

BMLW4002

Criminal Law

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1. Introduction

The purpose of this essay is to critically evaluate whether a reform of the law in relation to non-fatal offences Against the Person act (1861) is needed and no longer fit for purpose. The 1861 Act is the consolidation of several crimes, including but are not limited to Assaults, Battery and Child Stealing. "The 1861 Act is a **consolidation statute** — it brought together existing law on injury to persons into one piece of legislation." (Love, 2021)

The Act which was created in 1828 and later reformed in 1861 did serve the society well in those times as it was relevant to the crimes in that era. The fact that it has not been reformed in over a 150+ years, that is evidence that a reform is needed. There is clear evidence that a reform is needed but the question remains as to whether it still serves today's society. (Offences against the Person Act 1861, 2021)

2. Arguments for and against

There is no argument that the language used in the Offences Against the Person Act 1861 is obscure and outdated, the 1861 Act serves little purpose in the modern society, the reason being some of the offences are outdated in the Act. Furthermore the 1861 Act fails to provide logical structure of offences, it has been used to prosecute over 26,000 every year. In addition, the offences of Assault and Battery generate over 100,000 prosecutions a year, some of the offences are not clearly varied for seriousness, the mental element of some of the offences are not clearly expressed and does not reflect the external elements of those offences. (Offences against the Person | Law Commission, 2021)

Going back to ABH (Actual Bodily Harm) and battery, there is no clear definition for either and as such no clear differentiation between them. Any contact with intent without permission equals to a battery charge (Faulkner v Talbot, 1981). From what can be taken from the CPS website, it seems as though ABH is a more serious attack than battery. However, according to sentencing guidelines battery has a maximum of 6 years in prison and ABH has a maximum of 5 years (R v Miller). There is only a difference of 1 year even though the one is worse than the other, which clearly shows sentencing guidelines need a review. (Offences against the Person, incorporating the Charging Standard | The Crown Prosecution Service, 2021)

These crimes could include crimes such as threats over social media or through an online platform. These crimes would not have occurred in the past as social media was not around and individuals could not communicate with each other online and therefore means it wasn't required in the act, however technology today has advanced and individuals now have easy access to social media, mobile phones and are able to communicate easily online with others, this also allows many individuals to take advantage of their ability to easily communicate with others and may use it threaten to kill individuals and many individuals do carry out this criminal Act, however it is not included in the non-fatal offences against a person's Act 1861. It is very important that as society changes and develops that key Laws and Legislation also update alongside them.

There are many reasons why this act needs a reform, one of the main reasons being the act includes crimes that are no longer relevant to the 21st century, I will list some of these below:

1. 17. Impeding a person endeavouring to save himself from shipwreck.
2. 26. Not providing apprentices or servants with food, &c. whereby life is endangered.
3. 28. Causing bodily injury by gunpowder.
4. 29. Causing gunpowder to explode, or sending to any person an explosive substance, or throwing corrosive fluid on a person, with intent to do grievous bodily harm.
5. 30. Placing gunpowder near a building, with intent to do bodily injury to any person.
6. 35. Drivers of carriages injuring persons by furious driving.
7. 60. Concealing the birth of a child.
8. 64. Making or having gunpowder, &c., with intent to commit any felony against this Act.

These crimes are no longer relevant, for example gunpowder is no longer needed as there is access to firearms and explosives. Not only that explosives can be made out of house hold chemicals which can be bought from supermarkets, which will go undetected to police authority. Carriages are very rarely on public roads, they have been replaced with cars so there is clear evidence the crimes in the act need a review.

There are crimes against the person in the 21st century which were not around in the 18th century. These crimes could include crimes such as threats over social media or through an online platform. These criminal acts would not have occurred in the past as social media was not around and individuals could not communicate with each other online and therefore means it wasn't required in the act, however technology today has advanced and developed and individuals now have easy access to social media, mobile phones and are able to communicate easily online with others, this also allows many individuals to take advantage of their ability to easily communicate with others and may use it to threaten to kill individuals and many individuals do carry out this criminal Act, however it is not included in the non-fatal offences against a person's Act 1861. It is very important that as society changes and develops that key Laws and Legislation also update alongside them.

(Social Media - Guidelines on prosecuting cases involving communications sent via social media | The Crown Prosecution Service, 2021)

These crimes would go under malicious communication and cyberbullying which would not have been around in the 18th century as technology did not exist. The internet itself was invented in the 1960's. The internet is a major part of the 21st century and without it we would not be able to operate as we do today. The internet

makes it possible to harm individuals that in itself is evidence of a reform of the act. (Who Invented the Internet?, 2021)

Cyberbullying is not included in the 1861 non-fatal offences against a person act as social media was not around and internet was not readily available and therefore individuals did not have access to numerous online platforms and therefore were not able to commit cyberbullying. This Act needs reform to include all the other crimes that are committed in the 21st century that were not committed in the 1800s.

Secondly, many of the words used within the act is complicated and confusing, making it difficult for anyone without a lot of knowledge in Law and literature to understand. Most of the citizens back in the 18th Century were illiterate and had very little knowledge of that dialect. The language used in 1861 Act was complicated, obscured and outdated and the courts waste a lot of time having to explain the real meaning of the words in various term. An example of old dialect would be the word grievous, in society today grievous translates to very serious, whereas in the 18th century it meant murder. The dialect has developed just as humans, technology and the world. Language and the meanings of word are constantly changing and therefore it would make sense for the Act to also update and change along with everything else. (The Law Society Gazette, 2014)

The language that was spoken and used in the 18th century was known as Archaic but is now less common in the 21st century, therefore this language is very rarely used today, for this reason many words such as the words malicious and grievous are not used in modern times and require interpretation by the courts. For instance, the word malicious is related to evil or hatred, whereas in legal terms malicious means intention or reckless. It would make complete sense to bring the language up to date so common people will understand it. A lot of crimes are not clearly explained, and some might not even know they are committing a crime, this would also save time and money in court. (Love, 2021)

However, the London criminal courts solicitor's association argued that most of the legal terms within the non-fatal offences against a person act 1861 were well understood and that modernisations sometimes created more problems than it has solved. Although they did agree that some of the language required updating to make it more accessible and understandable for the individuals who read it. They also mentioned that removing redundant offences from the 1861 act was of small significance in comparison to a greater number of brand-new offences which are regularly created but are rarely prosecuted. (Offences against the Person | Law Commission, 2021)

Thirdly, the 1861 Act needs to be updated and reformed is because of section 26 which includes neglecting or causing bodily harm to servant. This offence is heavily outdated as it is very uncommon for individuals to come across a servant in modern society. It would be very unethical to keep an individual as a servant and have them tend to your every need and for these reasons it is highly unlikely for anyone to keep servants. Section 26 also includes that servants should be given adequate food and clothing, this would have been relevant in the past, however, it would have made

more sense to include this under “employment law”. On the other hand, some individuals may argue that servants are still very common and are still used in modern society, therefore they would argue that this section would still be relevant. Many would argue that since individuals still have servants, then we should keep the section in the act which protects their rights to adequate food and clothing.

Additionally, the non-fatal offences against the person act contains many offences that are not very relevant for our society today and therefore it needs reform. By doing so it will refine and modernise the law and target the most egregious misconduct. For example, section 60 of this act includes concealing the birth of a child. This offence is not very relevant for modern society for many reasons. It is impossible for individuals to hide a birth of a child as there are many procedures included during pregnancy. When a woman is pregnant, she has regular checks with a midwife and that midwife is normally present during the whole pregnancy and even after birth, making sure that the child is healthy and growing at a normal rate. Whether the women have a home birth or hospital birth, it does not change then fact that midwife and doctors will be informed and therefore it is not possible to conceal the birth of a child. Also, as technology and medicine have advanced, it has made women more inclined to go to the hospital more regularly meaning the doctors and midwives would be up to date with the women’s pregnancy during every stage. Also, where individuals needed to hide the birth of a child for example due to adultery or before marriage, in today’s society this is the norm. Additionally, if they gave birth and did not want the baby, there are many ways of putting the baby up for adoption. Similarly, there are also many options for termination of pregnancy. As it is impossible to conceal a birth of a child in society today, this act should be updated and reformed.

On the other hand, many individuals oppose the need for a reform of the non-fatal offences against a person act 1861. These include the Bar Council and the Criminal Bar Association. They have both argued that this Act worked very well in practice and that the flaws found within the act were more theoretical and lack practicality. They also mentioned that a few outdated offences should be moved and that a few changes could be made with regards to the hierarchy of offences. They proposed that these little changes could be made without completely replacing this act.

3. Conclusion

To conclude, from all of the available information we can see that this act needs a reform. It is heavily outdated as discussed before, it lacks relevance to the modern society. The Act uses language which is quite intricate and therefore difficult to understand in layman’s terms, had it been in a much simpler form then I think it would be much easier to interpret. The Act includes punishment for crimes that no longer take place in today, for example, causing bodily harm to a servant. Not many people have servant is these days and so this part of the legislation serves no purpose. Another crime that no longer takes place is the concealing of a baby. This crime once again no longer exists in the 21st century and is therefore irrelevant by reforming the Act, it could decrease the expenditure of the Criminal Justice System and that way the money could be spent elsewhere. I think the reform should be a point of discussion in the House of Parliament, however the UK parliament does not see the reform of this Act as a priority and therefore have not acted upon this.

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