
An Analysis of the Impact of *R v Challen* in the Context of Coercive Control for Domestic Violence Cases

Panagiota Mavri

LLB (Hons) Law
CCCU UK-Alexander College, Cyprus

Abstract

This project deals with the adoption of *s. 76 Serious Crime Act 2015*, which criminalizes coercive behaviour in an intimate or family relationship. The purpose of the law is to see if it can align the law with partial defence with murder. A landmark case is *R v Challen*, which with its lawyers managed to get permission and appeal against her conviction for murder. This was after they succeeded in convincing the court that the *s. 76* was new evidence in her defence that was not available at the time of her trial in 2011. The aim of the arguments in her appeal is to seek to reduce her conviction for manslaughter murder, giving this coursework the opportunity to investigate by law and other similar cases the complexity of aligning the partial defence of murder with the offense of coercive or controlling conduct. Also, if some of the reforms that could be done could give a real opportunity to people who have undergone coercive control to be able to defend themselves and be justly convicted for the crime, they committed but, on the crime, committed by their perpetrator.

Keywords Coercive control, domestic violence, abuse, manslaughter

¹ Defending 'Co-offending' Women: Recognizing Domestic Abuse and Coercive Control in 'Joint Enterprise' Cases Involving Women and their Intimate Partners – accessed 19-04-22

² Coercive control post-Challen – accessed 19-04-22

³ Coercive control post-Challen – accessed 19-04-22

⁴ *s.76 Serious Crime Act 2015*

1. Introduction

According to the Minister for Equality, Carolyn Harris, a landmark case for victims of coercive control is *R v Challen (2011)*.¹ It concerned a woman who had been under compulsory control by her husband for more than 30 years.² He was killed and she was convicted of murder in 2011, having unsuccessfully relied on partial defense of reduced liability and was thus sentenced to life for manslaughter without any mitigating circumstances.³ In 2015, under *s.76 of the Serious Crime Act*⁴, these behaviors began to be criminalized when they cause a person to fear for his life or negatively affect their daily lives.⁵

Through the appeal that Sally filed for her conviction in 2018 and coming out winner from the exit, she managed to lead the courts to examine the forced and controlled victim of domestic violence who kills under the partial defense of the murder.⁶ By introducing the above section, you recognize that the victim's experiences focus mainly on psychological behaviors that undermine the victim's self-defense.⁷ The *Challen case* provides an opportunity to investigate the function of partial defense in homicide in the context of domestic violence, arguing that they should be interpreted as closely as possible in order to align with the offense, promoting a coherent and consistent legal approach.⁸ It would therefore be fair to consistently recognize the vulnerability of a forced victim by a close partner when entering the criminal justice system as a vulnerable defendant who has killed his or her perpetrator.⁹

2. Methodology

In order to examine and analyze the coercive control with the data mentioned above, a methodology had to be chosen that would allow to investigate the effectiveness of the approach of defending victims from coercive control who go so far as to kill and provide judges and various other professors the

⁵ Coercive control post-Challen – accessed 19-04-22

⁶ Ibid – accessed 19-04-22

⁷ Aligning Partial Defences to Murder with the Offence of Coercive or Controlling Behaviour – accessed 19-04-22

⁸ Ibid – accessed 19-04-22

⁹ Coercive and Controlling Men and the Women Who Kill Them – accessed 19-04-22

seriousness that coercive control has brought within a family. Such an examination needs to bring to light all the changes that have been made so far in the law and to examine possible changes that could improve the way the court approached the "perpetrators - victims". For this reason, the methodology of "Dogmatic Analysis" was chosen to achieve the objectives of this study. It is used to provide critical analysis and meticulous arguments in the legal field under consideration, which allows further follow-up and examination by other scholars instead of providing definitive results.¹⁰ Finally, it provides the opportunity to discuss and evaluate secondary authorities such as articles, books, encyclopedias of legal review.¹¹

3. Coercive Control and Data

Starting with the position of Expert Evan Stark, the concept of coercive control is described as a pattern of behaviours aimed at undermining the autonomy of the victim, through the micro-regulation of noisy behaviours, leading to punishment if he resists. In particular, he considers coercive control as "racial" in its construction, tradition and consequences, which is exercised mainly by men on women and puts the emergence of male use of coercive and controlled strategies in close relations to equality gains in the public sphere. In other words, this tension is maintained on the victim as the perpetrator uses a credible threat that has negative consequences for the resistance.

As Ms Dutton explains, as power imbalances escalate into an abusive relationship, the submissive party feels unable to take care of itself and therefore goes so far as to increasingly need its sovereign. As a result of the viability of coercive control behaviours and the psychological instability that the victim has are interrelated. Research from the University of Gloucestershire by Dr. Jane Moncton-Smith shows that 92% of domestic homicides, 94% of obsessions and 78% of isolation from family and friends clearly point to classic signs of coercive control. The adverse effects of a prolonged period of coercive control are tantamount to psychological trauma that outweighs the victim's ability to control

their life, the fear they feel, and their sense of inability to manage their own lives.

Before, a study published in the British Journal of Psychiatry found that opportunities to detect domestic abuse were lost out of the health care system, making it more difficult to find people who suffered from coercive control. It does not show that 0.25% of the victims on the list of doctors used were named, although it is believed that 1 in 4 victims will experience this abuse in their lifetime. Failure to detect and record abuse has an impact on victims' mental health, but it is also a major omission in criminal proceedings, where a defendant's medical history could provide critical information that is unfortunately not available.

Indeed, coercive control remains an important stereotype as it has led to blatantly unfair results for the victims involved in this case of violence by their perpetrators.¹² Due to the fact that over the years the recognition of the experienced experiences increased, it led to the introduction of the offense, based on *s.76 of the Serious Crime Act 2015*.¹³ Thus, the experiences experienced by a victim of domestic violence can be applied to psychological behaviours that undermine the victim's autonomy. Much emphasis has been placed on this type of crime and perceptions in general continue to evolve to this day and are at least attempting to make further legal changes to the definition and consulting on the government bill on domestic abuse.¹⁴

The review of Sally Challen's case offers a new opportunity for the judiciary to better investigate the partial defence against homicide in the context of domestic abuse and argues that they should be interpreted as much as possible to align with the offense, promoting a coherent and consistent legal approach.¹⁵ It is therefore fair that the vulnerability of a coerced and controlled victim by a familiar partner be consistently recognized when entering the criminal justice system as a victim or as a vulnerable defendant who has killed his or her perpetrator. In order to improve this management, if the law is not applied correctly, the corresponding changes, reforms or adjustments should be made to the existing measures so that there is justice for the

¹⁰ Richard A. Posner, 'The Present Situation in Legal Scholarship', (1981) 90(5) *The Yale Law Journal* 1114

¹¹ Amrit Kharel, 'Doctrinal Legal Research' (2018)

¹² Aligning Partial Defenses to Murder with the Offence of Coercive or Controlling Behavior – accessed 21-04-22

¹³ *s.76 of the Serious Crime Act 2015*

¹⁴ HM Government, *Transforming the Response to Domestic Abuse: Government Consultation* (2018)

¹⁵ *Ibid*

victims. The examination of the main case Challen will first show that coercive control exists and how serious it is and how the judiciary's lack of awareness of these individuals' behaviour and the outcome of the coercive control have affected the entire legal system in general.

4.The Criminalisation of coercive control

Traditional criminal jurisprudence has focused on how distinct incidents of violence have affected the victim's psychology and led professionals and psychiatrists to rely on battered woman syndrome and the diagnosis of post-traumatic stress disorder.¹⁶ The key aspects of coercive control can be summarized as follows, reflecting extreme examples of acceptable male behaviours such as controlling financial resources, controlling finances.¹⁷ Financial abuse can happen in otherwise secure and stable relationships, main reason, or one of many, why a relationship may start to break down. Also, it can be present alongside other forms of domestic abuse or be the sole manifestation of abuse.¹⁸ Additionally, using credible threats that may or may not involve bodily harm or a victim who is psychologically in need of living under her partner is at risk of either suicide or homicide.¹⁹

Summing up, *s. 76 Serious Crime Act 2015*²⁰, was created to criminalize the repeated or continuous use of coercive or controlling behavior by partners or family members of the opposite sex. The aim was to address the failure of the existing criminal law framework to recognize the experience of many survivors of domestic violence and abuse and thus to try to align the legislation with the political perceptions of the issue.²¹ Contrary to the law's ambitions, Tolmie is of the opinion that the system

is not well-equipped to deal with the complexity of enforcement cases, and her concern is when a custom-made offense will only be applied to extreme situations or those with high levels of physical abuse.²² Walklate, Fitz - Gibbon & McCulloch also point out that there are doubts about the possibility of translating clinical practice into the legal framework and speculate that an offense will not lead to improved access to justice for most victims, noting that the application of s.76 applies for offenses that are fragmentary to this day.²³

In the view of Walklate and others, it would be good to have in the courtroom testimonies of experts from abused women who kill their partner and suffer years of coercive control. Because they will help in the cases and will not build their opinion around best-known trophies of despised women, as in the Challen case.²⁴ On the contrary, without the criminal offense of coercive behaviour in the context of domestic violence, the police would have no tools to be able to remove this serious issue. Research by Robinson, Pinchevsky and Guthrie shows that policing in England & Wales develops the ability to detect unnatural forms of coercive control.²⁵ An unnatural example is the control of aspects of the victim's health and body by monitoring and controlling how much he eats, how much time he spends in the bathroom or how much sleep.²⁶ According to data from the Ministry of Interior, there are 4,246 records by the police for compulsory control offenses in the year ended March 2017.²⁷ However, expert Wiener is of the opinion that compulsory police training should be provided so that he can support s.76 and that the police can distinguish such behaviours.²⁸ Indeed, such training would help to support the sufferers and give due weight to the impact of the perpetrator's actions on the impact it has on the victim.

¹⁶ Coercive control post-Challen – accessed 22-04-22

¹⁷ Evidence – Controlling money, controlling live – Financial abuse in Britain – accessed 23-04-22

¹⁸ Ibid

¹⁹ Controlling or Coercive Behaviour in an Intimate or Family Relationship – CPS accessed 22-04-22

²⁰ Ibid

²¹ Strengthening the Law on Domestic Abuse - A Consultation – Home Office – accessed 23-04-22

²² Coercive Control: To criminalize or not criminalize? Julia R Tolmie – accessed 23-04-22

²³ Criminology & Criminal Justice – Is more law the answers? – accessed 23-04-22

²⁴ Ibid

²⁵ International Journal of Comparative and Applied Criminal Justice - Under the radar: policing non-violent domestic abuse in the US and UK – accessed 23-04-22

²⁶ Healthline – How to Recognize Coercive Control? – accessed 23-04-22

²⁷ Office for National Statistics - Domestic abuse in England and Wales: year ending March 2017- accessed 23-04-22

²⁸ The Howard Journal of Crime and Justice - Seeing What is 'Invisible in Plain Sight': Policing Coercive Control – accessed 23-04-22

In his turn, Stark welcomes the introduction of s.76, emphasizing that its creation covers oppressive acts in personal relationships that no one had seen before.²⁹ The reaction of the police is growing and advocating the necessary changes to ensure enforcement. Seeing the *Paul Playle (2018)* case with Judge Henson taking the most computational and cruel behavior and sentencing him to 3 years and 6 months in prison, he reveals that the prosecutions under s.76 overall seem low, and with greater and more consistent use of the offense would be welcome.³⁰ Such cases show that although on 1 June 2016 there was a change in the Home Office Counting Rules to emphasize that such offenses should prevail over other offenses, the courts still did not understand what coercive control is and its impact.³¹ Unfortunately coercive control has not yet been adequately addressed, although some such as Myhill (2015) have attempted to do so using data from CSEW.³²

5. The defence against coercive control

One last important issue is the defense of losing control against homicide and coercive control based mainly on the events of the Challen case. Mainly, the possible loss of control stems from the psychological behaviour of the deceased towards the abused defendant and lack of physical violence or feeling threatened by it. The defense should present evidence of coercive behaviour and expert testimony from professionals or survivors or perpetrators of coercive control. Based on *R v Gurpinar (2015)* are key elements in defending the victim.

Expert Herring points out that the institutional requirements regarding the loss of control represent a departure from the traditional understanding of the term, allowing the defense to be framed around emotions such as despair, fear or anger. In order to see if this function is valid, a longer implementation period is needed, if it is found that it is not being fulfilled, further legislative reform in the form of a discreet defense for the forced defendants may need to be considered. With the introduction of s.54 CAJ 2009, the loss of control must result from the characteristic factors defined by s.55 CAJ 2009.

Even in order to make things better, Edward argues that it would be good to transform the battered woman syndrome by locating women's behavioural motivation through a mentally abnormal state under a stressful life. Now in cases where the trigger was caused by sexual infidelity, defense is not available. The purpose of s.55 (6) (c) CAJ 2009 was to prevent male defendants from supporting the loss of control after discovering their spouse's infidelity, real or perceived. According to *R v Clinton (2012)* proof of coercive control will be necessary to show the broader context in which things were said or done. The absence of sexual infidelity will not automatically exclude the accused from defense.

There are many points that the law can be extended but another important point that will be mentioned here and where it will help subsequent cases of coercive control of defendants, is the relevance of the circumstances to the defense is extremely important, as it allows the narration of the history of coercive behavior of the perpetrator to the victim, which are defined by s.54 (1) CAJ 2009. Through the inclusion of age, gender is controversial because it favours certain characteristics over others and confuses all female reactions together, obscuring the complexity created when gender intersects with other factors such as sexuality. However, Edward entitlements that it was not for reasons of self-restraint that were questioned, but in relation to the circumstances in which he found himself.

Conclusion

In conclusion, the law has come a long way in accepting the effect that coercive behaviours have on the mind and acts of temper. From the early fragmentary acceptance of the effects of physical violence to the modern view of coercive behavior, the change in attitude toward the outcome of one person exercising power and control over another has been gradually recognized by both the legislature and the judiciary. It undoubtedly provides an opportunity to develop a framework that increases justice and consistency in criminal law, especially when it comes to psychologically abused people who go so far as to kill their perpetrator. This is not in line with s.76's approach, which is constructed in a way that requires courts to consider

²⁹ Violence against women - Coercive Control: Update and Review – accessed 23-04-22

³⁰ BBC NEWS – Paul Playle jailed for stalking wife for two years – accessed 23-04-22

³¹ Office for National Statistics - Domestic abuse in England and Wales: year ending March 2017- accessed 23-04-22

³² Untangling the consent of coercive control: Theorizing domestic violent crime – accessed 23-04-22

the pattern of behavior involved without also proving that the victim has developed a medical disorder as a result of the behavior. However, murder is just one example of a crime that can be committed by a coercive person and should be followed by further discussion on the inadequacy of general defense measures to accommodate abused defendants who commit crimes as a result of this abuse.

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