the intersectional gendered approach can be provided by the investigation of the CPS response. Specifically, the SED was implemented through the CPS Equality and Diversity statement, according to which the CPS should take into account the protected characteristics of the victims while responding to

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<sup>1042</sup> Kelly L and Westmarland N, 'Time for a Rethink—Why the Current Government Definition of Domestic Violence Is a Problem' *Trouble & Strife* (12 April 2014) <[www.troubleandstrife.org/2014/04/time-for-a-rethink-why-the-current-government-definition-of-domestic-violence-is-a-problem/](http://www.troubleandstrife.org/2014/04/time-for-a-rethink-why-the-current-government-definition-of-domestic-violence-is-a-problem/)> accessed 12 October 2016.

their experiences through their policies and practice.<sup>1043</sup> Such a policy document is the ‘Domestic Abuse Guidelines for Prosecutors’,<sup>1044</sup> in which the CPS adopted a gender-neutral approach. This occurred because the CPS did not prioritise gender as the dominant identity leading to the de-gendering of the policy document.

Regarding this CPS document, Women’s Aid argued that the gendered nature of IPA should be recognised in the document<sup>1045</sup> while Refuge asserted for a gender sensitive response.<sup>1046</sup> These views promoted a gender-based approach as they focus on the gendering of the policies without pointing the need to consider the additional identities contributing to the victims’ experiences. On the other hand, Imkaan argued that the gender, sexuality, and age of the victim should be considered.<sup>1047</sup> This view treats all identities of the victims as equal without prioritising gender. Such approach could lead to the de-gendering of policies since if all identities are treated as equal, competing interests of the identities can lead to a gender-neutral practice, namely failing to target adequately gender inequality. In fact, although the CPS practice shows increase in the number of prosecutions and convictions, this practice is not consistent as there are still cases treated inadequately.

An additional example of the SED undermining the adoption of the intersectional gendered approach can be also identified through the BBR programme, which does not have a gendered focus but adopted a gender-neutral approach. Moreover, the practice of the BBR programme does not effectively address equality and diversity because it is provided only to male offenders in heterosexual relationships while it excludes male and female offenders in same sex relationships. Thus, the fact that victims of a different sexuality are excluded suggests that the protected characteristic of sexuality is not given proper attention. The reason for this could be that the SED does not take into account the experiences formed by the intersection of diverse identities.

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<sup>1043</sup> CPS, *Crown Prosecution Service Equality and Diversity Statement* (2011) 2.

<sup>1044</sup> CPS, *Domestic Abuse Guidelines for Prosecutors* (2014)

<[http://www.cps.gov.uk/legal/d\\_to\\_g/domestic\\_abuse\\_guidelines\\_for\\_prosecutors/#content](http://www.cps.gov.uk/legal/d_to_g/domestic_abuse_guidelines_for_prosecutors/#content)> accessed 30 August 2015.

<sup>1045</sup> Women’s Aid, *Women’s Aid Response to CPS Consultation on Prosecution of Domestic Violence* (2014) 13.

<sup>1046</sup> Refuge, *Refuge’s Response to Consultation on CPS Guidance, The Prosecution of Domestic Violence Cases* (2014) 1.

<sup>1047</sup> MsUnderstood Partnership, *Response to the Response to Consultation on CPS Guidance* (2014) 2.



For the above reasons, it is recommended that the SED should be amended in order to integrate the intersectional discrimination and to apply appropriately in different contexts in order to achieve substantial equality. This would mean that for IPA crimes, gender will be the dominant identity while for race crimes the respective identity. Moreover, it is suggested that the criminal justice perpetrators' programmes should be improved by establishing programmes that are equally provided to offenders of diverse identities in order to provide equal protection to all victims of diverse identities. Furthermore, these programmes should target gender inequality in order to help offenders realise their sexist attitudes that led them to commit IPA crimes and challenge their perceptions towards gender inequality and the victims.

In addition, the adoption of the intersectional gendered approach requires initiatives that aim to transform the social perception against IPA because the power of the law is limited. For this reason, awareness needs to be raised to the public, especially to young people, but also to professionals involved in making decisions concerning IPA. The Coalition government's response was problematic regarding the early intervention to young people. Women's Aid argued that the SRE should acquire statutory status while VAWG and gender equality should become key themes in the teaching of healthy relationships.<sup>1048</sup> Furthermore, EVAW claimed that teachers should be trained effectively in order to address these issues, especially to children with additional needs, as they are particularly vulnerable to abuse.<sup>1049</sup> Despite these feminist arguments, the Coalition government did not adopt these views and promote any changes.

The intersectional gendered approach supports the mandatory teaching of the SRE at both primary and secondary schools while faith schools should not be excluded. Providing faith schools with the option to exclude the teaching of SRE suggests the adoption of the diversity intersectional approach since the religion is considered as an equal identity to gender that can have a competing interest to gender in the context of IPA. Considering the additional identities in the teaching of SRE means that teachers should be adequately trained to address the diverse experiences of victims such as victims from BAME and LGBT social groups.

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<sup>1048</sup> Women's Aid, 'Women's Aid Submission to Education Select Committee Inquiry on PSHE Education and SRE in Schools' (2014) para 1.1-1.3.

<sup>1049</sup> EVAW, 'Written Evidence from End Violence Against Women Coalition' (2014) para 7.2-7.3.

This way the SRE will challenge the social perception not only on IPA and gender inequality but also the diverse experiences and discriminations of the victims.

#### **6.4 Main Findings on the IPA Response during the Conservative Government**

The Conservative government continued to recognise gender inequality as the cause of IPA through its VAWG strategy ‘Ending Violence against Women and Girls Strategy 2016-2020’.<sup>1050</sup> This indicates the Conservative government’s aim to tackle gender inequality. Due to the fact, that this aim was not implemented effectively in the past, it is suggested that the VAWG strategy should state the need to tackle gender inequality by prioritising gender in comparison to the other identities of the victims. Moreover, it should clarify that although the primary target will be to tackle gender inequality, the additional needs of the victims arising from their identities will be addressed by providing appropriate support to the victims.

Further, the Conservative government announced to create a new Domestic Violence and Abuse Act, with which it will challenge the social perception towards IPA and the way it is tackled.<sup>1051</sup> This commitment indicates the governmental recognition that the power of the law is not sufficient to tackle IPA but there is need to challenge the social perception to IPA. The influence of the intersectional gendered approach on this law would promote changes on the funding of specialist refuges. Specifically, it would ensure the long-term and stable funding of specialist refuges by giving statutory status to the governmental duty to fund specialist services that aim to tackle IPA by targeting primarily gender inequality but also considering the diverse identities of the victims.

Additionally, the Conservative government recognised the limited power of the law by promoting training of the CJA professionals on the coercive control offence. Although the creation of the coercive control offence has been a significant improvement, in reality the CJA did not have the adequate means to efficiently implement it. This can be attested from the fact that training on coercive control for frontline police officers, investigators, and

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<sup>1050</sup> HM Government, *Ending Violence against Women and Girls Strategy 2016-2020* (2016).

<sup>1051</sup> Home Office, ‘Prime Minister’s Plans to Transform the Way We Tackle Domestic Violence and Abuse’ (17 February 2017) <<https://www.gov.uk/government/news/prime-ministers-plans-to-transform-the-way-we-tackle-domestic-violence-and-abuse>> accessed 29 March 2017.

prosecutors has been introduced.<sup>1052</sup> In order to strengthen the training of CJA professionals, it is suggested that the new domestic violence law should provide statutory status to the delivery of training to all police officers, and prosecutors and judges involved with IPA cases, in order to ensure that they have appropriate awareness on IPA and the different experiences of the victims. In this training, gender inequality should be addressed as the cause of coercive control.

Similarly, the staff involved with the legal aid should be trained on the coercive element of IPA and how it can be manifested through physical violence and emotional abuse to different individuals in order to be more adept to recognise the occurrence of IPA. This will be facilitated if legal aid is included in a VAWG strategy as one of crime prevention aims because it would promote the strengthening of the victims' support. The adoption of the intersectional gendered approach would lead to providing legal aid access to all IPA victims with financial needs, as they should be provided with equal protection with other victims. Neglecting victims with financial needs means that victims of a specific identity, which in this case is class, are disadvantaged; thus, since the additional identities such as class need to be equal among them, such protection is necessary.

### **6.5 Practical Implementation of the Intersectional Gendered Approach**

The implementation of the intersectional gendered approach would mean in practice the promotion of substantive criminal laws that aim to strengthen the protection of female IPA victims with diverse needs. For example, the familial homicide offence of the DVCVA 2004 and the familial physical harm offence of the DVCVA 2012 do not include the coercive control essence of IPA. These laws indicate gaps in targeting gender inequality, which is manifested through coercive control. Moreover, these laws have limited consideration of the diverse identities of the victims since they do not apply to former partners who are not in frequent contact. This can be detrimental to former partners that share children but they are not in frequent contact. Thus, the identity of parenthood is disregarded as women who share a child with a former partner might still be at risk regardless of the frequency of contact. The influence of the intersectional gendered approach on these laws would promote their

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<sup>1052</sup> See College of Policing, 'New Training to Investigate Coercive Control' <[http://www.college.police.uk/News/Newsletter/January\\_2016/Pages/coercive\\_control.aspx](http://www.college.police.uk/News/Newsletter/January_2016/Pages/coercive_control.aspx)> accessed 27 December 2016; CPS, Violence against Women and Girls Crime Report 2015-16 (2016) 35.

amendment by integrating the coercive pattern of abuse and also by applying them to former partners who are in infrequent contact.

The improvement of these laws regarding the integration of the coercive nature of IPA could be achieved by amending the law, so that the coercive control is integrated in the course of conduct that lead to the homicide or serious physical harm. Alternatively, these laws could be applied in conjunction with the coercive control offense of s.76 of the SCA 2015. Moreover, these laws could be improved by extending its application to former partners that are infrequently in contact since their prior relationship status contributed to the commission of the IPA.

Regarding the CJA response on IPA, the implementation of the intersectional gendered approach could mean an increased variety in the identities of police officers. This could be beneficial to victims, as police officers of the same gender and of other identities with the victims such as race, ethnicity, and sexuality could be in a better position to understand the victims' needs and provide them with appropriate support. Similarly, the increase of diversity among prosecutors and judges could improve the CJS response towards the victims' needs. In addition to the increase of diversity, the CJA response could be improved by providing mandatory training to all CJA professionals on the different types of IPA and how it is manifested to victims with diverse identities.

Further, the application of the intersectional gendered approach would promote the mandatory arrest, as it would prioritise the targeting of gender inequality in comparison to other inequalities that victims might face due to their additional identities. This would mean that the police officer at the scene of a crime will have the appropriate training to determine whether an IPA crime has been committed and if so he/she will not have the discretion to avoid arrest even if this could put the victim in difficulty. In fact, the police officer will have to arrest the perpetrator regardless of the victims' wishes and circumstances. The diverse needs of the victims arising from additional identities will not be disregarded but they will be supported through other means such as providing them with legal aid and access to specialist refuges. The assessment on the victims' needs could be facilitated with the risk assessment, which could serve not for assisting the police officer to decide whether to arrest the perpetrator but to determine the support that victims need. Moreover, the police officer will

have to collect alternative evidence at the scene of the crime other than the victim's testimony in order to promote the success of a victimless prosecution.

When the case is referred to the prosecutor, he/she will have to decide whether to proceed with the prosecution of the case. The prosecutor should proceed with the prosecution even if the victims are not willing to testify against the offender due to fear of the consequences that they might face from such action. The prosecutor should proceed to the prosecution of the case in an effort to strengthen the targeting of gender inequality but should not disregard the diverse needs of the victims arising from their additional identities. This consideration of the diverse needs would be manifested by not compelling victims to testify if there is alternative evidence to support a victimless prosecution. However, if there is not sufficient alternative evidence, the prosecutor would compel the victims to testify because targeting gender inequality is the primary aim. When such action is needed from the part of the prosecutor, the victims' needs would be supported through other social welfare mechanisms such as receiving support from legal aid and specialist refuges.

At the stage of adjudication of the case in court, the case would be referred to a specialised court where the judge will have to apply the special measures to the victim. Moreover, the judge due to his/her training will be able to have an increased understanding of the circumstances of the case in order to be able to make the appropriate interpretation of the law. Also, due to an increased diversity of the judiciary that the adoption of the intersectional gendered approach would promote, the judge might share similar identities with the victims that could provide an increased understanding of their needs and circumstances. Thus, training and diversity could provide the judge the insight to make the appropriate adjudication. Moreover, the legal framework will give the judge the ability to provide an appropriate judgment that reflects the seriousness of the power and control pattern of IPA crimes.

In addition, since gender refers to the role adopted by the perpetrator, namely hegemonic masculinity or pariah femininity, and not to the sex of the perpetrator, gender inequality is the cause of IPA when committed in the context of power and control. Thus, the prosecution of IPA committed by male or female perpetrators targets gender inequality, and for this reason, the same criterion of prioritising gender in comparison to the other identities should be

applied. An example of this practical implementation is that the mandatory arrest would be applied in cases with female perpetrators against male or female victims or male perpetrators against male or female victims. The officer at the scene will have to arrest the perpetrator despite of his/her gender. Moreover, since the intersectional gendered approach promotes flexibility to the diverse needs of the victims, its application on male victims would be to provide measures of support of their diverse needs. For example, if a male victim is not willing to testify against his partner, victimless prosecutions should be provided in the same way as with female victims. Moreover, specialist refuges and legal aid should be provided to them in order to support them to overcome the abuse and access the CJS. This does not mean that their needs will be met the same way as female victims but they will be provided with an equal opportunity to support their needs. For example, refuges that specialise on male victims with specific identities should be supported by the government in order to be able to help the victims while male specialist police officers should be preferred to interview them. Moreover, in the case of RSE, its teaching should include acknowledgement of IPA committed by female and male perpetrators against male victims. This could be taught in the context of gender inequality due to the roles adopted by the partners and the diverse manifestations of IPA caused by the different sexuality of individuals.

## **6.6 Summary of Conclusions and Recommendations**

To summarise, the conclusions of the thesis are the following:

- The CJS and the whole-system response have improved but more changes are needed (e.g creation of VAWG gender-based strategies instead of gender-neutral, coercive control offence, mandatory teaching of RSE).
- The policies and practice are not consistently applied. There is need that all policies and practices adopt consistently the intersectional gendered approach.
- The SED undermines the implementation of the intersectional gendered approach; thus, it needs to be changed.
- Feminist theorists and activists have contributed to the IPA developments through lobbying, campaigning, and training.

The specific recommendations for improvements based on the adoption of the intersectional gendered approach are the following:

- a) The recognition in the strategies that gender is considered the dominant identity considered since gender inequality is the cause of IPA.
- b) The adoption of mandatory arrest
- c) The extension of SDVCs to youth courts
- d) A different implementation of the SED based on the context it applies. This could be done through the Guidance of the SED which would recognise this.
- e) Promoting victimless prosecutions
- f) Creating a new IPA statutory definition
- g) The creation of a court mandated perpetrator programme that targets gender inequality and is provided equally to perpetrators of diverse identities.
- h) The inclusion of legal aid in the strategy
- i) The RSE and RE should address IPA in the context of gender inequality and address the diverse victims and victimisations. Teachers should be appropriately trained to address these issues. Faith schools should not be excluded by this approach.
- j) Long-term and stable funding of specialist refuges by giving statutory status to the governmental duty to fund specialist services.
- k) Statutory training of CJA and legal aid professionals through a statutory guidance that regulates the specifics of the training (gender inequality as the cause, the power and control pattern, diversity issues).

Overall, the CJS response has improved progressively through these administrations; however, there is need of further improvements in order to tackle IPA. The adoption of the intersectional gendered approach could contribute to the improvement of the CJS response by promoting changes that will target gender inequality, address the needs of diverse victims, and promote the transformation of the social perception. The promotion of these three aims in the CJS and the whole-system response could provide a more holistic approach to the contemporary challenges that victims face.

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