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Module code: BMLW4005

Module: Criminal Law

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Submission date: Friday 15th March 2024

Reform of the Offences Against the Person Act 1861

The following essay aims to discuss whether the Offences Against the Person Act 1861 is relevant to modern society regarding non-fatal offences against a person. The act is a legislation that protects individuals from violence, and it is multiple forms of legislation all put together (Horder, 1994; Jefferson, 2012). The issue of this law is whether it should still be used in a court of law today, due to the outdated language and descriptors, this concern resulted in a draft bill in 1998 for plans to reform the act (Jackson and Storey, 2015). Under the guidance of the Ministry of Justice, the Law Commission in 2015 reviewed this piece of legislation to decide if it needs reform to meet the standards of the present day (Law Commission, 2015a). No action has been taken yet.

An argument in support of the Offences Against the Person Act 1861 is that despite the legislation needing to be reinterpreted, it is still being used today, and it still works which shows how flexible the U.K justice system is (Criminal Bar Association, 2015). For example, psychiatric illness and cutting hair without the persons consent counts as actual bodily harm (Eugenicos, 2017; Harris, 1994). Obviously, these specific types of actions were not seen as actual bodily harm in the year 1861 but the changes in our society have made people view this piece of legislation differently. Another example is the word battery, which is any type of touching that is unlawful (Demetriou, 2016; Gardner, 1994). A real-life example of this is the case law of 'DPP v K (a minor)' (1990) which is when a school student was arrested for adding acid inside the hairdryers in the school bathroom, which injured another student's face when they tried to use the hairdryer. Even though the student did not directly pour acid on the other student's face, it was still seen as important and crucial for the legislation to cover these types of actions that involve indirect touching that results in harm or injury to the victim. This shows that the Offences Against the Person Act 1861 still has some benefits being used in court cases. This links back to the topic and discussion because it is talking about an advantage of the legislation and how it still works in modern times. From the above, it is clear to see that there are some advantages of the Offences Against the Person Act

1861 and that there are some aspects of the legislation that can still be used and implemented in the modern day as seen above.

An argument on why the Offences Against the Person Act 1861 does not apply to modern times is because the language used in this legislation is outdated (Williams, 1981). One disadvantage of the legislation is that the language is unclear and confusing (Demetriou, 2016; Law Commission, 2015a). For example, the words in the Offence Against the Person Act 1861 such as malicious and grievous have no consensus on what it actually and objectively means in legal terms, and it is left for personal interpretation by legal workers in court cases/ legal cases (Jackson and Storey, 2015). Grievous can be explained as something is that very serious such as the case law of 'DPP v Smith' (1961). However, malicious means something different from it is general meaning. Malicious in legal terms is interpreted as intention or recklessness which is mentioned in the case law of 'R v Cunningham' (1957). Another example is the word bodily harm which is used in sections 18 and 20 require no physical force or violence (Jackson and Storey, 2015). A real-life example of this is the case law of 'R v Burstow' (1997) which is when the defendant caused psychiatric injury by constantly harassing his victim. In section 20 of the Offences Against the Person Act 1861, the term inflict just means cause and there is no need for a battery or physical application of force to be convicted of the offence (Demetriou, 2016). This shows that the language used in this legislation is not suited for modern times and changes should be made where the language is clear and easy to understand and should not be left for personal interpretation (Eugenicos, 2017; Reed, 1995). Changes should be made to this legislation in order to make the language easy to understand for members of the public and the judiciary (Jefferson, 2012). From the above, it is clear to see that the language used in the Offences Against the Person Act 1861 regarding non-fatal situations is outdated and should not be used in the present day.

Another argument against the Offences Against the Person Act 1861 is that the seriousness and hierarchy of offences in this legislation is unclear and confusing (Law

Commission, 2015a). For example, any form of intentional touching of an individual will be seen as battery by the courts which is mentioned in the case law of 'Faulkner v Talbot' (1981). However, any form of injury or hurt will be calculated to obstruct the comfort or wellbeing of the victim will count as ABH (actual bodily harm). There is not much difference of the two offences other than the fact of the victim's comfort is being interfered, yet the maximum punishment for this is 6 months and 5 years of ABH (Jefferson, 2012). Another example is GBH (grievous bodily harm) and ABH can have multiple stages of seriousness and still section 47 of ABH has the same maximum punishment as section 20 of GBH which can confuse people because of the balance of seriousness between the two offences (Demetriou, 2016; Eugenicos, 2017;). Another issue of this is that GBH under section 18 has a maximum sentence of life of imprisonment which can involve similar action to that of GBH under section 20 (Jefferson, 2012). From the above, it is clear to see that the levels of severity regarding the sections of the Offences Against the Person Act 1861 are not set out clearly which makes it difficult to understand and shows that this legislation is not suited for modern times.

Another issue of the Offences Against the Person Act 1861, is the criminalisation of reckless transmission of disease which is under section 20 of the legislation (Stone, 2017). Defendants in a court of law can give the defence of consent to bodily harm (Stone, 2017). This is called informed consent and this type of defence in court allows the individual who is infected with HIV to act recklessly and uses the victim's knowledge and consent to justify their actions in court cases (Giles, 2021; Stone, 2017; Weait, 2005). A real-life example of this is the case law of 'R v Dica' (2004) which is when the defendant who knew he was HIV positive and engaged in unprotected sexual activity with two women who did not know any of this, was infected. The case was dismissed because there was some evidence that the victims consented to unprotected sexual activity. This is problematic because the defence of 'informed consent' increases the risk for victims being infected with HIV because the defendant does not necessarily have to tell the victim that they have HIV if they have heard it from another individual. This is

shown in the case law of 'R v Kozani' (2005). From the above, it is clear to see that the Offences Against the Person Act 1861 regarding transmission of diseases is a controversial issue as it gives people who are infected with a disease the ability to act recklessly and be dishonest to their partners during intimacy. Reform is needed to protect future victims of transmitted diseases from individuals (Law Commission, 2015a).

From looking at both sides of the argument, it is clear to see that the Offences Against the Person Act 1861 regarding non-fatal is not suitable for a present-day society because the language is obsolete and obscure. Reform is needed to fix this issue regarding this legislation. To reform this legislation, the language must be changed so that it is clear for everyone to understand. This will stop personal interpretation and confusion (Law Commission, 2015a). Another way to reform the Offences Against the Person Act 1861 is to sort out the hierarchy of seriousness and punishment regarding certain offences within this legislation. This will make easier for members of the public to understand the offences (Criminal Bar Association, 2015; Law Commission, 2015b). Doing this will be beneficial because it will save time and money on court cases, and it will make the legislation clear to interpret (Jackson and Storey, 2015; Law Commission, 2015a).

References

1. Criminal Bar Association (2015) *Proposed Reform of the Offences Against the Person Act 1861 Consultation by the Law Commission*. Available at: [Microsoft Word - PROPOSED REFORM OF THE OFFENCES AGAINST THE PERSON ACT 1861\[3\].docx \(criminalbar.com\)](#) (Accessed: 4 March 2024)
2. Crown Prosecution Service (2023) *Intentional or Reckless Transmission of Infection*. Available at: [Intentional or Reckless Sexual Transmission of Infection | The Crown Prosecution Service \(cps.gov.uk\)](#) (Accessed: 21 February 2024)
3. Demetriou, S. (2016) 'Not Giving up the Fight: A Review of the Law Commission's Scoping Report on Non-Fatal Offences Against the Person', 80(3), pp. 188-200. Available at: <https://doi.org/10.1177/0022018316646656>
4. Eugenicos, A. (2017) 'Should We Reform the Offences Against the Person Act 1861?', *The Journal of Criminal Law*, 81(1), pp. 26-32. Available at: <https://doi.org/10.1177/0022018316685478>
5. Giles, C. (2021) 'A Sexual Harm? HIV Transmission, Biological GBH and Ancillary Sentencing Provisions in England and Wales. *The Journal of Criminal Law*, 85(3), pp. 209-222. Available at: <https://doi.org/10.1177/0022018321991097>
6. Gardner, J. (1994) 'Rationality and the Rule of Law in Offences against the Person', *The Cambridge Law Journal*, 53(3), pp. 502-523. Available at: <https://doi.org/10.1017/S0008197300080934>
7. Horder, J. (1994) 'Rethinking Non-Fatal Offences against the Person', *Oxford Journal of Legal Studies*, 14(3), pp. 335-351. Available at: <https://doi.org/10.1093/ojls/14.3.335>
8. Harris, D. (1994) 'Included Offences and the Offences Against the Person Act', *The Cambridge Law Journal*, 53(3), pp. 467-470. Available at: <https://doi.org/10.1017/S0008197300080880>
9. Jackson, A., and Storey, T. (2015) 'Reforming Offences Against the Person: In Defence of Moderate Constructivism'. *The Journal of Criminal Law*, 79(6), pp. 437-447. Available at: <https://doi.org/10.1177/0022018315617583>
10. Jefferson, M. (2012) 'Offences against the Person: Into the 21st Century', *The Journal of Criminal Law*, 76(6), pp. 472-492. Available at: <https://doi.org/10.1350/jcla.2012.76.6.805>
11. Law Commission (2015a) *Offences against the Person*. Available at: [Offences against the Person - Law Commission](#) (Accessed: 11 February 2024)

12. Law Commission (2015b) *Reform of Offence Against the Person*. Available at: [REFORM OF OFFENCES AGAINST THE PERSON \(Law Com No 361\) \(publishing.service.gov.uk\)](#) (Accessed: 21 February 2024)
13. Reed, A. (1995) 'Offences against the Person: The Need for Reform', *The Journal of Criminal Law*, 59(2), pp. 187-197. Available at: <https://doi.org/10.1177/002201839505900205>
14. Stone, J. (2017) 'Consent, Knowledge and Precaution: A Critical Analysis of the Criminalisation of the Reckless Transmission of HIV and Other Serious Diseases', *Plymouth Law Journal and Criminal Justice Review*, 9, pp. 93-114. Available at: [Stone.pdf \(plymouthlawreview.org\)](#)
15. Stone, R. (1992) 'Reckless Assaults after Savage and Parmenter', *Oxford Journal of Legal Studies*, 12(4), pp. 578-585. Available at: <https://doi.org/10.1093/ojls/12.4.578>
16. Virgo, G. (1997) 'Offences Against the Person-Do-it-Yourself Law Reform', *The Cambridge Law Journal*, 56(2), pp. 251-253. Available at: <https://doi.org/10.1017/S000819730008123X>
17. Williams, G. (1981) 'Recklessness Redefined', *The Cambridge Law Journal*, 40(2), pp. 252-283. Available at: <https://doi.org/10.1017/S000819730010738X>
18. Weait, M (2005) 'Criminal Law and the Sexual Transmission of HIV: R v Dica' *The Modern Law Review*, 68(1), pp. 121-134. Available at: <https://doi.org/10.1111/j.1468-2230.2005.00531.x>

Law References

'DPP v K (a minor)' (1990) 1, *WLR*, 1067.

'DPP v Smith' (1961) *AC*, 290.

Faulkner vs Talbot [1981] *ALL, ER*, 468.

Offence Against the Persons Act 1861, Available at: [Offences against the Person Act 1861 \(legislation.gov.uk\)](#) (Accessed: 24 February 2024).

'R v Dica' (2004) *EWCA Crim*, 1103, *Lexis Plus UK*. Available at: <https://plus-lexis-com.ezproxy.uwtsd.ac.uk/api/permalink/2ef5768c-5ef9-40e5-bcb2-4a2a5d475215/?context=1001073> (Accessed: 28 February 2024)

'R v Cunningham' (1957) 2, *QB*, 396.

'R v Konzani' (2005) *EWCA Crim*, 706, *Lexis Plus UK*. Available at: <https://plus-lexis-com.ezproxy.uwtsd.ac.uk/api/permalink/66fef6b4-4a07-4b2a-b91c-bc6594dd0829/?context=1001073> (Accessed: 29 February 2024)

'R v Burstow' (1997) *UKHL*, 34.