

Domestic Violence Laws: Worldwide Flaws and Challenges

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Chapter 1: Introduction

Domestic Violence has become a silent worldwide epidemic. It affects everyone and discriminates no one. Do the current domestic violence laws do right by society? After doing research, I found that current domestic violence laws do not do right by society. There were statistics and studies that answered my thesis question that in fact laws need to be changed because the current laws that are in place are ineffective. Legislatures and the government must come together to come up with better laws to protect victims of domestic abuse. Organizations can be created to help both the victims and the abusers and find a way to minimize this epidemic.

Background

Domestic violence has been around for centuries. In the past domestic violence was seen and used as a way for a husband to “correct” their wife. It was also used to instill fear and maintain patriarchy. We can all certainly agree that progress has been made but there is still a lot of work to be done. Let’s go back to the early 1500’s where husbands were allowed to whip their wives to correct them, this is where the “rule of thumb” was created. This went on for a very long time, more accurately from 753 BC to 1824.

Then, in 1824, the Mississippi's Supreme Court allowed a husband to administer “moderate chastisement in case of emergencies” which basically meant the husband was permitted to beat his wife if she misbehaved and if he was able to justify that her behavior was inappropriate. In 1866, The American Society for the Prevention and Cruelty to Animals (SPCA) is founded.

Alabama was the first state to rescind the legal right of men to beat their wives in 1871. Great, slowly but surely progress is being made. Between 1872 and the early 1900s, Maryland became the first state to pass laws that made beating your wife a crime up to a year in jail; North Carolina declared that criminal indictment cannot be made against a husband unless the wives' injury was permanent, and the beating was done with malicious intentions and at that time with Queen Elizabeth's sitting in the throne lawmakers became more willing to enact reforms for women. For example, wives could no longer be locked in the house and beating your wife to near death was considered grounds for divorce and you could no longer sell or prostitute your wife and/or daughter.

Finally, in the mid 1900s most countries all over the world also started making reforms to support the movement to protect women who are being abused by their husbands. In Scotland, the husbands must pay a fine if they strike their wife. Brazil passes a penal code that prohibits husbands from selling, renting, or gambling away their wives in 1975. In 1992, the American Medical Association releases guidelines for signs of domestic violence and finally stalking becomes identified as a crime.

Chapter 2: Literature Review

Good studies were not hard to find. Many researchers have also done a lot of studies revolving domestic violence and the impact it has had on society and the way the law has failed.

A paper called ‘Mandatory-Arrest Laws and Domestic Violence: How Mandatory-Arrest Laws Hurt Survivors of Domestic Violence Rather Than Help Them’ was published by Bridgett in 2020 and used data collected over a period by researcher Lawrence Sherman. Bridgett is an attorney in Cleveland, Ohio and has the qualification and knowledge. In this article, Bridgett explains that Wisconsin is a mandatory arrest state, meaning that the law requires the alleged abuser to be arrested when responding to any domestic violence calls was causing more harm than good. After reading this article I do believe that the findings are most certainly justified based on the data presented.

A paper published in the journal *Policing and Society* in 2021 addresses a very similar topic. Written by Lin et al., the paper was titled ‘Chinese police officers’ attitude toward domestic violence interventions: do training and knowledge of the Anti-Domestic Law matter? attitudes toward domestic violence interventions: do training and knowledge of the Anti-Domestic Violence Law matter? the article touches on the Chinese police officers’ and their attitudes towards their intervention into domestic violence. Although, training, awareness around the severity and importance of domestic violence intervention has been provided studies show that the police are still reluctant to participate.

A paper published in *International Journal for Crime, Justice and Social Democracy* supported the fact that the laws need to be changed. Written by Molly Dragiewicz, the paper was titled ‘Domestic Violence and Family Law: Criminological Concerns’. Molly Dragiewicz is an Associate Professor in the School of Criminology and Criminal Justice at Griffith University in Australia and is a reliable source. This article touches on the failure to protect the women from the abuser and how the women are in danger of being punished if they do not encourage, facilitate, and promote a relationship with the children and their father/abuser.

In the *Journal of Experimental Criminology*, an article titled ‘Increased death rates of domestic violence victims from arresting vs. warning suspects in the Milwaukee Domestic Violence Experiment’ by Lawrence W. Sherman and Heather M. Harris. Lawrence W. Sherman currently serves as Editor-in-Chief of the *Cambridge Journal of Evidence-Based Policing* and Heather M. Harris is a junior scholar at University of California, Berkeley. This article speaks on research based on the 1987–88 Milwaukee Domestic Violence Experiment (MILDVE). Sherman and Harris concluded that the African American victims of domestic violence were most likely to result in death after arresting the abuser compared to white victims. There was also large correlation between the arrest rate and death of the victim of the person who is abused by the person who is arrested.

‘Non-Criminal Behavior: Why Idaho’s Domestic Violence Laws Are Inaccurate and Inefficient’ an article published in the *Law Review of Idaho* write by Madison E. Basterreche that goes into depth about the severity of Domestic Violence and how inaccurate and inefficient the laws are. It also goes into detail on how legal intervention is not the best route to take to prevent or combat domestic violence. The law falls short, and the judicial system is ineffective in protecting the victims.

‘The Criminal Law’s Response to Domestic Violence: What’s Going On?’ This article written by Heather Douglas and published in the *Sydney Law Review* talks about how in Australia the order of protection violations is handled and although criminal charges are made, criminal responsibility is minimized by the police and often offending/abusing party blame the victim for their actions. The article also goes into depth to discuss how the punishment does not attribute the background of the offense.

‘Women’s mental health: acute impact of COVID-19 pandemic on domestic violence’ an article published in *Archives of Women’s Mental Health* written by Sabrine Sediri, Yosra Zgueb, Sami Ouanes, Uta Ouali1, Soumaya Bourgou, Rabaa Jomli and Fethi Nacef touches on how domestic violence cases increased during COVID. Psychological, emotional, and economical

were higher than physical violence. However, many victims did not report it out of fear. Also, the high rate of violence was linked with anxiety, stress, and depression.

In the article ‘Domestic Violence Laws & the INA: How Domestic Violence Perpetrators Attain Immigration Benefits’ published in the Family Law Quarterly written by George T. Emmons, III touches on how both women and men are victims of severe physical abuse at the hands of their intimate partner. Many of the abusers although not having a legal status in the United States their crime is not seen as severe for them to be deported back to their countries. Police reports or Family Court findings are not relevant in their immigration proceedings and the abusers are still successful in obtaining an immigration status therefore, they are still able to remain in the United States and continue the abuse to their victim.

In the Health and Human Rights Journal, the article ‘Domestic and Family Violence in Post-Conflict Communities: International Human Rights Law and the State’s Obligation to Protect Women and Children’ written by Samantha Bradley who has worked for the Health and Human Rights Journal for several years talks about how in Britain the system fails victims terribly. The victims face discrimination, prejudice, inadequate protection and suffer more consequences rather than the abuser.

‘Domestic Violence and Children’s Presence: A Population-based Study of Law Enforcement Surveillance of Domestic Violence’ was written by John W. Fantuzzo, Rachel A. Fusco, Wanda K. Mohr, and Marlo A. Perry published in the Journal of Family Violence. The FBI release their data for the last 25 years which showed that 57,000 people were killed at the hands of their intimate partners. They also released information that showed that the health-related costs of rape, physical assault, stalking, and homicide by intimate partners exceeded \$5.8 billion each year, nearly \$4.1 billion of which goes to medical and mental health services. This article also talked about Domestic Violence Event Protocol (DVEP) which used by police officers to capture key features of domestic violence events.

‘Restraining Orders Enhanced by GPS Monitoring Will Protect Domestic Abuse Victims’ was published in the Harvard Civil Rights-Civil Liberties Law Review and written by Diane L. Rosenfeld. This article talks about a GPS motoring system that is being proposed nationwide. The initial proposal was that the victim would have the GPS tracker so that the abuser would stay away from the frequently visited places. This initial proposal had many people in disagreement as they thought it was unfair that the victim had to carry this burden. A second proposal was made, in which the abuser would have to be tracked to make sure they stayed away from the victim, pay for the cost of the monitoring and device. This was an option that people liked the best.

Chapter 3: Methods

Introduction: research design

My research design was secondary research.

Selection criteria

I used both peer-reviewed (11) and one website source.

Search terms

Domestic violence and the law.

Data collection and analysis methods

I used data from my peer-reviewed articles.

Study quality and risk of bias

I used scholarly standards of referencing and maintained an open mind.

Conclusion: brief recap

I was very successful in finding peer-reviewed articles (11) that supported my thesis. I was able to use reliable and credible sources.

Chapter 4: Findings

Domestic violence abuse can be physical, sexual, racial, emotional, or financial. Many victims stay silent about the abuse they experience for year even decades because they fear the repercussions and even death. Some of the abuse is so severe that they do not know any other life outside of this abuse.

Domestic violence is a worldwide issue. However, in the United States alone approximately 1 in 4 women and 1 in 7 men experience sexual violence, physical violence, stalking by an intimate partner. Based upon a national statistic about 26% of intimate partner violence experience repeated violence. Not only is the impact physical but there is the chronic physical and mental illness which creates a high medical cost to the nation. As Basterrechea (2021) states, “The cost of IPV over a victim’s lifetime was \$103,767 for women and \$23,414 for men. “Based upon 43 million U.S. adults in 2012, the lifetime cost of IPV for the United States was close to \$3.6 trillion.” (p. 196)

Data reported by the Bureau of Justice Statistics indicate violence by an intimate partner made up almost 20% of nonfatal crime experienced by women in the early 2000s. FBI data show that in the last 25 years 57,000 people have been killed in domestic violence incidents. The health-related costs of homicide, physical assault, rape, stalking by intimate partner exceeds over \$5.8 billion each year, in which \$4.1 billion of which goes to medical and mental health services. Not only is the victim suffering but if there are children involved. If the children witness the abuse or if they too are being abused. They too will need medical and mental health services.

Lawrence Sherman, American experimental criminologist, and police educator who is the founder of evidence-based policing conducted research after receiving a grant from the National Institute of Justice along with the Minneapolis Police Department and the National Policing Institute in the early 1981 to mid-1982. Sherman wanted to test police responses to domestic violence calls. The point of this was to resolve the debate about how police address and respond to misdemeanor cases of domestic violence. There were three approaches: do as little as possible;

the psychologists' approach that the police should mediate or arbitrate the disputes underlying the violence; or the approach recommended by many women's groups and the last approach which is that the accused should be subject to arrest. After the experiment it found that the accused being arrested was the most effective solution of the three proposals.

Studies like Sherman's and pressure from activists and the victims pushed Congress to take some action. Finally, The Violence Against Women Act passed in 1994. This act allowed prosecution of the abuser regardless of whether the victim cooperated or not. This was important because in some cases the victim was too scared to testify or come forward because they feared the repercussions. This act also incentivized other states to implement the use of the mandatory arrest and offered additional aid to the states that implemented it. The Violence Against Women Act was renewed in 2000 and 2005 to clarify that this law did not only pertain to women but rather the protection of anyone suffering domestic violence abuse. In 2013 the Act added undocumented immigrants the LGBT community.

In 2015 Sherman did a second study and found that approximately 64% of the victims died prematurely when the abuser was arrested. Other studies that followed also showed that the police officers answering to the domestic violence calls had little training and sometimes did not know what the best course of action was. Studies also had found that follow-up actions such as prosecution, supervision, programs, arrests, warnings, leaving the victim and the abuser with little supervision after release leads to another act of abuse or even murder. This study clearly showed that Shermans experiment was unsuccessful.

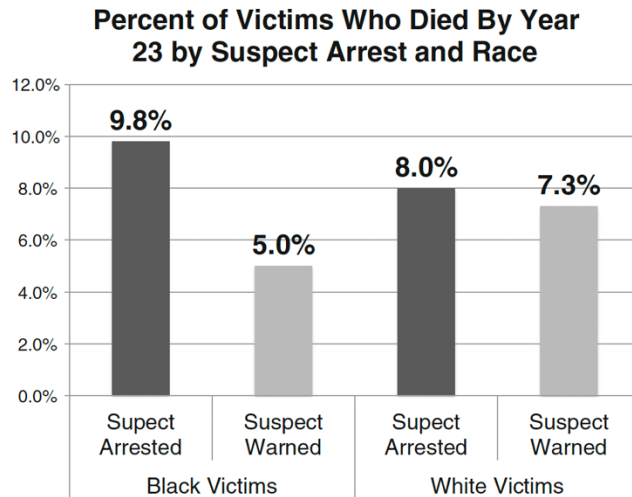


Figure 1. Effect of suspect arrest on victim mortality by race of victim

In Figure 1, we can clearly see that there was failure in the study as there was a high rate of mortality/murder related to the abusers/suspects that were arrested.

When GPS devices became a resource, it was immediately considered. However, the first initial proposal was not so successful. The initial proposal basically placed all the burden on the victim. The proposal had the victim be responsible for the GPS system so that the abuser would stay away from the most frequently visited places by the victim, it was also an indirect way of having control over the victim because it limited them to where they could be. This proposal was immediately rejected and then a second proposal was proposed. The second proposal was that the abuser must take responsibility for the cost of the GPS device, the monitoring and they would be tracked to make sure they stayed away from the victim. This proposal was put into a legislature by the state of Massachusetts.

This is not the only situation that the victims have had to carry the burden of dealing with less-than-ideal situations. In family court, abused mothers to this very day are expected to divorce their abusers to protect their children. If they refuse to do so and if the child protection system is involved, the mother faces removal of their children because they fail to protect the children from the abuser. However, once there is a divorce or separation agreement the

mothers/victim is also expected to maintain open line communication, facilitate, encourage, and promote a relationship with their abuser, or they face alienation charges. When there is a severe case of abuse, the Family Court does offer supervised visitation, but this is only a temporary fix because they can only cover the expense of the supervised visitation for a short amount of time. After this time has passed the burden falls on the victim and she/he is once again exposed to the abuser.

Due to these predicaments more than four thousand women each year are killed by their partners. Regardless of the damage the abuser causes, our laws do not hold them accountable for their actions. More specifically, in the immigration laws. Many of the abusers who have been convicted of domestic violence crimes are not considered grave enough to be removed from the United States. There is serious disregard for the stories of the victims and the horrific harm they suffered. Many times, the police reports are not relevant in the proceedings in immigration when determining the severity of a crime. Rather than the abusers lose the privilege to remain in this country, their granted legal status and continue with their abuse and the victim must continue to suffer physical, mental, and emotional harm.

In 2020, we were all impacted by COVID-19. However, we all welcomed our much-needed time at home, but others were not as fortunate as some of us were. During lockdown violence against women increased. Most of the women who experience violence/abuse during the lockdown did not seek help. The women who experienced emotional abuse never reported it. Women who were already experiencing abuse at home prior to the pandemic showed to have a higher rate of violence. Studies related the violence during the pandemic with anxiety, stress, and depression, however, this just seemed a way for the abuser to justify as to why the abuse started or became severe.

The United States is not the only country who struggles to find a solution to this worldwide epidemic. In 2015, China passed the anti-domestic violence law, introducing the very first domestic violence law in China ever. However, police intervention in domestic violence incidents are considered by the Chinese society as a waste of law enforcement resources. Domestic violence is a real serious social issue in China. There are reports of high domestic abuse by intimate partners reported by the public. In China, domestic violence incidents were not solely by intimate partners. There are many incidents of domestic violence specially when the spouse is sharing a home with his or her spouse's parents. The culture itself shames any private matter leaving the home and the role of male dominance are rooted from generations. In China, the police do not want to be mediating disputes between husband and wife or family members. Therefore, police involvement to this date has not been considered an effective approach. China wants their officers to continue to get the proper training in hopes that in the future their intervention can gain respect and make a difference. China is aware that it has a long road ahead but believes that by bringing awareness to domestic abuse it can start making progress and significant changes in the relationship with the public and the police.

The Australian government has a different approach to domestic violence. They believe that domestic violence is clearly a crime. Studies show that although criminal charges are laid, the criminal consequences are minimized by the prosecution when it comes to the type or charges being applied. Often, the final sentencing fails to appropriate the right punishment with the crime. They also fail to consider the history of the abuser and the victim. On October 17, 2022, Australia released the National Plan to End Violence Against Women and Children 2022-2023.

The purpose of the National Plan

Violence against women and children is a problem of epidemic proportions in Australia. One in 3 women has experienced physical violence since the age of 15, and one in 5 has experienced sexual violence¹. On average, a woman is killed by an intimate partner every 10 days². Rates of violence are even higher for certain groups, such as Aboriginal and Torres Strait Islander women³. All Australian governments are united in their commitment to addressing the unacceptable rates of violence in our communities.

The National Plan outlines what needs to happen to achieve the vision of ending violence in one generation. This includes building the workforce and strengthening data collection systems. It also includes increasing accountability for people who choose to use violence, and providing person-centred and holistic responses to support victim-survivors through their recovery and healing.

The National Plan sets out actions across four domains:

1. **Prevention** – working to change the underlying social drivers of violence by addressing the attitudes and systems that drive violence against women and children to stop it before it starts.
2. **Early intervention** – identifying and supporting individuals who are at high risk of experiencing or perpetrating violence and prevent it from reoccurring.
3. **Response** – providing services and supports to address existing violence and support victim-survivors experiencing violence, such as crisis support and police intervention, and a trauma-informed justice system that will hold people who use violence to account.
4. **Recovery and healing** – helping to reduce the risk of re-traumatisation, and supporting victim-survivors to be safe and healthy to be able to recover from trauma and the physical, mental, emotional, and economic impacts of violence.

Figure 2. This figure explains the purpose of the 2022-2023 Australian National Plan.

Now, let's look at Britain and how they handle domestic violence incidents. In Britain, the police are immediately put on notice when there is a domestic violence incident complaint. After a complaint is filed not much is done besides collect dust. Victims face discrimination and prejudice. However, Britain is really trying to make a change, they have come up with a proposal to take steps to make changes. Britain has proposed the following:

1. The development and funding of emergency support services for victims of domestic violence.
2. The development of legislation both criminalizing domestic violence and facilitating the legal protection of victims.
3. The training of law enforcement officials in best practice relating to domestic violence response and protection.
4. The installation of long-term measures to facilitate cultural change, and address the toxic masculinities and power dynamics that may propagate domestic violence.

Chapter 5: Conclusions

A lot of researchers have tried to find ways to come up with solutions but even with years of research and history, many have only been able to find temporary solutions. Worldwide domestic violence has become an epidemic that creeps up when you least expect it. Even after hours and hours of research, several trials, studies, thousands of people trying to find a solution and millions of people trying to bring awareness it has become evident that someone needs to take matters into their own hands and find a solution that works. Many of the victims of domestic violence have a tragic ending and we need someone to put an end to this. Do the current domestic violence laws do right by society? Absolutely not. On the contrary, they barely protect us.

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