Domestic Violence: The Australian Law Reform Commission Opinion

Intro

The Australian Law Reform Commission stated that assault occurring in the home is not a private matter but one that is of concern for the community as a whole. It is approximated that 23% of women in a spousal relationship will experience domestic violence. In regards to the contemporary issue of domestic violence, legal responses including AVO's, criminal charges and Family Court Injunctions have had varying degrees of success in achieving justice for women against domestic violence. However, the ineffectiveness has also been highlighted through the difficulties in enforcing and responding to these specific legal responses.

Domestic/family violence

In reference to s11 of the Crimes (Domestic and Personal Violence) Act 2007 (NSW), "domestic violence is violence committed against someone with whom the offender has, or had a domestic relationship". Domestic violence can arise in various different forms including asserting dominance over your partner, withholding money, denying job freedom, rape/sexual abuse, hitting, intimation and controlling. There are 3 theories in which try to explain why domestic violence against women occurs. The first theory is the 'structural theory' which incorporates aspects such as drugs, alcohol, lack of money and employment. The second theory is the 'cycle of violence theory' which essentially means that if a young boy has exposed to domestic violence his whole life, as he grows older violence is the only answer to his problems as this was all he witnessed when he was a kid and therefore the cycle of violence continues. The final theory is the 'manifestation of male supremacy theory' which outlines that if young boys are raised to have a 'men are the boss' mentality, it could result in violence as this is their way of asserting their misguided belief.

AVO

An ADVO is a piece of paper issued by the court in order to protect an individual from behaviours by someone with whom they are or have been in a domestic relationship. Apprehended domestic violence orders (ADVOs) were introduced under section 547AA in the Crimes (Domestic Violence) Amendment Act 1982 (NSW). An ADVO is effective to some degree in responding to domestic violence regarding the protection of individual rights. This is evident as it states in section 36 of the Crimes (Domestic and Personal Violence) Act 2007, an AVO prohibits the defendant from assaulting, threatening, molesting, harassing, or interfering with the protected person. As well as this, it prohibits the defendant from stalking or threatening the protected person and it prohibits intentionally or recklessly destroying or damaging any property belonging to the protected person. However, ADVO's are fundamentally ineffective in achieving justice for women against domestic/family violence as they are difficult to enforce. A piece of paper can not stop someone from breaching their ADVO if they really wanted to. This is manifested through the Andrea Patrick case where in spite of an AVO being put against her husband, he simply went to her house and killed her. In addition, the ineffectiveness of ADVO's

in regards to enforceability is emphasised as according to the NSW Bureau of Crime Statistics and Research, in 2014 NSW courts issued 26,491 Apprehended Domestic Violence Orders and out of those, 11,788 were breached. Therefore, an ADVO is somewhat effective in achieving justice for women as it has the ability to protect their individual rights however, it is essentially ineffective as this legal response is too difficult to enforce.

Criminal Charges

Criminal charges are formal accusations made by a governmental authority asserting that somebody has committed a crime. The effectiveness of criminal charges in response to achieving justice for women has been demonstrated to some extent through its ability to protect individual rights. This is furthered through Section 13 of the Crimes (Domestic And Personal Violence) Act 2007 as it states that “A person who stalks or intimidates another person with the intention of causing the other person to fear physical or mental harm is guilty of an offence”. By implying charges including a criminal record, maximum imprisonment of 5 years and/or a fine of up to $5500 it successfully achieves justice for women and effectively protects their individual rights. Alternatively, criminal charges have an element of ineffectiveness as it highlights the inaccessibility of proving a charge. The Crimes Act 1900 (NSW) states “an offence must be proved beyond reasonable doubt” which can be difficult, time consuming, expensive and traumatic. (CASE STUDY)

Family Court Injunctions

Family Court Injunctions are for married couples and couples in a de-facto relationship and are granted by courts in order to protect the welfare of a child and a party to the marriage. This is demonstrated in Section 68B of the Family Law Act as it permits a court to grant an injunction to protect the welfare of a child and Section 114 of the Family Law Act permits a court to grant an injunction in circumstances arising out of the marital relationship. Family Court Injunctions are somewhat effective in the protection of individual rights as they restrict a wide range of behaviours including restraining a person from entering or remaining in the place of residence or specified areas of the child and the child’s parent. However, Family Court Injunctions are predominantly ineffective in achieving justice for women against domestic violence as they are not responsive due to the fact that they are not immediately obtainable. If a Family Court Injunction is contravened, it does not respond in an appropriate time frame as the application required by the protected individual containing the affidavit and filing fee paid, can be time-consuming and this lengthy time could be fatal. A case study highlighting the ineffectiveness of Family Court Injunctions in relation to responsiveness is the Jean Lennon case. Jean Lennon attempted to get a Family Court Injunction out against her ex-husband Majdalawi, however, due to the lengthy process, she was unable to protect herself which resulted in her being shot dead by him while outside the Parramatta Family Court. Therefore, it is evident how a Family Court Injunction is somewhat effective in achieving justice for women as it has the ability to protect their individual rights however, it is very ineffective as this legal response lacks responsiveness.