

BMLW4002

Criminal Law

Salema Khatun

1704819

Laura Knight

Contents

1. Introduction (Page 3)
2. Advantages and Disadvantahes (Page 3 – 5)
3. Conclusion (Page 5)
4. References (Page 6)

Word Count

2033 (Including reference)

1800 (Excluding reference)

1. Introduction

The purpose of this assignment is to discuss whether the law in relation to non-fatal offences against the person is no longer fit for purpose and in needs reform. The 1861 Act is a consolidation statute, it brought together existing law on injury to persons into one piece of legislation. "As a method of keeping the law up to date this can be very effective" (The 1861 legislation Act) as the common law develops and becomes stable and old pieces of legislation are being replaced in a piecemeal way with separate legislation, it helps to put everything in one place to make it easier for citizens to understand and lawyers to work with.

The Offences Against the Person Act [1861] is an act which means causing or tending to cause danger to life or bodily harm, be Inflicting bodily injury with or without a weapon, using chloroform to commit any offences, attempting to choke to commit an offence etc. Some more topics that come under the Act would be homicide, this is the killing of one individual by another and manslaughter the killing of one without the intention and assault. At a first glance, it is clear to see that there are far more disadvantages about this act than advantages. (The Massively Outdated Offences Against the Person Act 1861 Shows How Well the Common Law System Works - Oxford Royale Academy, 2021)

Prior to the 1861 reform the act originally used to be the Offences Against the Person's Act 1828, which was on the date of 27th of June 1828. The British parliament passed the law the Offences Against the Person Act originally known as the "Lord Lansdowne's Act" which was introduced by the home secretary. The 1828 Acts first triumph was the synthesis which put the act into a whole different angle as the Act repealed and had the whole Act into a system logically coherent system nationalising parts of 57 statutes which passed across eras of Henry III and George IV.

1828 Act second achievement was to notice assault in more significant actionable and litigable triable law. However, The Act had taken a new route towards interpersonal violence as too many other developments happened. But the main reason for the 1828 Acts was for the poor people to gain access to justice for minor assaults by giving magistrates summary the power for such offences. The Act had also unexpected cases of marital issues such as wife beating, abuse etc. The 1828 Act was made due to the fact there was a lot of intense interpersonal violence which helped with the right of the law. (Lisa Surridge, "On the Offences Against the Person Act, 1828" | BRANCH, 2021)

2. Advantages and Disadvantages

One of the dew advantages of this act include the fact that it thoroughly explains the different types of crimes that fall under this act and what their consequences are. However, some can argue that the consequences that are faced for some of the crimes are questionable. For example, Assault and Battery both carry a similar prison term, however one offence is more serious than the other.

One reason as to why the legislation is not suited to crime today is because it is over 150 years old, meaning that it is heavily outdated (Eugenicos, 2017). We are in the 21st century where English language has been changed and modified as well as technology becoming

more advanced. The language that was previously used in the 1800's was far less primitive than the language used within the law now. As the language has been changing more and more every decade, this has meant that the people of the new era of the 21st century would not be able to keep up with the language that was used previously in the 18th century. One example of a word would be malicious, the word malicious is used in society today but the meaning of the word has changed since the past, it is also used in a different way compared to how it is used in the courts. Another word that can have different meanings around it would be the word magistrates. The English language that we use now is different from the old languages. This is a big downside as the court will have to waste time explaining what that word means and the defendant may not have even known that they were committing that crime due to the fact the act of 1861 is outdated and this could lead to many of the defendants committing crimes which they may have not even known were criminal offences.

Another issue with the 1861 Act is that there is no logical ladder of offences. This means that individuals can be prosecuted with the same length prison sentence for a variety of crimes. An example of this would be that the jail time for "Assault" (REFORM OF OFFENCES AGAINST THE PERSON) and threatening to murder someone/sending a letter to them and going out and proceeding to kill the person are the same, whereas these two acts are vastly different things and should have different prison sentences. The problem with this act is that it does not consider how these two activities are different, for example, in one instance the individual is sending death threats to another individual and in the other instance the individual physically commits the act of murdering the other individual, as you can see the difference between the two is excessively big, however many people would argue that threatening to commit murder is the same as committing murder. The biggest problem of this act is that there is no ladder. The defendants will be at a huge disadvantage if they are told that they will face the same prison time as someone who has carried out the act of murder.

On the other hand, many people argue that the hierarchy of offences could be changed without the need to reform the whole act. For instance, the Bar Council and the Criminal Bar Association argued that the act worked very well in practice and that many of the shortcomings were mostly theoretical. (Law Commission, 2015) They suggested that a few changes could be made regarding the hierarchy and the structure of the act, so that it is more understandable for others. They put the idea forward that these minor changes could be introduced without replacing or reforming the whole act.

Another reason the 1861 Act needs a reform is because the act contains several offences that serve no purpose in modern society. For instance, an assault that results in wounding a magistrate or any other person while they are carrying out their duty preserving a wreck or any ship in distress could result in a prison sentence of 7 years ordered by the Crown Court. This needs reform as the sentencing for an offence should be dependent upon the severity of the assault. This offence has been recommended to be abolished with no replacement by the Law Commission as it is very unlikely for such an act to be committed in modern society. (Offences against the Person, incorporating the Charging Standard | The Crown Prosecution Service, 2021)

The non-fatal offences against a person act 1861 needs reform as it is not up to date with society today. For example, within the act, there is a whole section dedicated to threats to

kill, this is seen in section 16. In this section it fails to mention any sort of threats or harassment carried out on social media which can come under “malicious communication”. In the 1800s there would have been no form of social media and therefore it would have been normal for them to not include threats to kill made through social media. However, in modern society everyone has access to social media and uses it very frequently, if not every day and this allows many individuals to misuse it and allows them to easily threaten or harass individuals through social media, therefore it is very concerning that section 16 does not include any sort of social media communication (*Offences against the Person Act 1861*, no date). These offences against the person were not possible in the 18th century as the internet was not around then, the internet was invented around the 1960’s (Brief History of the Internet | Internet Society, 2021). Even offences via mobile phones were not possible, as the first ever phone invented to be able to send a text message was in 1992. (Text messages turns 20 – but are their best years behind them?, 2021)

An authority to further support this point would be the *R v Ireland (1997)* case. This was a case where there was a couple who were initially in a relationship, but the claimant had ended it. The defendant would then continually pester and call the claimant to the point where the claimant suffered severe psychiatric injury. The court held that psychiatric injury can be classed as bodily harm and that the law ought to provide resources for women suffering from malicious harassment and unrequited lovers (*House of Lords - Regina v. Burstow Regina v. Ireland, 1997*).

The Offences Against the Person Act should be reformed because it is heavily outdated. Most of the legislation included is not relevant to today’s society. It should also be reformed because the language can be rather difficult to understand and so it would be better if it were much more simplified and put into layman’s terms. By implementing a reform this could help the criminal justice system improve efficiency and deter away from unnecessary spending.

3. Conclusion

To conclude, it is very evident from this report and all research conducted that a reform of the non-fatal offences against a person Act 1861 is required. There are a lot more advantages to introducing a reform than there would be to keep the same Act. The disadvantages heavily outweigh the advantages, the sentencing guidelines definitely need a review as mentioned earlier some of the crimes should be focused on the severity of the crime rather than just the crime. Also, there is no argument that the language included in the act needs updating, even the people who are for the act have agreed to this, i.e., the law commission. Furthermore, some offences against the person that were not around in the 18th century when this act was last reformed should by now have been placed in the act. These crimes include harassment, threatening and bullying on social media or even mobile phone, these crimes were not possible back in the 18th century as the internet did not exist and technology was not as sophisticated as today. All these points are evidence that a reform is well needed, but the real question is whether this act is still needed.

4. References

Eugenicos, A.-M. (2017) 'Should We Reform the Offences Against the Person Act 1861?', *The Journal of Criminal Law*, 81(1), pp. 26–32. doi: 10.1177/0022018316685478.

House of Lords - Regina v. Burstow Regina v. Ireland (no date). Available at: <https://publications.parliament.uk/pa/ld199798/ldjudgmt/jd970724/irland02.htm> (Accessed: 16 February 2021).

Law Commission, T. (2015) *REFORM OF OFFENCES AGAINST THE PERSON (Law Com No 361)*. Available at: www.gov.uk/government/publications (Accessed: 16 February 2021).

Branchcollective.org. 2021. *Lisa Surridge, "On the Offences Against the Person Act, 1828" | BRANCH*. [online] Available at: https://www.branchcollective.org/?ps_articles=lisa-surridge-on-the-offences-against-the-person-act-1828#:~:text=The%201828%20Offences%20Against%20the,more%20accessible%20to%20the%20poor.> [Accessed 20 February 2021].

Cps.gov.uk. 2021. *Offences against the Person, incorporating the Charging Standard | The Crown Prosecution Service*. [online] Available at: <https://www.cps.gov.uk/legal-guidance/offences-against-person-incorporating-charging-standard> [Accessed 20 February 2021].

Internet Society. 2021. *Brief History of the Internet | Internet Society*. [online] Available at: <https://www.internetsociety.org/internet/history-internet/brief-history-internet/> [Accessed 20 February 2021].

Legislation.gov.uk. 2021. *Offences against the Person Act 1861*. [online] Available at: <https://www.legislation.gov.uk/ukpga/Vict/24-25/100/contents> [Accessed 20 February 2021].

Oxford Royale Academy. 2021. *The Massively Outdated Offences Against the Person Act 1861 Shows How Well the Common Law System Works - Oxford Royale Academy*. [online] Available at: <https://www.oxford-royale.com/articles/offences-against-the-person-act-1861-needs-reform/> [Accessed 20 February 2021].

the Guardian. 2021. *Text messages turns 20 – but are their best years behind them?*. [online] Available at: <https://www.theguardian.com/technology/2012/dec/02/text-messaging-turns-20> [Accessed 20 February 2021].