

# Marital Coercion

**Siobhan Weare** writes on the problem(s) with the abolition of marital coercion

In March the Government abolished the defence of Marital Coercion with the introduction of the Anti-Social Behaviour, Crime and Policing Act 2014. The defence, previously found in s.47 of the Criminal Justice Act 1925, stated “[o]n a charge against a wife for any offence other than treason or murder it shall be a good defence to prove that the offence was committed in the presence of, and under the coercion of, the husband.” The defence was most recently in the headlines having been used unsuccessfully by Vicky Pryce at her trial for perverting the course of justice, after she accepted driving licence penalty points incurred by her then husband Chris Huhne in 2003.

## No Longer an Appropriate Defence

In recent history, Anne Darwin the wife of John Darwin, the canoeist who faked his own death to claim insurance money, also used the defence unsuccessfully. In contrast, in 2000, Ashley Fitton successfully used the defence to escape a drink driving conviction after she claimed that her husband forced her to drive when she was over the legal limit. The abolition of the defence had been considered before, most notably by the Law Commission in 1977, who argued that it was no longer an appropriate defence to be used in modern society. Indeed this was the argument of many critics of the defence, who argued that it was “[a]rchaic, rooted in extreme sexism and was not compliant with modern day equalities legislation.” London Feminist, “Is it time to scrap the defence of marital coercion?” at <http://londonfeminist.com/site/is-it-time-to-scrap-the-defence-of-marital-coercion/> Although, *prima facie*, abolishing the defence may have seemed like another step towards gender equality, it is submitted that its abolition has raised numerous issues which need to be considered further.

First, it is arguable that the defence has been abolished for the wrong reasons; namely as a result of the *Vicky Pryce* case where there was much public outcry and commentary on the fact that such a successful, financially independent woman could never be coerced into doing anything against her will by her husband. Indeed, in the prosecutions’ closing statement they argued that she “[w] as such a powerful and successful woman that she could

“... it was “[a]rchaic, rooted in extreme sexism and was not compliant with modern day equalities legislation.””



never have been forced to become a ‘quivering jelly’ ...” Adrian Shaw, *The Mirror*, “Not the quivering jelly kind”: Chris Huhne’s ex-wife could not have been forced to take points, court hears” at <http://www.mirror.co.uk/news/uk-news/vicky-pryce-trial-chris-huhnes-1706240> However, in contrast, recent research has suggested that women who earn more or who are

more educated than their male partners are more likely to be psychologically and physically abused than those women who are paid less. Ingrid Wreden K  ss, *Information Centre for Gender Research in Norway*, “Higher status that one’s partner makes both men and women vulnerable to intimate partner violence’ at <http://eng.kilden.forskningsradet.no/c52778/nyhet/vis.html?tid=87378> This therefore suggests that even women from strong socio-economic backgrounds are capable of being coerced by their partner and would potentially have benefitted from the defence being retained in some form.


Secondly, although abolishing the defence may arguably have been reflective of the greater equality of women when compared to their position historically, it is submitted that not all women have experienced such equality. Indeed, there is a significant proportion of women who for social, religious and cultural reasons cannot effectively exercise their own free will and may feel that they have to obey their husbands, thus potentially being

coerced into criminal behaviour. Therefore by abolishing marital coercion, this vulnerable group of women who feel compelled in some way to follow their husband's orders, are effectively excluded from using an applicable defence.

### Conclusion

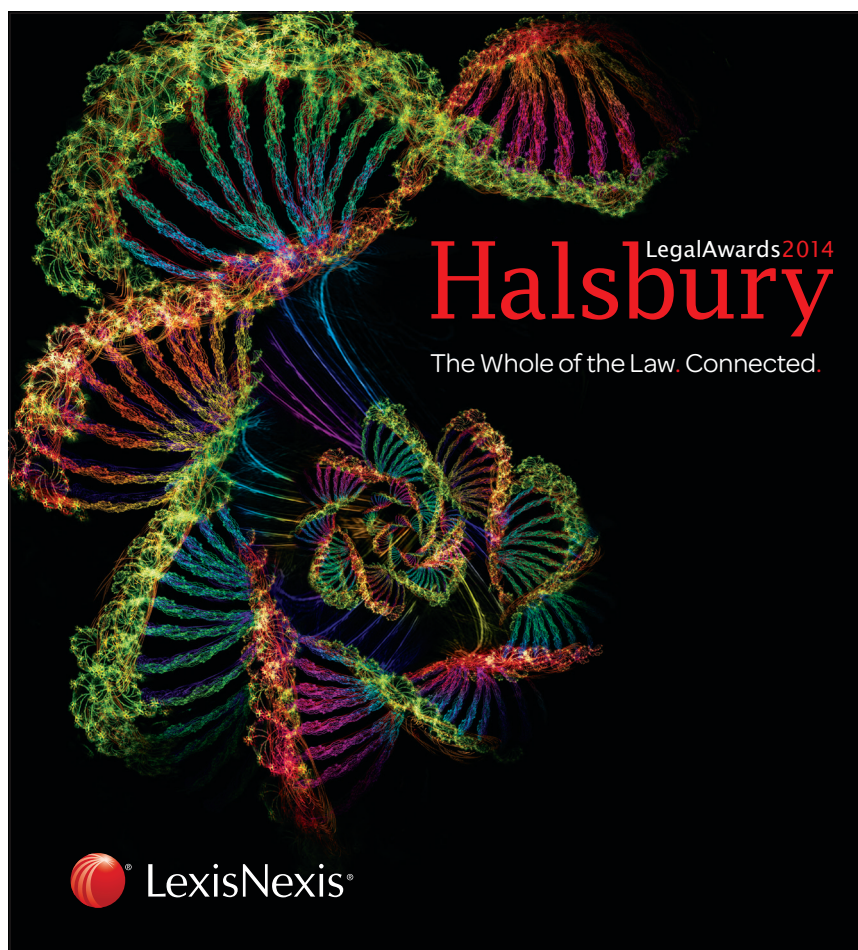
Finally, completely abolishing marital coercion means that there is now no alternative comparable defence that coerced women can plead. Although the defence of duress has been unaffected by the proposed changes, there are some key differences when pleading duress which mean that women who could previously have successfully pleaded marital coercion cannot now successfully use duress as a defence. The most obvious of these differences which raises serious issues is that to plead duress a woman would have to prove that her husband was threatening her with serious injury or death, *A-G v. Whelan* [1933] 1 EHC 1 a high threshold to meet. In contrast, in *R. v. Shortland* [1996] 1 Cr App R 116 it was held that marital coercion did not need to involve either the threat of force, or any physical force being used. Indeed in the successful case of *Ashley Fitton*, noted above, her fear was of her husband's temper and the fact he may be violent towards her if she did not drive them home, it was not that she would be seriously injured or killed by him. Anna Moore, the *Daily Mail*, "Following Vicky Pryce's unsuccessful citing of the controversial Marital Coercion defence, we ask, 'Can women really be forced to break the law by their husbands?'" at <http://www.dailymail.co.uk/home/you/article-2314056/>

Vicky-Pryce-Marital-Coercion-defence-Does-law-place-modern-society.html Moreover, there are women who may be coerced into criminal acts by their husbands without any threats of violence ever being made. Instead it may be a case of "moral force" where issues of honour and family values, reflected in cultural and religious beliefs, are significant. These women are not protected by the defence of duress.


It is therefore submitted that instead of abolishing marital coercion entirely, more consideration should have been given to amending the defence. One criticism of the defence as it existed was that it was sexist and incompatible with gender equality legislation as it only applied to married women. Therefore, one suggestion is that the defence should have been amended to become one of intimate partner, rather than marital, coercion and include protection for all those in intimate relationships, regardless of gender or sexuality. This would have extended the defence to those who are co-habiting, in civil partnerships or same-sex marriages, as well as allowing men to utilize the defence. Altering the defence in this way would have reflected the idea that it is the unique pressures which exist for individuals within any intimate relationship, not just for women within a marriage, which would have justified the amendment, rather than the abolition, of marital coercion. 

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