

## SOCIOLOGY

# CONVERGENCE AND DIVERGENCE OF DOMESTIC VIOLENCE POLICY AND LEGISLATION IN ENGLAND AND SCOTLAND

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## ABSTRACT

This article presents the approaches in domestic violence policy framework in England and Scotland and makes its comparative analysis. In particular, it considers the devolution of Scotland from UK parliament and policy trajectories of Scotland as a devolved government. Secondly it explores domestic violence policy content by considering main policy documents of two countries. Furthermore, legislative framework including Acts and Guidances regulating the partnership working are analysed. As a result it illustrates divergence and convergence of domestic violence policy in two countries that occurred after devolution of Scotland from UK parliament and brought to some policy changes in Scotland from the UK government.

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**Definitions:** MAP- Multi-Agency Partnership, MAPPA- Multi-Agency Public Protection Arrangements, MARAC- Multi-Agency Risk Assessment Conferences, MASH- Multi Agency Safeguarding Hubs

**Introduction.** During the last twenty years the evidence shows that violence against women perpetrated by men is increasing and requires consideration of this problem in the global scale (Watts & Zimmerman, 2002). Violence of women is a problem that always existed in the society, but attention to this problem started to be given only in the last two decades where international society began to accentuate and define this social phenomenon (EU Agency for Fundamental Rights, 2014). The Committee on the Elimination of Discrimination against Women (CEDAW) of the United Nations Organization (1992) and the Declaration on the Elimination of Violence against Women acknowledged that violence against women is a gender based violence and violation of human rights (EU Agency for Fundamental Rights, 2014). This followed by the agreement on Global Platform for Action in the World Conference on Women in Beijing in 1995 and adoption of Council of Europe Convention in 2011 aimed at combating and eliminating of all forms of violence against women.

In the UK during the last thirty years there were significant changes in comprehension and domestic violence policy development. The UK government formulated a national domestic violence policy framework based on recommendations given by international organisations, in particular, it developed its policy in accordance with strategic objectives of the Beijing's Global Platform for Action. Responses to domestic violence from criminal justice system, particularly from courts and police service followed by responses from health and social services started to arise in England (Matczak *et al.*, 2011). Its legislation and strategy supported by annual action plans mainly focused on introducing measures to provide safety for victims and bring perpetrators to justice. These measures

were performed through the work of many organizations at national and local level in order to ensure effective responses to domestic abuse. Scotland, as part of the UK, also has developed its national domestic violence policy in accordance with recommendations of international organizations. However, as a devolved government, it has its own domestic violence strategy by outlining the main goals focused on prevention, victim's protection, service provision and participation of all involved organizations to provide that policy and implementation practices respond to the needs of victims of domestic abuse and ensure their safety.

Devolution of Scotland has brought to constitutional change as well as to restructuring of state, in particular, establishment of Scottish Parliament that was made under the Devolution Act – the Scotland Act 1998 introduced by the UK Parliament. The Scottish Parliament has been empowered to pass laws called as Acts of the Scottish Parliament on devolved matters which include areas of social work and health, housing and local government, environment, internal transport, heritage, tourism and sport, justice and policing, education and economic development (Cabinet Office and Scotland Office, 2013). Other matters which mainly refer to the UK-wide scope and have international impact are reserved matters for the UK Parliament (Cabinet Office and Scotland Office, 2013). The responsibility given to Scotland over devolved matters have led to policy divergence from the UK government policy in the areas that were similar prior to devolution (Nutley *et al.*, 2012). After devolution, the aim of Scottish government's policies was to reduce economic and social inequalities, improve local communities and economies (Mackay, 2006). One of determinants of divergence that impacted on Scotland's approach in social policy making and reducing social inequalities between men and women is the opportunity that devolution have given to activists of women's movement to promote their feminist ideas and gendered claims to be included in the process of constitutional reform (Mackay, 2006). Also, as previous studies suggest, another determinant of divergence is distinctive approach of Scotland to relations between central and local government, and public services regulation that is directed to "work in partnership" with local government (Nutley *et al.*, 2012, p.202) and has its impact on some policy areas. For example, while introducing performance improvement audit, as Best Value Audit for local government, Scotland did not adopt the top-down approach like setting of targets, league tables and star ratings, as England did. It mainly used persuasion, collaboration and "shared ownership of the improvement agenda" (Nutley *et al.*, 2012, p.202). In economic development of local areas, the government made emphasis on Community Planning where local authorities in partnership with related agencies had to make a Community Plan so that to integrate providers of public sector and community in delivering of public services (Bennett *et al.*, 2002; Parry, 2002) and ensure that public services "are delivered by the best supplier, at the best price" and within clear priorities (Parry, 2002, p.323). Education also has become a priority for new Scottish Parliament which carried out activities in changing educational policy by altering approach to teacher's pay and modernizing Scottish Qualifications Authority to improve school examinations (Bennett *et al.*, 2002). Abolishment of tuition fees for students in education has come from the emphasis of policy-makers on social goals, social inclusion and less reference to "neo-liberal ideas", or less "market-led approach" of Scotland in contrast to England (Gallacher and Raffe, 2011, pp. 4, 18). In housing policy, Scotland's approach is more based on the need and abolishment of priority need notion so that all homeless people can have a right for home, while in England the approach is directed to balancing between need and choice (Stirling and Smith, 2003).

However, some researches argue the extent of divergence of policies between Scotland and England. McGarvey and Shephard (2002) argue that introduction of free personal care for elderly people in health policy is more common with duplication of policy from England rather than divergence, because many health issues like drug pricing and labelling, salaries of National Health System are actually reserved matters of the UK government. They also outline that in some policy areas it is difficult to detect policy divergence as it can be not due to policy intentions but because of divergence in outcomes that are affected by different institutional arrangements and political climate.

Based on this debate, further analysis looks at convergence and divergence in domestic violence policies and implementation practices in England and Scotland that occurred after devolution of Scotland.

**Government policy on domestic violence in England and Scotland.** The domestic violence policy in England started to develop after 1990 as a response to requirements and recommendations of international organizations. At that time the government set up Inter-Ministerial Group and identified the Home Office as a leading government department to coordinate domestic violence policy. Home Office issued the Inter-agency Circular in 1995 called "Inter-agency coordination to tackle domestic violence" which promoted multi-agency partnerships on the local level (Hague *et al.*, 1996). However, it was until 2005 when government of England noted the contribution of statutory and voluntary agencies and started to be "a full member of that partnership" (Matczak *et al.*, 2011, p.6). In Scotland, after devolution, a significant work has been done by the government concerning elaboration of policies and strategies which shows its commitment in combating violence against women. Following

the National Strategy in 2000, the Scottish government established a National Group to Address Domestic Abuse to coordinate the implementation strategy which consisted of the cabinet minister, the Social Justice Minister, local government, police, education, third sector, justice and equalities agency (Charles and Mackay, 2013).

The following table illustrates the government policy on domestic violence in two countries for the period 2000-2015.

Table 1. Government policies on violence against women in England and Scotland

<b>England</b>	<b>Scotland</b>
<p><i>2005- The National Domestic violence Delivery Plan</i></p> <p>The aim was to reduce the domestic violence prevalence and homicides, support MAPs, launch Specialist Domestic violence Court Program which promoted the model of Coordinated Community Response for MAPs (Matczak <i>et al.</i>, 2011).</p>	<p><i>2000 - National Strategy to Address Domestic Abuse</i></p> <p>Main aims were: to prevent domestic violence, provide legal protection and support services to women and children. It stressed that domestic violence is connected with broader gender inequality. It provided general strategic direction, prioritized prevention of domestic violence, and supported MAP working (The Scottish Government, 2006).</p>
<p><i>2010 – New overarching strategy of the government “Call to End Violence against Women and Girls”</i></p> <p>It defined actions to tackle all forms of violence against women and girls including domestic violence and had four major aims: to prevent domestic violence as a priority, provide support and reduce risk for victims, bring perpetrators to justice and support partnership working. It introduced Equality Duty for public sector, which should consider the requirements of the duty in tackling violence against women and girls (Home office, 2010).</p>	<p><i>2003 - National Prevention Strategy</i></p> <p>It emphasized primary and secondary prevention of all forms of violence against women. Primary prevention targeted children and young people and implied change of culture and attitude to domestic violence. Secondary prevention targeted reduction of domestic violence effects for women and children. It stressed multi-agency programs initiated to change social attitude and challenge to accept responsibility by offenders (McKie and Hearn, 2004).</p>
<p><i>2011- Call to End Violence against Women and Girls: Action plan</i></p> <p>The aims follow from the previous overarching strategy and focused on long-term commitment towards prevention of violence against women and girls. It also supported multi-agency partnerships MARAC (funding), MAPP (Home Office, 2011).</p>	<p><i>2004 - the National Training Strategy</i></p> <p>The aim was to provide multi-agency training for improving collective responses to issues of violence against women and facilitating implementation of government’s strategy. It has two phases that include response to aims of the National Strategy and the Safer Lives: Changed Lives (The Scottish Government, 2009).</p>
<p><i>2012- Call to End Violence against Women and Girls Taking Action- Next Chapter</i></p> <p>It had clear objectives: prevention of violence against women and girls, provision of services, support of partnership working, reduction of risk for victims and justice outcomes. It promoted MARAC (funding), MAPP (guidance) and funding of Domestic Homicide Reviews (Home Office, 2012).</p>	<p><i>2009 - Safer Lives: Changed Lives a Shared Approach to Tackling Violence against Women</i></p> <p>It objectives were: prevention, protection and provision of services to victims, participation of all involved organizations in tackling of all forms of violence against women. It supported MAPs, Community Planning Partnerships, Training Consortia, Caledonian programme, which work should be based on Gender Equality Duty (The Scottish Government, 2014).</p>
<p><i>2013-2014 Action Plans</i></p> <p>Keep the outlined principles of the main strategy of 2010, placing more attention on early intervention and prevention. Study lessons from and support Domestic Homicide Reviews, MARAC (part-funding), MAPP (guidance: update links with MARAC) and MASH (Home Office, 2013, 2014).</p>	<p><i>2014 - Equally Safe</i></p> <p>It has four strategic priorities: raising awareness, decreasing economic imbalance between men and women, provision of wider range of services from all involved organizations, more effective and robust responses from justice system. This strategy appeals to joined-up working to tackle all forms of violence: the Community Planning Partnerships, MARACs, MAPP and other MAPs to create the society which is safe for women and girls, where they can be respected and have equal opportunities (The Scottish Government, 2014).</p>

By analyzing domestic violence policies of two governments, it can be outlined that they have similar policy aims as prevention, protection of victims, bringing perpetrators to justice, partnership working and service provision for victims, but with major focus on prevention. Moreover, both countries acknowledge that combating domestic violence only can be successful through partnership working where England mostly supports MARAC, MAPPA, MASH, One-Stop Shops, and Scotland pay more attention to Community Planning Partnerships, Training Consortia, Caledonian programme, MARAC and MAPPA. Though both countries do not deny the importance to prevent all forms of violence, the primary attention was mostly paid to domestic violence: the National Domestic violence Delivery Plan in England and National Strategy to Address Domestic Abuse in Scotland. However, further steps were undertaken towards more holistic approach, by concentrating on all forms of violence in both countries.

Comparison also illustrates a difference or divergence in the policy direction of the two. In England, the National Domestic violence Delivery Plan (2005) launched Specialist Domestic violence Court Program and in 2008 such approach was criticized by Home Affairs Select Committee stressing that the policy mostly accentuated the work of criminal justice system instead of paying attention to early intervention and prevention (Matczak *et al.*, 2011). After 2010, England added Equality Duty to its strategy “Call to End Violence against Women and Girls”, where public bodies should comply with in delivering services to victims. In contrast, Scotland, as a devolved government, defined its domestic violence policy with clear reference to gender inequality, as seen from its National Strategy (2000) that stresses domestic violence as a main gender inequality concern, the Safer lives: Changed Lives (2009) puts Gender Equality Duty at the corner of activities of all involved public bodies, and Equally Safe (2014) strategy identifies four priorities which are based on achieving equally safe society where women and girls are respected, free from violence and have equal opportunities.

**Legislation on domestic violence in England and Scotland.** The government policy on domestic violence also defines the legislative framework aimed at protecting victims and bringing offenders to justice. In considering the legislation of two countries it is necessary to outline that recognition of domestic violence as a crime was very important element in the UK government policy for controlling crime (Matczak *et al.*, 2011). According to Young (1999) as cited by Matczak *et al.* (2011) such approach is perceived as “criminalization of social issues” and legal solutions applied in the UK mirror the extent of recognition of domestic violence as an important social problem. The following table represents the most important legislative documents of two governments, which include criminal and civil remedies for victims.

Table 2. Legislative framework of domestic violence against women in England and Scotland

<i>Similar criminal and civil laws</i>	
1	2
the Common Law, under which there are different Acts which criminalize different types of offences	Under the common law offences as common assault, murder, manslaughter, sexual and rape assault, breach of peace are criminalized in England (Matczak <i>et al.</i> 2011). In Scotland there is no specific criminal law on domestic violence in Scots law, such incidents are prosecuted under various crimes from serious assault as homicide to breach of the peace considered as minor assault (The Scottish government, 2005).
Clare’s law 2014 (Domestic violence Disclosure Scheme)	Under this law people have a right to ask information from police about previous abusive behaviour of their partners, so that to protect themselves from domestic violence incidents beforehand. It was introduced in England in 2014 (Home Office, 2014). The same law was adopted in Scotland in 2015 (The Scottish Government, 2015).
The Protection from Harassment Act (PHA) 1997	It contains criminal remedies, by criminalizing actions of harassment but not clearly criminalizing stalking. It provides civil remedies in the form of restraining orders in England and Non-harassment orders in Scotland (Woodhouse and Strickland, 2016). Breach of these orders is criminalized by punishing offenders with imprisonment for maximum of 5 years and a fine (Woodhouse and Strickland, 2016). Under this Act a person is considered as guilty if he makes a <i>course of conduct</i> of harassment behaviour (in England) (Woodhouse and Strickland, 2016).

Continuation of table 2

1	2
<b>Laws that provide similar criminal and civil remedies</b>	
<b>England</b>	<b>Scotland</b>
<p><i>The Family Law Act 1996</i></p> <p>It provides occupation and non-molestation orders. Occupation orders exclude offenders from home for temporary period, thus giving right to victims to enter or remain at home. Non-molestation orders prevent offenders from molesting, pestering or harassing the victims and their children (Woodhouse and Dempsey, 2016).</p>	<p><i>Matrimonial Homes (Family Protection) (Scotland) Act 1981</i></p> <p>It provides matrimonial interdicts that prohibit offenders to remain in or around their family home. Under exclusion orders offenders are expelled from home for certain period of time (The Scottish government, 2012). In case of breach of matrimonial interdicts the power of arrest can be applied (The Scottish Government, 2005).</p>
<p><i>Protection of Freedoms Act 2012 (amended PHA)</i></p> <p>It added two new specific offences of stalking, by clearly criminalizing stalking (Woodhouse and Strickland, 2016).</p>	<p><i>Criminal Justice and Licensing (Scotland) Act 2010</i></p> <p>Criminalizes offences of stalking. It is close to offence on harassment stated in PHA 1997 but has important differences (Woodhouse and Strickland, 2016)</p>
<b>Different criminal and civil laws</b>	
<b>England</b>	<b>Scotland</b>
<p><i>Domestic violence, Crime and Victims Act 2004</i></p> <p>The most important piece of legislation adopted during the last 30 years that criminalizes breach of non-molestation orders and gives power of arrest for the common assault. Under this Act multi-agency statutory bodies should participate in Homicide Reviews if homicide occurred due to domestic violence (Harwin, 2006).</p>	<p><i>Protection from Abuse (Scotland) Act 2001</i></p> <p>This Act gives power to police to arrest the offender, without a warrant, in case he breaches the matrimonial interdict, thus providing better protection to victim (The Scottish government, 2005).</p>
<p><i>Domestic violence protection orders (domestic violence PO) 2014</i></p> <p>Under domestic violence PO immediately after the incident, the magistrates and police have a right to prohibit the perpetrator to have contact with the victim and return to his home for up to 28 days. These orders help victims who left their homes by providing them with the shelter, time to get support and think over the options (Woodhouse and Dempsey, 2016).</p>	<p><i>The Family Law (Scotland) Act 2006</i></p> <p>Provides additional protection to victims from domestic violence. This Act extends the power of matrimonial interdicts by adding that offender cannot enter not only family home, but also the victim's place of work, any other home where victim can live or the school where victim's children study (The National Archives, 2006).</p>
<p><i>Serious Crime Act 2015</i></p> <p>Criminalizes the controlling and coercive behavior committed against family member or intimate partner. The penalty for this offence is imprisonment of five years and a fine (Woodhouse and Dempsey, 2016).</p>	<p><i>Domestic Abuse (Scotland) Act 2011</i></p> <p>It is very important part of legislation under which there is no need for the victim of harassment to show that action of harassment was a "course of conduct", <i>only one accident</i> is enough to get Non Harassment Order, which in result provides better protection for victim. The breach of such injunction is considered as criminal offence (The Scottish Government, 2014).</p>

The legal framework in England and Scotland also has some similarities and differences. The similar part is that both countries do not have a specific criminal law on domestic violence and criminalize different violent acts under the Common Law. The Clare's Law was adopted by both governments, by giving opportunity to people to make inquiry about previous violent history of their intimate partners. The PHA 1997 is in effect in jurisdictions of two countries by criminalising mostly

actions of harassment and providing civil remedy to victims: the restriction orders in England and non-harassment orders in Scotland. There are also civil remedies for victims: occupation orders, domestic violence protection orders in England and matrimonial interdicts and exclusion orders in Scotland, though these remedies are affected under different Acts. England and Scotland introduced Acts that clearly criminalise stalking, and apply pro-arrest actions showing the seriousness of the problem and making perpetrators accountable for their actions.

Comparative analysis helped to reveal some differences or divergence as well in jurisdictions of the two. Though both countries have Clare's Law, Scotland adopted it later after it has been piloted and introduced in England. However, as a devolved government, Scotland adopted the Law criminalising stalking earlier than England. Significant difference is that PHA 1997 in England criminalises harassment behaviour if offender makes a *course of conduct* of such behaviour. In contrast, Scotland adopted the Domestic Abuse (Scotland) Act 2011, which criminalizes the harassment behaviour if offender makes *only one accident* of such behaviour. England pays more attention to criminalization of controlling and coercive behavior, breach of non-molestation orders, while Scotland enforces protection of victims by extending the power of matrimonial interdict and criminalizing its breach.

**Conclusions.** In terms of domestic violence policy direction, England and Scotland gave different focus on gender equality issue that brought to divergence of Scottish policy formulation from that of in England. In England in policy formulation domestic violence was defined by the government in "a gender-neutral way" (Maczak *et al.*, 2011, p.3) and as stated in National Domestic Violence Delivery Plan 2005, the approach was mostly on crime reduction. However, this came at a price that domestic violence "is not understood as relating to gender-based inequalities" (Charles and Mackay, 2013). As seen from policy documents and stressed by Maczak *et al.* (2011), England changed its policy direction by making more accent on gender based violence only after 2010.

In contrast, the Scottish government after devolution took a distinctive approach in policy formulation with the emphasis on gender equality (Burman and Johnstone, 2015; Mackay, 2006; Charles and Mackay, 2013) and outlining compliance of public bodies with Gender Equality Duty in tackling domestic violence. What is more, Scotland started to tackle domestic violence earlier than England by first publishing the national strategy, prevention and training strategies.

However, both countries also have convergence in broader policy aims, with stronger focus in England on the development of domestic violence prevention framework (Maczak *et al.*, 2011) and in Scotland with the most strand also given to domestic violence prevention (Mackay, 2006). Moreover, both countries emphasize and support MAP working. It was also recognized by policies of UK countries that in terms of rigidity, influence, and repetition domestic abuse predominantly impacts on women and children (Harwin, 2006).

The legal framework in England and Scotland also undergo some divergence and convergence that is affected by policy learning. Policy convergence in both countries, that was prior to devolution of Scotland, is due to the absence of specific criminal law on domestic violence and different violent acts are criminalised under the Common law. Both governments have laws that provide civil remedies for victims though these remedies are affected under different Acts. There is also policy convergence after devolution that was due to policy learning of and transfer to Scotland of the Clare's law after its successful roll-out in England (Home Office, 2014). Laws on partnership working were adopted in both jurisdictions that was possibly due to policy learning and transfer to Scotland from England, as Scotland adopted it later than England did. Moreover, there are similar Acts and Guidances regulating the work of MAPPAs, though England adopted them earlier than Scotland. It is possible to judge that Scotland followed the lead of England, supported by the fact that MAPPAs in Scotland is based on the model of England.

In line with convergence, there is also divergence in jurisdictions of the two. The PHA 1997 is applied in both countries by protecting victims from acts of harassment and stalking. However, Scotland as a devolved government, adopted Domestic Abuse (Scotland) Act 2011, that introduces changes and criminalizes the act of harassment if offender makes *only one accident*, while in England there should be *course of conduct* of such behaviour. What is more, though, both countries introduced Acts clearly criminalising stalking, Scotland as a devolved government, adopted such Act earlier than England, thus demonstrating divergence in jurisdictions.

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