

Gender violence

By Marianne Beck

1. Introduction

In the 19th century, the husband had a legal right to correct his wife with physical punishment. This right was abolished in 1891, but it wasn't until the 70ies that domestic violence came to public consciousness. The establishment of crisis centres in the 70-ies gave an important contribution to breaking the silence around domestic violence.

At its most complex, domestic violence exists as a powerful tool of oppression. Violence against women in general, and domestic violence in particular, serve as essential components in societies which oppress women, since violence against women not only derives from but also sustains the dominant gender stereotypes and is used to control women in the one space traditionally dominated by women, the home.

Domestic and gender violence in Norway is now on the public and political agenda. The government has presented a program of action (2000) against violence towards women.

2. Legal situation

2.1. Criminal law

1. Domestic Violence

Domestic violence is violence that occurs within the private sphere, generally between individuals who are related through intimacy, blood or law. Despite the apparent neutrality of the term, domestic violence is nearly always a gender specific crime, perpetrated by men against women.

The Criminal Justice System in Norway does not have a specific definition of domestic Violence. Domestic violence is sorted under the same legal rules as other forms of violence.

Penal code chapter 22 – covers crimes against life, body and health;

Ordinary assault; penal code § 228

Ordinary assault covers physical violence against another person, for example; a woman has been beaten and abused but the damage is not severe enough to be regarded as actual bodily harm.

Assault, penal code § 229

Assault after penal code 229 is used when a woman is abused to such a degree that she has been injured, for example inflicted internal injury, broken a leg, lost her teeth. It has to be proven that the injury was inflicted with intent. Sentencing framework; up to 3 years imprisonment, in grave cases up to 8 years imprisonment.

Aggravated assault, penal law § 231

Assault after penal code 231 covers cases of grievous and lasting bodily harm, such as loss or substantial weakening of vision, hearing or ability to speak, becoming crippled or disfigured. Sentencing framework; prison for at least 2 years and up to 21 years provided that the crime led to the death of the victim.

Particular painful, penal law § 232

Penal law § 232 is an addition to §§228 – 231, and gives provision to increase the sentence for crimes according to §§ 228-231 if committed in a particular painful way or under special aggravating conditions.

Threats, penal law §§ 222 - 227

Threats of committing crime that can be punished if they are fitted to provoke serious fear.

Maltreatment and neglect of family members, penal code § 219

This is the only provision particularly aimed at domestic relations. Imprisonment for up to 2 years for maltreatment or neglect of family members, provided that it is frequent or a gross violation.

Punishment after these provisions change from fine to 21 years imprisonment, dependent on the perpetrators degree of guilt and the seriousness of the violation. The punishments do vary a lot, but imprisonment for more than five years is unusual. The most severe sentence was given in 1990, when the Supreme Court sentenced a man to 7 years imprisonment for aggravated assault that led to the death of the victim.

Homicide, penal code §§ 233, 239

Penal Code §233 covers negligent homicide, whereas penal code § 239 covers culpable homicide, with the maximum imprisonment of 6 years for negligent homicide and 21 years for culpable homicide.

2. Sexual Violence

Rape § 192

Rape according to § 192 compromises sexual abuse through threats, violence or taking advantage of defencelessness. The punishment is up to 10 years, and if the rape consists of intercourse or taking advantage of a defenceless person, the punishment is a minimum of 2 years imprisonment.

The punishment is up to 21 years if the rape was committed:

- by several persons, or
- in a particularly painful manner, or
- by a person earlier sentenced after this paragraph or for abusing minors (§195)
- if the victim dies or suffers from severe bodily damage as a result of the abuse

Gross negligent rape

In 2000, the legislation on rape introduced a new provision; gross negligent rape. The idea was to reduce the guilt claim in order to cover not only cases of intent, but also cases of gross negligence; cases where the perpetrator should have understood that he was forcing the victim.

The provision is useful in criminal proceedings since cases of rape often fail in proving the perpetrators intent – particularly in cases where the victim becomes paralysed with fear and anxiety. It is also believed to make it easier to get a sentence in cases of rape where the victim knows the perpetrator, typically marital rapes.

So far, there have only been a few sentences on this provision, and it has been suggested to remove it from the penal code. Women's organizations are generally supporting the provision, and will fight to keep it in the penal code.

A health survey carried out in 1999 among Norwegian women aged 20 to 49 indicated that five per cent of them had been raped by someone other than their partner, while 10 per cent reported that they had been raped by their partner.

Sexual abuse of minors, strl §§ 195-96

Sexual abuse of minors is a felony if the subject is a child under 16 years of age, the punishment vary, but can be up to 21 years, depending on the age of the victim, whether it was committed by several persons or in a particular painful manner etc.

2.2. From private to public charge

From 1998, the rules of prosecution were changed for the different penal provisions in cases of domestic violence. Earlier, violation of penal code §§228 and 229 was prosecuted by the public only on petition from the aggrieved person, which meant that the women had to file charges. The police had independent responsibility to prosecute domestic violence only in cases of grievous bodily harm.

The changes in the rules of prosecution in 1988 resulted in immediate public prosecution, which means that if the police are made attentive of violations of §§228 and 229, the case will be prosecuted independent of the woman's complaint.

The use of immediate public prosecution in cases of domestic violence was introduced to strengthen the aggrieved party's position and to make it easier to get a conviction. Over time, it has proved to be a problem that many women withdraw their complaint. There could be several reasons for this; some move back in with their husbands, some feel threatened to withdraw the complaint etc. Immediate public prosecution will make it easier to go through with a penal case of domestic violence, as well as sparing the woman from being the one who request prosecution and punishment.

2.3. Criminal procedure

The right not to make a statement, penal code § 122

In many cases it is a great strain for victims of domestic violence to testify in court against the man they have lived with and maybe have children with. According to penal code §122, partners / spouses are entitled the right not to testify.

Council for the victim, penal code § 107 a

Introduced in 1981. The council for the victim's main task is to attend to the victim in cases of sexual crime. In the beginning this arrangement was only for cases of rape, but in 1985 it expanded to cases of sexual abuse of minors, and in 1994 to victims of violence in general if "severe damage on body and health" had been inflicted. However, The limits for what is considered "severe" are so strict, that only a few number of domestic violence cases is included in the system.

The task for the counsel of the victim is to protect the victim's interest in regard to the investigation and main proceedings of the case. The counsel of the victim is supposed to support the victim and prepare her for court. During the trial, the counsel of the victim can ask the judge to reject questions that does not relate to the case or are asked in an improper manner. Beyond this, the counsel of the victim has limited options during the trial. He or she can not ask any direct questions to the accused or other witnesses.

Free legal aid to victims of domestic violence

When Counsel for the victim was introduced, several organisations suggested that battered women should have the same right to a counsel as victims of rape. This was rejected on the grounds that it was raped women who in particular needed help during the trial. However, in 1981 an arrangement with free legal aid for battered women was introduced.

The arrangement with free legal aid for battered women differs from the arrangement with counsel for the victim, chiefly in that it is less extensive. The attorneys in cases of violence do not have the right to speak during the trial, they have no role in the process. Secondly the free legal aid is limited to ten hours, which rarely is sufficient.

If a woman claims compensation from the perpetrator, the attorney has the right to full examination and procedure concerning the compensation, and is as such given a role in the main proceedings.

2.4. Protection for victims of violence

Interim exclusion order

Interim exclusion order means that the perpetrator are forbidden to stay certain places, to visit or in any way contact the woman. This provision can be used if the woman is at risk of being exposed to a criminal act, persecution or being injured in other ways.

The exclusion order can be given on the request of the woman, or from the prosecuting authority if they find it necessary. The police are obliged to inform the woman about this option when she call on the police in connection with harassment.

There is no demand that a punishable action has already taken place, or that the woman files charges against the perpetrator. However, this will be important factors in the evaluation of whether exclusion order should be imposed.

It is the prosecution authority who first decides if a exclusion order should be imposed, but the case has to be tried in court within three days, and the court then makes the final decision. The exclusion order must be for a limited time, with a maximum of one year at the time.

“Violence Alarm”

In 1997 a new protection arrangement was introduced; persons who are exposed to serious threats from closely related persons can be given a violence alarm. The alarm can be given independent of complaint or prosecution, but the threatened person has to fill in an application for the alarm. The arrangement is administered by the police. The alarm has had a positive effect and has to some extent contributed to increased security for the users.

Violence alarm is supposed to be a temporary arrangement to solve acute problems, and is not a permanent solution. The assignment is for three months at the time.

The alarms that are in use today, have limited geographical reach, they are only operating within a persons house. An extension to include alarms that can be used outside the home is being considered.

Women's Shelters

The first Crisis Centre was opened in Oslo in 1978, today there are 50 Crisis Centres and 5 Crisis help lines covering the country. The Crisis Centres offers shelter for battered women and victims of rape. There are also 14 support centres for victims of incest across the country.

The number of shelters for battered women has remained relatively stable in recent years, while there has been an increase in the number of new support centres for victims of incest.

A considerable number of children live with their mothers at shelters for battered women. These children have often been exposed to violence and/or sexual abuse themselves or have seen their mothers being beaten or sexually abused.

Every year approximately 2700 women take refuge in Norwegian shelters, many of them together with their children. This figure has been relatively stable for the last five years. But while the number of women born in Norway has declined slightly, the number of women born outside Norway is steadily rising.

2.5. Compensation for victims of violence

Law of 20th April 2001 – compensation to victims of violence;

According to this law, a person who has suffered bodily injury as a result of a punishable action can claim compensation from the government. It is necessary to apply for this compensation, and as a main rule the punishable action has to be reported to the police.

Maximum compensation is approx. 130.000 EURO, but the payments are usually considerably lower.

2.6. Immigrant women and violence

Migration is a risk factor for violence and abuse. Reports show that 237 immigrant women fled to the Crisis- Centers in 2001. In some areas of Norway they amount to 1/3 of all the women in the Crisis Center. The last years there has been an enormous increase in Norwegian men marrying foreign women for sexual exploitation.

Most of these women do not have an independent settlement permit. On this background, many immigrant women find it hard to file for a divorce since that will lead to expulsion from Norway.

For these cases there is a special provision in the immigration law, permitting immigrant women residence permit if she has been abused in the relationship. According to the law, such permit shall be given in cases of battering. The woman has to substantiate the abuse, and the woman's explanation is the main evidence. There is no demand for filing an official report to the police or documentation of the abuse.

3. Recommendations

Many of us now take for granted that violence is a legitimate political issue, but let us remember that a little more than two decades ago, most people considered "domestic violence" to be a private concern and thus not a proper subject of public discourse or political intervention. Only one generation separates us from that era of silence.

The rhetoric of public versus private and the consequent primacy afforded to the public realm has fundamentally affected perceptions of women's rights. In distinguishing certain forms of violence as domestic violence, definitions have arisen out of the original conceptualization of such violence as private acts within the family. However, an inflexible definition of domestic violence, focusing solely on private actors, legitimizes the public/private dichotomy. This construction has continually been challenged and critiqued by women's human rights activists, not least because it neglects a genderspecific dimension. The development of a comprehensive framework clearly depicting the relation between the nature of the violence perpetrated against women and their private personae is important in an effort to move beyond a private/public distinction in addressing violence.

A preventive approach is also necessary, the education system plays a vital role in forming attitudes against violence at an early age. Public information campaigns and research are important measures to combat gender violence.

It is of crucial importance that the police are trained on how to deal with cases of gender violence. Some women experience sceptical attitudes from the police and prosecution authority when they file reports against gender violence. In some cases women are met with doubts on whether the abuse could have been avoided by the woman, or whether it has taken place at all. The result of these attitudes are that many women refuse to file reports on gender violence. In Norway, an arrangement with family violence coordinators in all police districts was introduced in July 2002. The police directorate has also developed a handbook on how to deal with cases of domestic violence.

It is a paradox that it is the threatened person who is forced to flee from their home, school, working place and family, thus carrying the burdens of the situation. Different protection measures should be considered, such as alarm, restraining order and guard of the house. Some also suggests measures such as surveillance of the perpetrator. However, fundamental legal protection must also be ensured for the perpetrator.