

## Law essay.

### Offences Against the person Act, 1861 and its reforms.

*'It has been suggested by the Law Commission and others that section 18, 20 and 47 of the Offences Against the Person Act 1861 should be repealed because they are unjust, ineffective, illogical and severely defective. In addition the offences, as they are defined, are incomprehensible to juries.'*

*Explain and comment on these suggestions.*

In 1980 it was suggested by the Criminal Law revision Committee that the area of law concerning the Offences Against the Person Act 1861 should be reformed. Its proposals were incorporated into the draft code of criminal law prepared by the law Commission. The LC again considered the matter at the beginning of the 1990's. In 1993 a report and Criminal Law draft Bill on the issue in question was produced. Whilst considering the reforms much emphasis was played on the wording of the Act and its sections. The language used was updated and wording such as seriously injured was used rather than grievous bodily harm, whilst enabling the words 'maliciously' and 'wounding' all together.

1993 and 1998 saw the introduction of many significant reforms, which were proposed in the Law Commission report, as previously mentioned. The Home Office issued a draft bill based on the law commissions report and stated the aim of the bill was not to make the law more lenient or tougher but rather to make it clearer and easier to use.

There were many propositions made by the main were as follows, 'Clause 1, to replace section 18, intentionally causing serious injury', instead of Grievous Bodily Harm with intent.

'Clause 2, to replace section 20, recklessly causing serious injury' instead of GBH, in this section the imprisonment period would be changed from a five year maximum sentence to that of seven years. This increased maximum sentence would make it the same as a racially aggravated punishable offence.

'Clause 3, intentionally or recklessly causing injury', to replace section 47 which is that of Actual Bodily Harm.

However, concerning clause 3 it would be necessary to prove intention or recklessness in relation to the injury, not merely the fact that an assault was present.

‘Clause 15, makes it clear that injury includes both physical and mental harm.’

Whilst clause 15 is intended to help make the sections wording clearer it also proposes that for clause 1, (to replace section 18, intentionally causing serious injury’, instead of Grievous Bodily Harm with intent.) offences only, harm would include the transmission of disease (e.g. Aids), though this is likely to prove controversial.

While it is accepted that this Bill would bring much needed clarity and consistency to this area of law, due to pressure on the legislation timetable, it is unlikely it is unlikely to be enacted until 2002 at the earliest. However, when the change comes for many it will be seen as a tremendous breakthrough in solving cases due to the difficulty of the wording of sections.

The proposals for the reform of the criminal offences used to prosecute violence against people and the difficulty of the vocabulary of offences of violence against the person is part of the common currency of everyday life.

Television and general media has made the words GBH and ABH deeply familiar with all people, not just those of the legal career and knowledge. However, this familiarity has led that such time-hallowed offences are readily understood or that they provide an effective means for the courts to deal with violent behaviour – this is not the case. The act in itself derives from both common and statute law but the unrepealed parts of the OAPA 1861 provided the bulk of the statutory offences. The Act itself is not a coherent restatement of the law but a consolidation of much older law. For this reason it is not surprising that the law has been openly criticised as archaic and unclear, hence the reform.

Reforming the law on non-fatal offences against the person make up a large part of the work of the courts and therefore costing a great deal of money.

Due to the mass of cases as mentioned above brought to court each year it is understandable as to why the behaviour and understanding of the acts and sections should be robust and clear. Unclear or uncertain wording may lead to no conviction and therefore preventing justice being carried out. This problem has also led to unnecessary

and expensive appeal arising when there should be no need, resulting in general criticism.

Even with the suggested changes as previously mention in clause 1 – 3 and clause 15 it has been suggested that there should be a distinction made between serious injury and other injury, and in respect of serious injury there should be a distinction between intentionally causing injury and recklessly causing such injury. Other than all reforms previously mentioned the two distinctive objectives put forward via the Law commission report number 218, Offences Against the Person and General Principles (LC218) were as followed:

‘To reformulate those non-fatal offences against the person found largely, but not exclusively, in the Offences Against the Person Act 1861 in a more comprehensible and legally certain matter’, and secondly,

‘To place in statute for the first time certain defences such as duress and self-defence which apply not only to the newly formulated offences but also across the criminal law as a whole’.

In conclusion, the law on offences against the person is outmoded and unclear, therefore creating unnecessary confusion in courts. This Bill sets out the way in which the Government believes that the law in this area can be modernised, simplified and brought within a single statute. This Bill also sets out a new hierarchy of offences against the person, ranging from intentional serious injury to assault. The distinction between these levels of injury would be based on motivation and outcome, to replace the existing range of statutory and common law offences.

In putting this Bill into place it is making the law more accessible and therefore helping criminal cases such as those mentioned being dealt with much more easily and at the same time enabling the citizens to understand the criminal offences more easily – this would also work for the police in a similar way in that it enables the police to explain and charge offences that are more readily understood. It should also make the task for judges, magistrates and juries more straightforward in the day-to-day administration of justice for the victims and their communities. It is hoped that these proposals will improve the English and Welsh justice system to a higher standard and quality.