

Reform of Homicide

Homicide occurs when a killing is undertaken by an individual towards another person. Within England and Wales, there are two main criminal offences, which are known as murder and manslaughter (Allen and Zayed, 2021). There are three ways where manslaughter can be carried out, one way is killing an individual with the intent of murder, but the partial defence needs to be applied, or an individual has to have a loss of control, diminished responsibility or undertaking a killing via suicide pact, voluntary manslaughter can be applied for this particular point. Carrying out an action of killing even though the individual was aware of the risk, but still went ahead with it, also known as gross negligence. An action taken in the form of an unlawful act, which involves the danger of some harm, also that can be led to death. These last two points can be applied as involuntary manslaughter (CPS, 2019).

The Actus Reus of murder is when individual acts were deliberate, and the Mens Rea of murder would be the intention to kill (www.dpp-law.com, n.d.). Even though an act can lead to killing, which normally would be labelled as murder but through the Mens Rea element an individual can end up with manslaughter offence, as their intentions were otherwise.

There was a report published regarding partial defences to murder, and it was stated that “the law of murder in England and Wales is “a mess”. This led to the government inviting the law commission in July 2005 to undertake a review within the law of murder. The key elements that were acknowledged in this review was, the factors of murders, which included the defences and partial defences. The correlation between the law of murder and the law that relates to homicide, were also looked at especially the manslaughter. Some recommendations were made, such as taking account in the continuation of the existing mandatory life sentence intended for murder. Providing consistence within clear offences that protect individuals and the society, also enabling individuals that are convicted to be fittingly punished, it has to be fair and within the non-discriminatory in accordance with the “European Convention on Human Rights and the Human Rights Act 1998” (The Law Commission, 2005).

In the current law of homicide, murder and manslaughter are the only 2 offences that constitute to homicide, so most cases of homicide end up falling into one of those categories. Intention of individuals play a large role in order to determine how substantial the punishment is, and it has be proven that the individual had intention of causing bodily harm or death. As the way the law stands, the jury can decline the intention to harm.

The Law Commission has considered major defects of the current law within England and Wales, there are certain issues which they are not considering, such as the “causation and justifications for killing”. The faulty element within murder, an individual who goes ahead with the killing of another individual, is guilty of murder. Even though the individual did not intend to cause anything more than serious harm. Serious harm that is currently defined as does not mean to be life threatening. Within the current law, an individual can be found

guilty of murder, even though the individual did not and cannot anticipate or intend that their action would bring danger to another individual's life.

The intended execution that the parliament had in 1957, when passing the homicide act does no longer represent the current law, it does not match with what murder is understood to mean. The Law Commission believes that the current law is inadequate, as the underlying flaw within the law of homicide is that the structure is not constructed to differentiate the levels of criminality, which should be precisely graded and labelled. The process to undertake in grading offenses will be difficult, but there are 3 considerations that needs to be considered in order to work out the offenses are graded, these are the law breaker's state of mind when they are committing the offence, aggravation factors and the mitigating factors (The Law Commission, 2005).

Partial Defences allows the court to charge an individual with a lesser offence, this means a person who was convicted of murder can be charged with voluntary manslaughter than murder. This means they can avoid a life sentence, there are 3 aspects to partial defences. These are diminished responsibility, which means that the defendant was suffering from abnormality within mental functioning, this led to the individual being impaired with their judgment or their self-control. Another aspect is loss of control, where an individual has a qualifying trigger such as serious violence and they end up losing control. Another aspect is a suicide pact, where a defendant has planned to commit suicide in conjunction with the victim (Ashmans Solicitors, 2021).

There are key issues with partial defence, as it can allow an individual to get a lighter sentence than they may deserve. Even when a murder is taken place, they could just be convicted with manslaughter and walk away from life sentence, this may not be fair in many cases, a simple intention can stop an individual from their actual sentence. The victim's family may not be satisfied with the judgement but will not be able to do anything about it as the current law is a mess and rickety.

Mental functionality is quite broad, and it can take a long time to determine individuals' mental issues that led them to commit an offence, this is a key issue as this can drag the whole case lengthier than required. The Law Commission believe that the medical science has verily moved on significantly, since when the diminished responsibility was set down within the statute books and that happens to be half a century ago. The current definition does not make it clear on the abnormality of mind, also it does not correspond well with the psychiatric practice. Simply it is out of date with the current time, where more and more health issues falling under the mental health (Bickle, 2008).

Manslaughter is too broad as it is categorised within voluntary and involuntary. Involuntary manslaughter occurs when there is an unlawful killing, but there is no intent to kill or even cause serious harm to the victim. This means if an individual can somehow provide evidence or show that there is no intention to kill, then they can avoid murder charges and fit into manslaughter offence (Sentencingcouncil.org.uk, 2017).

In July 2005, the government announced that there will be review upon the law of murder within England and Wales.

There were many provisional proposals that was made, these are to modernise the diminished responsibility, this will allow it to be clearer and be able to assist developments within the expert diagnostic practice. The Law Commission has proposed a three-tier system for the generalised homicide offences, these are first degree murder where the individual will get the mandatory life sentence, second degree murder where the individual will get a discretionary life sentence and manslaughter where the individual will also get a discretionary life sentence (JUSTICE, 2008).

The first-degree murder ought to be limited to cases when there was a deliberate intention of killing. This means currently murder shows that intentional killing and killing with the intention to do serious harm, can be categorised the same and individuals can be known as murderers even though they did not intend to kill inappropriately. The Law Commission have also proposed changes towards other aspects within the law of homicide, which are provocation and complicity. The current law within provocation, would be substituted by partial defence of killing in the response to gross provocation or fear of serious violence, and the loss of self-control requirement would be eliminated (JUSTICE, 2008).

As of now the government have elected that they would not proceed with reformation to the structure of homicide. The proposals regarding provocation and diminished responsibility, they have decided for the reduction from murder to manslaughter. The term provocation is intended to be replaced by killing within circumstances where other conditions, such as the individual having the fear of serious violence, or something wrongful must have been done towards the individual in order for a negative action being undertaken. The law of complicity within homicide has been proposed to be changed by the government, also there are couple things they have not taken up, such as duress in becoming defence to murder and public discussion upon the issue of mercy killing. Partial changes have been made, but it is not enough to reform the current law and more needs to be done or even be discussed.

References:

Allen, G. and Zayed, Y. (2021). Homicide Statistics. *Number*, [online] 8224. Available at: <https://researchbriefings.files.parliament.uk/documents/CBP-8224/CBP-8224.pdf> [Accessed 24 Oct. 2021].

Ashmans Solicitors. (2021). *What is the Difference Between Murder and Manslaughter in UK Law?* [online] Available at: <https://www.ashmansolicitors.com/articles/what-is-the-difference-between-murder-and-manslaughter-in-uk-law/>.

Bickle, A (2008). *Proposed Reforms to Partial Defences and their Implications for Mentally Disordered Defendants*. Journal of Mental Health Law. [online] Available at: <https://www.northumbriajournals.co.uk/index.php/ijmhcl/article/view/260/254> [Accessed 31 Oct. 2021].

CPS (2019). *Homicide: Murder and Manslaughter | the Crown Prosecution Service*. [online] Cps.gov.uk. Available at: <https://www.cps.gov.uk/legal-guidance/homicide-murder-and-manslaughter>.

JUSTICE. (2008). *Homicide law reform - JUSTICE*. [online] Available at: <https://justice.org.uk/homicide-law-reform/>.

Sentencingcouncil.org.uk. (2017). *Manslaughter explained*. [online] Available at: <https://www.sentencingcouncil.org.uk/blog/post/manslaughter-explained/>.

The Law Commission (2005). *The Law Commission A NEW HOMICIDE ACT FOR ENGLAND AND WALES?* [online] Available at: http://www.lawcom.gov.uk/app/uploads/2015/03/cp177_Murder_Manslaughter_and_Infanticide_consultation_overview.pdf.

The Law Commission (n.d.). *Reform of Offences against the Person Reform of Offences against the Person*. [online] Available at: http://www.lawcom.gov.uk/app/uploads/2015/11/51950-LC-HC555_Web.pdf.

The Law Commission (2006). *MURDER, MANSLAUGHTER, AND INFANTICIDE*. [online] Project 6 of the Ninth Programme of Law Reform: Homicide. Available at: http://www.lawcom.gov.uk/app/uploads/2015/03/lc304_Murder_Manslaughter_and_Infanticide_Report.pdf [Accessed 31 Oct. 2021].

www.dpp-law.com. (n.d.). *What Is The "Actus Reus" Of Murder?* [online] Available at: <https://www.dpp-law.com/blog/actus-reus-murder/> [Accessed 2 Nov. 2021].