



Obstetric Violence: Where is the Law?

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Law is a powerful tool that shapes relationships, defines boundaries, and regulates interactions within our social structure. Importantly, as a society, we turn to law for legal remedies when we are wronged and our rights are violated. In this way, ‘law and its language can be a critical frontier for feminist change’.^[1] However, the power of law to do this important work is undermined when it fails to recognise specific harms, such as obstetric violence and its gender-based injuries. In what follows, we offer some reflections on law’s failings in the context of obstetric violence, and encourage continued complaint and discussion to keep this form of violence visible. Consciousness-raising is vital, not only for empowering victim-survivors of obstetric violence by validating their experiences,^[2] but also to ensure that the shortcomings of our legal system do not go unrecognised and, consequently, unremedied.

Obstetric violence is a form of gender-based violence, and, at its core, concerns the violation of women’s integrity (physical and psychological) during the provision of maternity care,^[3] with childbirth being a particularly vulnerable time for violence and abuse. It is rooted in women’s gender inequality, as a product of a broader discriminatory failure to value and respect women, which makes it possible for healthcare institutions to violate them during pregnancy and birth. This is why obstetric violence is also a form of structural violence, with violent maternity care practices being systematically legitimated and normalised, such that women and society are often prevented from recognising violent birthing experiences for what they are – violence. The World Health Organization recognises that violence and

abuse in childbirth is a violation of fundamental human rights, which causes profound and long-lasting harmful consequences for women and their families.^[4] It is for this reason that we need the law to take a stand on obstetric violence as a specific form of gender-based violence.

Outside the United Kingdom, there is certainly an appreciation for the important role of law in this context. For instance, since 2007, several Latin American countries have included obstetric violence in laws dedicated to tackling gender-based violence, with some countries criminalising specific manifestations of obstetric violence.

The passage of these laws is a good start, as they empower women and families to claim their rights to health care without discrimination.^[5]

The importance of these laws is painstakingly clear in light of a recent case brought before the Committee on the Elimination of Discrimination against Women, *SFM v Spain*. In 2018, the Committee heard its first obstetric violence complaint against Spain, where the complainant had been subjected to numerous interventions without her informed consent, including several vaginal examinations and an episiotomy.^[6] The complainant in this case was forced to approach the Committee for redress because she was unable to secure access to justice through the Spanish legal system. Here, the Committee recognised obstetric violence as a form of gender-based violence and confirmed that States are under an obligation, under international human rights law, to ensure access to remedies for violations of women's reproductive health rights during childbirth. Indeed, the United Nations Special Rapporteur on Violence Against Women published a report on obstetric violence and mistreatment, highlighting:

'States have an obligation to respect, protect and fulfil women's human rights, including the right to [the] highest standard attainable of physical and mental health during reproductive services and childbirth, free from mistreatment and gender-based violence, and to adopt appropriate laws and policies to combat and prevent such violence, to prosecute perpetrators and to provide reparations and compensation to victims'.^[7]

The obligations highlighted by the UN Special Rapporteur reflect the position in the Convention on the Elimination of All Forms of Discrimination Against Women, an international human rights treaty of which the UK is a signatory. This means that the UK has formally committed itself to take measures to tackle violence against women. So, where do we stand in the United Kingdom? Unfortunately, the law is in a sorry state for victim-survivors of obstetric violence.

At present, no distinct provisions against obstetric violence exist in the UK legal system. This means that, in order to seek redress, victim-survivors must rely on pre-existing legal actions. Whilst avenues are technically available under civil law (such as the torts of negligence and battery) and criminal law (such as criminal battery, and other Non-fatal Offences Against the Person),^[8] these actions are not designed to address obstetric violence as a specific form of gender-based violence. Consequently, reliance on these avenues exacerbates the difficulties victim-survivors may encounter when attempting to seek redress, and their lived experiences may be distorted as they are 'filter[ed] through a mesh of legal relevances'^[9] specific to the relevant criminal or civil law action being brought. Notably, even if a victim-survivor is

successful, redress against the harms and wrongs suffered will not necessarily follow if the objectives of the action do not align with her individual justice needs. For example, the primary mode of redress under civil law is the granting of compensation. However, monetary compensation may not provide meaningful redress for some victim-survivors of obstetric violence. For those who do seek compensation to meet their justice needs, meaningful redress nevertheless remains illusory, as courts are notorious for failing to recognise and compensate satisfactorily for 'gender-specific' harms.^[10] Furthermore, reliance on these laws decontextualises obstetric violence as a form of gender-based and structural violence, instead, suggesting they are individual issues between women or birthing people and their healthcare providers.^[11] Whilst this may not impact the outcome of a given case, it fails to ground the issue as part of women's human rights struggles, obscures the underlying causes of this violence, and sustains the lack of understanding surrounding the specific nature of obstetric violence and its consequences for victim-survivors.

For a long time, feminist lawyers have highlighted the law's failure to reflect women's experiences and its limitations in the context of gender-based harm. They have also stressed, however, the need to engage with law, 'because law is an important and unavoidable site of political struggle'.^[12] In order to meaningfully provide redress and ultimately, to prevent obstetric violence, the law must be able to account for the complexity of the phenomenon, and it must speak to women's and birthing people's lived experiences. Given that our current legal frameworks struggle to accommodate for and fail to redress gendered experiences of violence and gender-based harms, the adoption of an obstetric violence framework in UK law is the only way to ensure this is achieved.

In conclusion, it is vital that victim-survivors are enabled to recognise their degrading and dehumanising experiences during labour and childbirth as obstetric violence. It is equally important, however, that they are able to seek meaningful redress through the law. Whilst actions may be available in some instances in UK law, they are ill-equipped to deal with this specific form of violence. This forces victim-survivors to rely on these actions despite their fundamental incapacity to reflect the nature of the issue and of the specific harms suffered. Additionally, it sends a harmful message about the validity of their experiences, their suffering, and fails to communicate the intolerability of violating women's bodies in the maternity care context with the fervour it warrants. However, through the sharing of lived experiences and collective condemnation of this violence, we generate empathic concern and demand attention to the issue, and with it, responsiveness from the law. It certainly has a role to play.

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[2] Leslie Bender, 'A Lawyer's Primer on Feminist Theory and Tort' (1988) *Journal of Legal Education* 9.

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[9] Carol Smart, 'Law's Power, the Sexed Body, and Feminist Discourse' (1990) 17 *Journal of Law and Society* 205.

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