

# **THE GENDERED CONTAGION: PERSPECTIVES ON DOMESTIC VIOLENCE DURING COVID-19**

**Gender, Human Rights and Law**

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**Volume - 7**

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# Foreword

- Justice Prabha Sridevan

I do not know what word I should use to acknowledge the invitation to write the foreword for this special issue. Honoured? No. Privileged? No. We should be ashamed that we have given cause for **This Gendered Pandemic**. Just as I started writing the foreword on 30.9.2020, our newspapers carried the horror stories at Hathras and of the child stabbed hundred times with a screw driver. It would seem as if even with the sword of death held by the C-Virus over their heads, men will not stop inflicting violence on women and children. The violence will not decrease and on the contrary it will step up its pace. So what do we do?

This compilation carries contributions which show the immediacy and the presence of the Violence and the Rights-Violator at the doorstep, sorry, even inside our four walls. The contributions are grouped under descriptive headings; *The Shadow Pandemic*, *The Dysfunctional State Protection*, *The Engulfing Loneliness* and the *Notes from the Neighbourhood*. They include transcripts of panel discussions, interviews and field notes. The transcripts are true records and they bring home to us what women actually faced. The importance of treating domestic violence as a health core issue becomes urgent, because the lockdown is a protection only for the lucky few, it is a curse for women and children in spaces plagued with violence and abuse. This issue shows us that there are certain unique barriers which compound the difficulties of sexual and gender minorities since they are excluded from the protection of the DV Act. Then we have the practical difficulties faced by the domestic violence clients since communication has become difficult due to the lockdown.


We see posters all around us, asking us to stay home and stay safe. But the value of this injunction depends on who you are. The staying-at-home deepens the economic distress for many and also increases the vulnerability to domestic

violence. The stay home stay safe paradox is dealt with in this compilation. For in fact, on research, the home has been found to be the “most dangerous place for women”. The experience of women facing domestic violence is not single faceted and we read about the intersectional experiences of Dalit women and Muslim women. The pandemic situation has aggravated the factors that cause domestic violence, because now the women have no escape and the Government shows apathy. There is a paper which deals with implementation of the Domestic Violence Act during lock down. With sinking guts, I read how this pandemic has intensified the violence against gender-diverse persons, women belonging to tribal communities, Muslim women, women with disabilities, Dalit women and children, that means the more vulnerable you are, the more violently the lock down hits you. With regard to children, we read that the impact cannot be captured in one line for it impacts “their education, their nutrition, their mental health and their lives”. And we are told that 10 million children may never return to school....Ten million children.

This collection also contains narratives from Sri Lanka, Maldives, Pakistan, and Bangladesh. It tracks the violence and discrimination across states and even within states across districts. It opens your eyes to understanding what the situation is. But as my friend Professor Kadambari said to me, “Unless society has the ultimate concern of a healthy future, laws cannot be implemented”. Recently I wrote an op-ed for the Tamil daily Dinamani. The title can be loosely translated as “When will this stop?” or “When will this end?” It is a continuous tale of aggressors inflicting violence on women. I really do not know the right way to refer to this violence. I have read that the phrase, “violence against women”, depersonalizes the violator, the offender, the criminal, and focuses on the women as a passive object. Language I know is very important. Will it make a difference if we focus our attention on the culpable one? In that case, the aggressor must be mentioned or must find a place in our discourse.

After Justice Ruth Bader Ginsburg passed away, a champion of equality, I like many others went into a flurry of reading what she wrote, listening to her lectures, searching for her interviews on You-tube and so on. In her interview to (I think) with Harvard Law School, she says that a man must be able to declare I want to be nurse, and a woman must be able to say I want to be





a rocket scientist. She is of course referring to our stereo-typical image of nursing as a woman's job and being a rocket scientist as a man's job and the switching of the roles or shifting of the roles. Tell me each one of you who reads this foreword, what did you feel when you read about a woman aspiring to be a rocket scientist and a man aspiring to be a nurse. If you are honest, you would have raised your eyebrows in puzzlement at the man and raised your eyebrows in admiration at the woman. What is traditionally considered a man's job is pegged at a higher rung than what is traditionally considered a woman's job. I will give you another example. This is not my own brain wave. It is a casual remark said to have been made by a woman I admire. Since I am not sure of the authenticity, I am not revealing her name. It seems she said that we are fine with a girl wearing pants or shorts, but are we fine with a boy wanting to wear a skirt? Imprinted in the universal DNA is the message that somewhere, somehow, somewhat the women is less equal. This has to change and how does one change it? The most dangerous place, this compilation tells me, is the home where the women is enclosed with the violator. If this has to change, equality education must start from home. Our homes do not teach our children that all are equal no matter what one is nor what one wants to be. The teaching must start early, if we want to usher in an equal society where situations such as those described in this compilation become things of the past, buried deep unmourned. I am hoping for that day. For, in his interview to Times of India, the Dutch historian Rutger Bregman who has written "Humankind: A Hopeful History" says, "But you do have a moral obligation to hope for a better future because hope impels us to act". This hope must lead to action that transforms each home into an equality education nursery and studies like this will surely assist in that transformation. Can a module be created for that?

My congratulations and appreciation for everyone who has conceptualized, and contributed to this compilation. Thank you Ms. Indira Jaisingh and Prof. (Dr.) Sarasu Thomas, the Registrar of the National Law School of India University, Bengaluru for asking me to write this foreword.

Chennai  
13<sup>th</sup> October 2020

Justice Prabha Sridevan,  
Former Judge,  
High Court of Madras



# Preface

– *Senior Advocate Indira Jaising*

The COVID-19 pandemic compels us to look at the human rights issues from a different lens. Regulations which were authoritarian in nature locked down intimate partners in the same shared household. A right to reside in a shared household, introduced in the Protection of Women from Domestic Violence Act, 2005, was in danger of being turned on its head and the shared household became a trap rather than a safe sanctuary. This is probably just an illustration of what COVID-19 did to human beings, generally. Inability to socialize took away from all of us an essential human need resulting in depression for many. It also meant denial of access to justice, because courts were also largely locked down until arrangements could be made for videoconferencing.

To understand the impact of these lockdowns on domestic violence for women, let us step back a bit and understand the inspiration behind the Protection of Women from Domestic Violence Act 2005 which came into force in October 2006. .

It is perhaps ironic that for a country which takes nonviolence as its founding faiths, it took us more than 60 years as an independent country to come up with a definition of violence against women. One of the revolutionary features of the Act is that it defines violence between intimate partners not just in terms of physical violence but also in terms of economic abuse, sexual abuse and emotional abuse. As the readings in this compilation show, all three forms of violence were likely to be exacerbated during the pandemic, within the four walls of the shared household. We, as human rights activists and as service providers, were faced with an unanticipated challenge. It is then that one of the primary principles which informed the Act, which till then laid dormant, suddenly came alive. The Act had attempted to put in place multi-focused service delivery, a cradle to grave approach which we described as ‘coordinated response to domestic violence’.

What does this response entail? It entails hand holding of a survivor of domestic violence to empower her to access justice and put her back on her own feet. The support could come through infrastructure which was put in place by the Act itself. This included the recognition of existing service providers who by authority of law could record domestic incident reports and counsel women on their rights. It also included obligations cast on medical professionals to provide medical services to survivors of domestic violence free of cost. Most importantly, it created the posts of protection officers who could record domestic incident reports, counsel women, remain present in court when an application for relief is being heard, collect information and evidence under the supervision and direction of the court to enable a prompt and just outcome. On the same lines, the Nirbhaya fund was created in the wake of gruesome 2012 gang rape, so that a dedicated amount of money was earmarked for the creation of One Stop Crisis Centres to begin with, one in each district. Upon perusal of the data tendered by the Ministry of Women and Child Development, it is starkly apparent that there has been an under-utilization of the funds allocated for setting up crucial support and rehabilitation programs/schemes for victims of sexual assault such as One Stop Centres, among others.

It is evident that from the data available from the **Ministry of Women and Child Development**, Government of India as was provided before the Lok Sabha on 29.11.2019 as answer to Unstarred Question No. 1903, the total funds allocated to all States/UTs for the crucial **One Stop Centre Scheme** for victims of sexual offences was **Rs. 311.14 Crore out of which only Rs. 42.98 Crore has been utilized.** (Table No. 1)

Table No. 1

Sl. No.	State	Funds released to States/UTs (Rs. in Lakhs)	Amount utilized (Rs. in Lakhs)
1.	Andaman and Nicobar Islands	96.28	38.95
2.	Andhra Pradesh	1167.98	430.47
3.	Arunachal Pradesh	981.85	94.37
4.	Assam	1408.23	122.79

5.	Bihar	1187.9	0
6.	Chandigarh	37.5	6.99
7.	Chattishgarh	2017.19	928.67
8.	Dadra and Nagra Haveli	87.33	35.22
9.	Daman & Diu	89.18	8.08
10.	Delhi	201.18	0
11.	Goa	96.07	12.11
12.	Gujarat	1246.51	56.89
13.	Haryana	1011.31	189.09
14.	Himachal Pradesh	310.96	15
15.	Jammu and Kashmir	402.29	48.69
16.	Jharkhand	1078.85	48.43
17.	Karnataka	1205.41	0
18.	Kerala	468.86	41
19.	Lakshdweep	0	0
20.	Madhya Pradesh	2797.6	590.73
21.	Maharashtra	1446.54	19.41
22.	Manipur	590.45	12.89
23.	Meghalaya	436.93	58.17
24.	Mizoram	416.75	64.63
25.	Nagaland	693.28	211.73
26.	Odisha	1038.82	54.46
27.	Puducherry	104.08	0
28.	Punjab	1185.37	65.62
29.	Rajasthan	1078.37	171.86
30.	Sikkim	132.06	38.9
31.	Tamil Nadu	1672.64	45.88
32.	Telangana	1396.91	138.07
33.	Tripura	374.91	44.66
34.	Uttar Pradesh	4088.39	540.02
35.	Uttarakhand	566.69	164.31

36.	West Bengal	0	0
37.	<b>Total (in Crores)</b>	<b>311.1467 Crores</b>	<b>42.9809 Crores</b>


As of the latest data available from the **Ministry of Women and Child Development**, Government of India as was provided before the Lok Sabha on 07.02.2020 as answer to Unstarred Question No. 925, from the financial year 2016-2017 till the financial year 2018-2019, total amount sanctioned to various states and Union Territories towards One Stop Crisis Centre (OSC) Scheme was **Rs. 218.59 Crores**, whereas the total amount utilized was only **Rs. 53.99 Crores**. (Table No. 2)

**(Table No. 2)**

**Fund Allocation and Utilization by the Ministry of Women and Child Development on the One Stop Centre Scheme as on 07.02.2020**

State	2016-17 (Rs. in Lakh)	Utiliza- tion (Rs. in Lakh)	2017-18 (Rs. in Lakh)	Utiliza- tion (Rs. in Lakh)	2018-19 (Rs. in Lakh)	Utiliz- ation (Rs. in Lakh)
Andaman and Nicobar Islands	0.00	0.00	31.21	31.21	36.88	38.00
Andhra Pradesh	268.97	268.97	330.14	0.00	390.63	180.24
Arunachal Pradesh	28.41	28.41	53.20	38.19	782.02	14.57
Assam	75.66	68.77	0.00	0.00	786.95	70.18
Bihar	198.90	0.00	0.00	0.00	308.32	0.00
Chandigarh	0.00	0.00	0.00	0.00	9.31	0.00
Chhattisgarh	734.28	734.28	167.04	146.08	662.44	649.44
Dadra and Nagar Haveli	0.00	0.00	43.41	43.41	0.50	0.00
Daman & Diu	0.00	0.00	0.00	0.00	0.00	0.00
Delhi	0.00	0.00	0.00	0.00	0.00	0.00

Goa	19.41	0.00	10.85	3.92	4.92	0.00
Gujarat	38.83	38.83	127.15	0.00	562.70	9.87
Haryana	116.49	107.99	38.30	24.00	479.61	51.06
Himachal Pradesh	0.00	0.00	15.00	15.00	101.19	0.00
Jammu and Kashmir	95.66	28.11	87.52	48.69	150.20	8.64
Ladakh	0.00	0.00	0.00	0.00	0.00	0.00
Jharkhand	56.83	41.20	18.47	0.00	704.37	63.20
Karnataka	85.24	0.00	62.74	0.00	594.44	0.00
Kerala	113.66	34.87	11.80	0.00	283.32	48.38
Lakshadweep	0.00	0.00	0.00	0.00	0.00	0.00
Madhya Pradesh	773.48	645.83	131.27	51.25	1123.91	117.87
Maharashtra	213.56	19.41	437.70	0.00	389.29	67.24
Manipur	0.00	0.00	0.00	0.00	357.22	0.00
Meghalaya	28.41	28.41	7.75	0.00	186.40	22.51
Mizoram	0.00	0.00	61.41	61.41	272.65	15.13
Nagaland	55.42	55.42	80.42	80.42	454.87	30.01
Odisha	15.00	15.00	120.33	29.18	774.60	0.00
Puducherry	0.00	0.00	19.41	0.00	47.67	0.00
Punjab	97.07	59.71	335.88	21.91	526.33	0.00
Rajasthan	341.23	122.69	28.96	52.29	308.60	87.81
Sikkim	0.00	0.00	30.71	0.00	39.23	0.00
Tamil Nadu	0.00	0.00	38.83	23.82	1139.95	0.00
Telangana	155.32	138.07	301.72	51.92	589.49	105.19
Tripura	0.00	0.00	0.00	0.00	269.01	0.00
Uttar Pradesh	454.63	297.34	266.23	35.73	2228.30	39.72
Uttarakhand	58.24	53.07	138.86	109.56	272.25	125.20
West Bengal	0.00	0.00	0.00	0.00	0.00	0.00
<b>TOTAL (Rs. in Crore)</b>	<b>40.247 Crore</b>	<b>27.8638 Crore</b>	<b>29.9631 Crore</b>	<b>8.6799 Crore</b>	<b>148.3757 Crore</b>	<b>17.4426 Crore</b>




While this system has not worked satisfactorily, it was a beginning at creating a network of self-help, a network which could be accessed for self-help by a survivor which could lead to her empowerment. All this has happened under the umbrella of the Protection of Women From Domestic Violence Act 2005. There have been success stories of the implementation of the Act and there have also been failures. Some States have chosen to appoint a separate cadre of dedicated Protection officers while others have simply given additional duties to the existing bureaucrats.

The work of gender sensitization of Protection Officers and Judges has continued through State Judicial Academies, with the help of Feminist groups. Several young women who started their careers in NGOs working on the issue of violence against women have been appointed Judicial Officers themselves.

All this meant that before the pandemic broke, there was an infrastructure in place for women to access the justice system. The pandemic however made physical access impossible. It is in this situation that another success story emerged. As Sangeeta Rege's presentation during the panel discussion, included in this volume makes clear, in Mumbai, NGOs succeeded in getting themselves declared as "*essential services*". This gave their staff the mobility that was required to make home visits on receiving a call from a woman seeking help during the period of lockdown. It was then that the system of coordinated response came alive. It took a pandemic to realize the full potential of the Domestic Violence law. An observation which comes to mind is that when formal access to courts is difficult, para-legal structures come into play for performing the justice function.

For me, it has been an exciting journey to be part of the drafting process of this law from the drawing board to the courtrooms and now watch its performance during a pandemic. We at the Lawyer's Collective, monitored and evaluated the functioning of this law for five long years, from 2007 onwards. We came to the conclusion that the law is operating through three primary means. One, through the Private Model, where the survivor accesses the court directly through her own lawyer; two, through the Mixed Model where the access to court may be private but the public functionary of the Protection Officer enables evidence collection and thirdly, through the Public Model, where the





survivor approaches the Protection Officer who then initiates the process through access to court. **In the pandemic, we have seen a fourth model where the courts recede into the background and the coordinated response through service providers and Protection Officers comes into play giving a form of relief to the survivors of domestic violence.**

None of this is to say that we have seen the end of domestic violence through a legal process. It can never be so. The law sets the threshold norm indicating to the general public, the behavior which is considered unacceptable in public policy, in this case domestic violence, between intimate partners. It draws a *lakshmanrekha* which a perpetrator must not cross. Ultimately, it is the acceptance of this norm by civil society which will go a long way towards ending domestic violence. For now, there is cause for alarm. A recent news report and a video which went viral showed a Senior Police Officer, who ironically was in-charge of the Women's Cell, physically beating up his wife. When questioned by the media, his answer was that, "This is not a crime anyway."

When is a crime a crime? I always believed that it was when the law tells us that it is a crime. We do have laws which criminalize domestic violence, Section 498A of the Indian Penal Code. We now have a civil law which defines domestic violence broadly as mentioned above and offers a range of civil remedies to protect women against domestic violence. Why then does a senior Police officer in charge of a women's cell, say that it is not a crime? This is what impunity looks like, the power to ignore crime, to say a crime is not a crime. It is this that we need to end if we want to end domestic violence.



# Note from the Editors

Amidst reports of the growing instances of domestic violence due to the ongoing pandemic and resulting lockdown, the Centre for Women and the Law ('CWL') and the Law and Society Committee at NLSIU, Bangalore along with the Leaflet have collaborated on an edited volume titled '**The Gendered Contagion: Perspectives on Domestic Violence during COVID 19**'. This publication is a special issue of the Gender and Human Rights Law which is a publication series of the CWL, that has covered both collections of essays/articles as well as books/ monographs in the past.

This publication has sought to bring together different perspectives on domestic violence and the diverse issues being faced by gender and sexual minorities during the current time. We have contributions from Indian lawyers, civil society members and activists working at the grassroots level along with field notes from organisations working in both Indian and neighbouring countries in South Asia. The aim of this volume was both to bring together diverse experiences of affected people and stakeholders working on gender and sexuality issues as well as reflect on how current legal frameworks especially the Protection of Women from Domestic Violence Act, 2005 have played out during the current pandemic. While an attempt was made to bring truly diverse and marginalised voices to the fore, the editors are acutely aware that they have been unable to meet this goal in its true spirit. However, we still hope that the volume contributes to literature on the impact of the pandemic from a gender perspective and also informs future legal and policy reform efforts.

The first section titled, '**The Shadow Pandemic**', chronicles the disproportionate and gendered challenges that the lockdown and the pandemic have brought about, including how these experiences are mediated by religion, caste and ability. A special emphasis has been placed on the impact

on the psycho-social condition of children during the lockdown. The section opens with a **transcript of the panel discussion on ‘*The Shadow Pandemic: the Challenge of Domestic Violence*’** which was held on 20th April 2020 by the Centre for Women and the Law in conjunction with the Law and Society Committee, National Law School of India University. The discussion comprises presentations from T. K. Rajalakshmi, Senior Editor, *Frontline*; Adrija Bose, Associate Editor, *News18*; Anuradha Kapoor, Director, *Swayam*; Indira Jaising, Founder, *Lawyer’s Collective*; Jhuma Sen, CHRS, *Jindal Global Law School*; Sangeeta Rege, Coordinator, CEHAT; and Padma Deosthali, Care India. The speakers discussed the legal, social and economic dimensions of domestic violence, its invisibility from the present discourse, and subsequent absence from pandemic related relief. The specific impacts of the lockdown on women and children are further explored by Vatsal Raj and Adrija Bose. **Vatsal Raj**, in a student essay, examines the consequences of a gender-blind response to the pandemic in ‘*Stay Home, Stay Unsafe*’, where he discusses factoring in the care crisis and the feminisation of poverty in emergency responses to the pandemic. In ‘*How the Coronavirus Pandemic Disrupted Children’s Lives*’, **Adrija Bose** discusses the impact of lockdown on children’s schooling and nutrition, and the increasing vulnerability of the (girl) child to violence at home and the early marriage.

The section also explores the impact on marginalised communities in more detail. In an **interview with Zakia Soman** of the Bharatiya Muslim Mahila Andolan, she discusses the impact that the growing intolerance and communalisation has on the Muslim community, and the specific challenges faced in countering domestic violence as a result. The interview is accompanied by an article by **Iram Khan**, a doctoral scholar at the Faculty of Legal Studies, South Asian University, on ‘*Call for Safe Space*’, where she advocates for legal reforms to protect women against domestic violence, as well as the role of the economic empowerment of Muslim women through dower and equal inheritance rights, as well as the role of religious and community leaders. In a student essay, **Ishan Bhatnagar** explores the impact of brahminical patriarchy in perpetuating domestic violence in ‘*The Dalit Woman and the Pandemic*’, as well as how discrimination plagues the healthcare system and policing, and the shortcomings of present legal mechanisms. **Shruthi Venkatachalam** highlights the gender-blindness of laws on disability, the absence of disability

in the laws on domestic violence and the subsequent impact on disabled women during the lockdown in *‘Tracing the intersectional silence on understanding and addressing the violence in the lives of disabled women’*. The section ends with a student essay from **Stuti Srivastava** and **Khushali Mahajan** on *‘The Urgency of Treating Domestic Violence as a Healthcare Issue’*, proposing a new framework to examine the issue of domestic violence.

The second section titled, **‘the Dysfunctional State Protection’**, covers the impact of the lockdown on the efficacious implementation of the PWDVA Act, 2005. The section opens with *‘The Implementation of PWDVA Act, 2005 During Lockdown’* written by Adv. **Ujwala Kadrekar**, gives a brief history of the emergence of the Act and details out the procedural provisions of the Act, relating it with the Covid-19 context, she gives accounts of implementation of Act during the Pandemic. Throwing light on how safe home is for a woman in the lockdown, **Ayushi Agarwal**, in *‘Why Women Can’t ‘Stay Home, Stay Safe’*, discussed the the additional burden of care-work on women; the increase in the number of domestic violence incidents and inaccessibility to the relief authorities while having underwhelming responses from the police and the judiciary. **Pinki Mathur Anurag**, in *‘Stay Home, Stay Safe? In Lockdown With the Abuser’* beautifully inculcates the chronicles of domestic violence by Meena Kandasamy in her book *‘When I Hit You’* to explain the physical and mental harassment that the women are going through in the lockdown and states how the remedies provided by the PWDVA, 2005 cannot come to the benefit of women in Lockdown. In *‘Interplay between Domestic Violence Law and Laws Protecting Senior Citizens’*, **Malavika Rajakumar** while analysing the Acts reflects upon how the provisions under Senior Citizens Act which gives a right to the parents to remove children from the house which exclusively belong to them can have negative impact on the daughter-in-laws during the lockdown.

The interview by **Surbhi Karwa with Ms Renu Mishra and Ms Shubhangi** of Association for Advocacy and Legal Initiatives (AALI) , discussed the increase in domestic violence, the mechanisms which NGOs adopted to provide support to the victims, the unresponsiveness of the State and the survey conducted by AALI of 900 women which maps the vulnerabilities of women during the Pandemic. The second interview with **Prof. Asha Bajpai** examines the impact of the lockdown on the rights of children, particularly those facing domestic

violence at home, children of migrant workers, and children in need of care and protection. She also discusses how welfare and education for children have been shut down by the pandemic. In the interview with **Kiruba Munusamy**, while reflecting on the domestic violence faced by Dalit women, she discussed how this violence is a result of, both, caste and gender where the caste angle is most often not looked upon by the NGOs, the State. Further, she criticizes the provisions of the PWDVA to be upper-caste upper class centric and the remedies under the Act completely being blind to the Dalit women.

The students, **Ruchika Baweja and Aditya Jain**, in '***Covid-19 Crises- No Lockdown for Domestic Violence***' throw light on the *AICHLS v. UOI* judgment where the Delhi High Court had formulated policy changes within the governance structure of the country to counter this shadow pandemic, further, critically examining the solutions and guidelines so proposed, in light of their feasibility and other practical concerns that might arise while implementing them.

**Angel Syiem** in her piece on '***The Stay Home, Stay Safe Paradox***' looks at the issue of domestic violence as a 'pandemic without a year' in her examination of the response from the authorities, along with stories from North East India. She also examines the legal apparatus and lays down recommendations to improve responses to cases of domestic violence. In '***Analyzing the utility of domestic violence laws in light of the pandemic***', **Reeta Minz**, Assistant Public Prosecutor of Jharsaguda, Odisha, examines the inadequacies of the laws concerning domestic violence and the special measures being taken by the government of Odisha to combat domestic violence during the pandemic. Lastly, **Monaliza Minz** in '***Domestic Violence in Tribal Communities: Challenges and Possible Remedies in the Wake of Covid-19***', discusses how the Tribal Communities have their own local legal system where cases are decided by *Samaj Baithaks*, these *Baithaks* being dominated by men, results in the decisions not being favorable for women.

In light of these diverse perspectives, it is worth noting that on 16th October 2020, a three-judge bench of the Supreme Court rendered a progressive judicial interpretation of 'household' under the Section 2(c) of the Domestic Violence Act, 2006. Demonstrating a commitment to social emancipation of

women, the Court overturned *SR Batra v Taruna Batra* (2006) held that narrow interpretation of the term must not infringe the aggrieved women's right to a sharehold household. Thus, even if her husband does not own the said house, her statutory right to civil remedies under the law could not be denied.

The third section titled, '**Queer Vulnerabilities**', chronicles the experience of the gender and sexual minorities (the LGBTQIA+ community) during the lockdown. This section has two sets of articles – the first set highlights the lived-experiences of the LGBTQIA+ community during the Covid-19 pandemic and the second set analyses shortcomings in legal frameworks and approaches in responding to the issues of the community.

**Pawan Dhall** of the Varta Trust in '**No Lockdown on Domestic and Community Violence against Queer People during Coronavrius Pandemic**' bring perspectives of queer individuals who have faced both domestic and community violence during the pandemic-induced lockdown. He also analyses various legal strategies, including their potential shortcomings, which are available to community members. **Dr. Aqsa Shaikh** in '**Home Sweet Home**' problematizes the concept of the 'home' by arguing how home which is safe space for most members of society can become an extremely hostile, triggering, and abusive place for many queer people especially transgender persons. She highlights the unique problems faced by transgender persons stuck with their natal families and the lackadaisical response of the State through frameworks such as the Transgender Persons (Protection of Rights) Act, 2019. **Rachna Mudraboyina's** interview further highlights the experiences of the transgender community during the Covid-19 lockdown and emphasises the need for promoting economic and social resilience amongst members of the community. She highlights how members of the community are often subjected to discrimination due to their identity and the lack of state support mechanisms for transgender persons. **Amarinder Arora, Anupriya and Abhiti** in '**The Bi-Collective: Notes on Experiences of a Queer Support Group During Covid-19**' highlight the functioning of the Bi-Collective which is an independent voluntary collective of persons who identify as bisexual, biromantic, bi+, bi-curious and pansexual. They talk about how the functioning of the support group had to transition to a virtual space post the lockdown and the kind of positive role that the support group has played in the lives

of its members. The piece also includes many personal anecdotes from the members of the Bi-Collective reflecting on their time during the lockdown.


**Parth Maniktala** in the student essay **‘The Blind Spot in our Domestic Violence Legislation: Analysis of the Exclusion of Gender and Sexual Minorities’** analyses the nature of domestic violence in the context of gender and sexual minorities and argues that their exclusion from the scheme of domestic violence legislation is constitutionally unsound. **Gowthaman Ranganathan** in **‘Law and Violence: Gender-Diverse Persons in Lockdown’** discusses the nature of violence against gender-diverse and how the lockdown made them particularly vulnerable. He argues that given the persecution faced by gender-diverse persons at the hands of state authorities the criminal legal system should not be the primary remedy but instead root causes of violence such as socio-economic inequalities must be addressed.

The fourth section titled, **‘Notes from the Neighbourhood’**, includes field notes, interviews and articles from individuals and organizations in South Asia on the situation in their countries and what the key takeaways/ best practices for the social-economic and legal protection of survivors have been. The idea is to contribute towards a comparative understanding of gender and human rights issues in the South Asian sub-continent.

A field note from the **Asma Jahangir Legal Aid Cell** gives us perspective on the negative impacts of Ehsaas, Pakistan’s coronavirus relief programme, being genderblind and ignoring the impact of domestic violence, as well as court closures leading to no hope of relief for women. The discussion on Pakistan is continued by **Maria Rashid**, whom we interviewed about the expansion of her organisation, Rozan’s counselling services during lockdown, the psychological impacts of lockdown on women, and the need for strengthening state support systems.

From Bangladesh, we have a field note from **Nijera Kori**, an organisation involved in grassroots social mobilization in rural areas. Nijera Kori has written about the increase in violence under lockdown, the normalisation of violence against women in rural areas, the impact of social distancing on its field activities, and its experiences with the use of *shalish*, a method of alternative dispute resolution as a response to domestic violence.





**Ermiza Tegal** writes about the similar lack in state efforts to combat domestic violence in relief programmes in Sri Lanka, in the context of the wider institutional challenges under the domestic violence act – delays in obtaining protection orders, mandatory mediation, and the lack of safe spaces for survivors. The interview with **Sarala Emmanuel** dives deeper into this conversation, looking at how perceived challenges to the institution of marriage are viewed negatively in Sri Lankan society, as well as the need to broaden these struggles into a larger movement centered around sex and gender rights, food sovereignty and new economic models. Ms. Emmanuel also provides us first-hand accounts of the challenges faced by civil society in relief efforts for domestic violence.

The theme of the inadequacy of legal frameworks also finds resonance in the final two field notes by **Renu Adhikari** (for Nepal) and **Marium Jabyn** (for the Maldives). In addition, the authors emphasize the impact of Indian migrant worker crisis on Nepal (Adhikari), and the need for economic empowerment of women alongside the criminalisation of domestic violence (Jabyn).

We are extremely grateful to Justice Prabha Sridevan for writing the foreword to this volume. We are also grateful to Surbhi Karwa and Roshmi Goswami from the Leaflet team for helping us reach out to civil society initiatives. We are also grateful to Ms Beena Sarwar who generously supported our outreach efforts in South Asia. We are thankful to Dr Amal Sethi, Ms Bhavna Mishra, Mr Rishav Ambastha, Mr Ganesh Khemka, Mr John Simte and Mr Pradyuman Kaistha for their assistance in shortlisting student essays. We are also grateful to Sarthak Wadhwa, a member of the Law and Society Committee, for designing the cover page. We also note with gratitude the contribution of Pratik Bakshi and his associate Siva Shankar Santhosh for helping us finalise the design of the book.

We are also indebted to Heramb Mishra, Anchal Bhatheja and Jisha Garg for their diligent research and editorial assistance. This publication would not have been possible without the strident efforts of Ms Ashwini C and other staff members of the Centre for Women and the Law.

Prof. Sarasu Esther Thomas (Registrar, NLSIU, Bangalore)

Indira Jaising (Senior Advocate)

Akshat Agarwal, Manisha Arya, Prannv Dhawan and Vani Sharma

# About the Editors

## Indira Jaising


Indira Jaising is a noted human rights lawyer and a senior advocate at the Supreme Court of India. Along with her husband and fellow Supreme Court senior advocate Anand Grover, Jaising founded the Lawyers' Collective, a legal NGO that has been working since its inception in 1980 for the rights of the marginalised, particularly women, LGBTQ peoples, sex workers, and many more economically and socially disadvantaged groups.

Jaising has fought and won a number of landmark legal battles, particularly those dealing with Christian women's right to inherit property, right of the mother as the natural guardian in child custody cases, or having the Supreme Court strike down instant Triple Talaq as unconstitutional. Starting from the rights of pavement dwellers in the 1980s Bombay, to enshrining collective rights over environment in the famous Goa Foundation case, to fighting for justice and compensation for the victims and survivors of the Bhopal Gas disaster in December 1984, Jaising has traced a long and eventful journey and made her mark as an outspoken and intrepid legal interventionist, who is not afraid to call the spade a spade.

Jaising's role was pioneering in forming landmark laws against domestic violence, against sexual harassment at workplace, among other legal interventions.

## Sarasu Esther Thomas

Prof. (Dr.) Sarasu Esther Thomas is Professor of Law at the National Law School of India University, Bengaluru. Her areas of specialization include Human Rights Law and Family Law. Dr. Sarasu coordinates a number of research projects on Human Rights, Reproductive Rights and Sex Selection,



Trafficking and Rights based Lawyering. She coordinates the Centre for Women and the Law and the Human Rights Lawyering Project. The Centre for Women and the Law works with Legal Literacy for non law students in order to develop paralegal skills. Since its inception, it has worked on sensitization and continuing legal education of judges through training programmes in collaboration with judicial academies. Work with police has also been done to a lesser extent. The Centre has also directed women to legal aid and other avenues for redressal and generated knowledge products for use in justice education. The Human Rights Lawyering Project funded by the Ford Foundation has worked primarily with law students to offer summer courses/ one credit courses on the practical application of law and access to justice issues, leadership programmes for both students and young human rights lawyers to strengthen student initiatives and be change agents and holding conferences which could be platforms for students, young and mid career lawyers to interact and learn from peer experiences.

## **Akshat Agarwal**

Akshat Agarwal is a legal and policy researcher whose areas of interest include public law, public health, family law and gender and sexuality. He is currently working with an independent think tank in New Delhi. He graduated from the National Law School of India University in 2017.

## **Manisha Arya**

Manisha Arya is currently working as a Judicial Law Clerk-cum- researcher at the Supreme Court of India. She completed her B.A.,LL.B(Hons.) in 2019 from National Law School of India University and in past has worked as Law and Marginalization Young Fellow at the Centre for Health Law, Ethics and Technology, Jindal Global Law School, where she researched on diversity in Indian Judiciary specifically focusing upon ‘Caste’ as a factor in appointment of Judges. During her student life she held the position of the Joint-Convenor of the Savitri Phule Ambedkar Caravan (SPAC), a student body at NLSIU working towards creating an equal and safe space at campus for the Dalits and Adivasis (SC/ST) students. She was also a Member of the Law and Society Committee and student speaker at the conference of ‘Indian- Arpatheid’ where she spoke



about her own experiences with Caste Discrimination and oppression of Dalit Women in Caste based system.

## **Prannv Dhawan**

Prannv is a fourth-year law student at the National Law School of India University, Bengaluru. He is the founding editor of the Law School Policy Review and the editor of the National Law School of India Review. He was the Joint Convener of the Law and Society Committee, NLSIU in 2019-20. He is also a legal researcher at the Columbia University Freedom of Expression Initiative. He is interested in queer theory, gender justice, human rights and constitutional law.

## **Vani Sharma**

Vani Sharma graduated from the National Law School of India University in 2019, where she was an active member of the Law and Society Committee and the NLS Queer Alliance. She has also previously been an editor with the Socio-Legal Review for two years, and has been a teaching assistant in Family Law. She presently works as a lawyer in Delhi.

# Notes on Contributors

## **Abhiti**

Abhiti (she/her) is a people's person who likes to familiarise with experiences she hasn't lived. She is a proud feminist and loves to read on caste and its intersections.

## **Aditya Jain**

Aditya Jain is a student of National Law University, Jodhpur

## **Adrija Bose**

Adrija Bose is an associate editor with the News 18 network. She reports on the issues of gender justice, violence against women and human rights.

## **AGHS Lahore, Pakistan**

AGHS Legal Aid Cell was co-founded by Asma Jahangir in 1980 to provide free legal representation for vulnerable women, children, bonded labourers, people in prison and religious minorities. It is now the leading law firm in constitutional and family law related legal work in Pakistan. The fundamental principles of AGHS policy are essentially concerned with strengthening respect for human rights through providing free legal representation and by building a stronger constituency of activists, mainly women to challenge non-discrimination, violence and threats against the vulnerable. AGHS highlights violations of human rights and provides free legal representation to end impunity for perpetrators of human rights violations.

## **Amarinder Arora**

Amarinder Arora is an urban practitioner who is fascinated by cities at large, and engages with them through multiple lenses. He has worked in the social

development sector as a designer and researcher- actively exploring different ways to make a city more inclusive.

## **Anupriya**

Anupriya is an interdisciplinary soul who works in Behavioural science research by day and becomes a musician by night

## **Ayushi Agarwal**

Ayushi Agarwal graduated from National Law School of India University, Bangalore in 2018 as a gold-medallist. While at NLSIU, she served as the Editor of Socio-Legal Review and Chief Editor of Indian Journal of International Economic Law. Ayushi subsequently read for the BCL at Oxford as a Weidenfeld-Hoffmann in 2018-19. She was awarded a fellowship by the Bonavero Institute of Human Rights to work on a project to improve Colombian Afro-communities' access to justice at DeJusticia in Bogota, Colombia. She presently teaches at Jindal Global Law School, and is most interested in international human rights law, medical ethics, and discrimination theory.

## **Aqsa Shaikh**

Dr Aqsa Shaikh is a medical doctor and Community Medicine Specialist. She is an Associate Professor of Community Medicine at HIMSR, Jamia Hamdard, Delhi. Born and brought up in Mumbai, she completed her education from Seth GS Medical College. Before joining Jamia Hamdard, she worked at HLFPT. She lives in Delhi now for the last ten years and calls it home. She is a Proud Transgender Woman and works on LGBTQIA+ rights, Rights of Persons with Disability, and Mental Health. She has a keen interest in Medical Ethics, Medical Humanities, and Medical Education Technology and is a Fellow of Advanced Course in Medical Education. She is member of Association for Transgender Health in India. She has authored many medical books and blogs with Times of India, Women's Web, and Youth ki Awaaz along with other publications. She received the Youth ki Awaaz Award for the best article on Mental Health. She is also the recipient of Himalayan Green Awards for her services in Health Education. Aqsa is a poet and writes in English, Hindi, and Urdu. She is the Founder - Director of Meezaan Commercial Enterprises and Human Solidarity Foundation through which she carries her social work.

## **BMMA**

Bhartiya Muslim Mahila Andolan ('BMMA') is an autonomous, secular, rights-based mass organisation led by Muslim women. Formally established in January 2007, BMMA was organised as a small group of Muslim women in the aftermath of the 2002 communal riots. It was formed with an aim to bring Muslim women together under a democratic organisation, as a progressive voice for the Muslim community. The BMMA has more than 100,000 members. It has worked for the economic empowerment of women by establishing Karwaan Centres in various cities. It has campaigned for law and policy reform by engaging in activities to foster literacy and education, increasing employment opportunities and improving the livelihood of women.

## **Ermiza Tegal**

Ermiza Tegal is an Attorney at Law practicing before the Supreme Court of Sri Lanka. She has a Masters Degree in Law, Governance and Development from the School of Oriental and African Studies, UK. She leads an all female legal chambers in a practice focused on public law and family law. Ermiza represents victim survivors of human rights violations particularly victims of torture and domestic violence and is involved in advocacy for reform relating to Muslim personal law, female genital cutting, family law and domestic violence, land rights and counter terrorism.

## **Gowthaman Ranganathan**

Gowthaman Ranganathan is a legal researcher interested in human rights and critical legal studies. He has worked on gender and sexuality at Chennai and Bengaluru. He holds an LLM in Human Rights and Comparative Constitutional Law from the University of Texas School of Law where he was a Fulbright scholar. He also holds an LLM in Law and Development from the Azim Premji University and a B.A., LL.B. (Hons). from the National Law School, Bengaluru.

## **Iram Khan**

Iram Khan is a PhD Scholar at Faculty of Legal Studies, South Asian University, New Delhi, India. She completed her M.Phil and LL.M from South Asian University and B.A.LL.B(Hons.) from Aligarh Muslim University. Her core

research interests include Rights of Women and Minority Rights in South Asia, Feminist Legal Theory and Gender in International Law.

### **Ishan Bhatnagar**

Ishan Bhatnagar is currently pursuing BA LLB (Hons.) at National Law University, Delhi. He is passionate about criminal law and its intersection with constitutional rights and gender justice, prison reforms, due process etc. He represented NLU Delhi at the Frankfurt International Moot Court Competition (India rounds). The team has now qualified for the World Rounds. He is presently a student associate at Centre for Innovation, Intellectual Property and Competition and has interned with the National Human Rights Commission in the past. He presently has a publication on 'Child Labour and Caste' and a blog article on the legislative framework surrounding the Coronavirus Pandemic coauthored by him was recently cited by Dr. Upendra Baxi.

### **Kiruba Munusamy**

Kiruba Munusamy is a practicing advocate at the Supreme Court of India. She is working against various human rights violations in India that includes caste and gender based discriminations, caste based atrocities against Dalits, violence against women, discrimination in the academic spaces, death penalty, state repression and prohibition of the inhuman practice of manual scavenging. She started Legal Initiative For Equality to equip lawyers from marginalized communities with professional skills and a working space to act independently.


### **Khushali Mahajan**

Khushali Mahajan is a student at Rajiv Gandhi National University of Law, Patiala.

### **Pinki Mathur Anurag**

Pinki Mathur Anurag is Director - Technical at the Lawyers Collective. Pinki's primary academic interests lie in understanding the evolution of international law responses in addressing violence against women. Her most recent





publication is “Conflict in the Shared Household: The Law and Domestic Violence in India” Oxford University Press, 2019, Editors: Indira Jaising, Pinki Mathur Anurag, that she has co-edited with Indira Jaising. She is currently working on a book on the representation of the Feminist Movement in the 21st Century.

## **Prof Asha Bajpai**

Dr Asha Bajpai is a Professor of Law at the Center for Socio Legal Studies and Human Rights in the School of Law, Rights and Constitutional Governance. She is a PhD in Law with specialization on Child Rights. Her PhD thesis was on the ‘Best Interest of the Child in the Indian Legal System’ She has been involved in, teaching, research, training and legislative reform, for more than three decades. She was the founder Dean of the School of Law, Rights and Constitutional Governance at TISS. As the founder Dean, she designed and coordinated the unique LLM course on Access to Justice . LLM in Access to Justice is a socially relevant course aimed to prepare community and people’s lawyers for social change and legal research. Dr Asha Bajpai has been appointed as commissioner by the Mumbai High Court in several Public Interest litigation. Currently she is serving as an Amicus Curiae in a ongoing suo motu PIL in Bombay High Court on sexual abuse of orphan children in institutions.

## **Malavika Rajkumar**

Malavika is a Research Fellow at the Vidhi Centre for Legal Policy and the Content Lead at Nyaaya. She is a graduate of Symbiosis International University and holds a B.B.A.LLB degree. Her main areas of research include womens’ rights, child rights, social welfare legislations, gender based violence and information design. She also writes regularly on publications such as Live Law and Firstpost. Before joining Vidhi she completed a summer course on International Relations from Kings College London in 2017. She has worked on the Legal Development Project funded by WHO on ‘Road Safety and Design’ and in the National Policy and Research Team by IDIA (Increasing Diversity by Increasing Access).

## **Association for Advocacy and Legal Initiative**

Association for Advocacy and Legal Initiatives (AALI) is a feminist legal advocacy and resource group having presence in 45 districts across Uttar Pradesh, Uttarakhand and Jharkhand. Established in 1998, the association works with an aim to create an egalitarian social system that recognises women as equal agents in the society. AALI works through network of trained case workers and lawyers for providing women with required legal and non-legal assistance in cases of gender based violence.

## **Md Sadriwala**

In his own words, Mohammed Sadriwala, is a storyteller: one for the kitchen and one for the soul.

## **Maria Rashid- Pakistan**

Dr Maria Rashid is feminist practitioner, trainer and researcher who has been working with various non- governmental organizations in Pakistan for the last 22 years. She has a doctorate in Politics and International Studies from School of Oriental and African Studies, London and her research interests are militarism, masculinities and, violence against women and children. She has worked with Rozan for over 14 years as Director. Currently, she is an advisor for Rozan and supports its four core programmes technically and has been involved in Rozan's response to COVID-19.

## **Marium Jabyn**

Marium Jabyn, (Ph. D), is the current Secretary General of the Bar Council of the Maldives. She has been active in legal education, human rights, access to justice and organisational governance in the Maldives for over fifteen years, and has contributed to advocacy and human rights law reform in the Maldives in various ways. A Fulbright Scholar (UPENN, USA), a Commonwealth Scholar, and a Kings College London Fellow (2015), she has also been the recipient of multiple other international research grants and has published in the areas of human rights law, feminist legal theory and clinical legal & justice education.

## Monalisa Minz

Monalisa Minz is an Assistant Public Prosecutor in Jharsuguda, Odisha.

## Nijera Kori

Established in its present form in 1980, Nijera Kori is a social mobilization focused, activist NGO in Bangladesh. Since inception, Nijera Kori has worked in rural Bangladesh with the objective of building a strong autonomous organization of the rural poor and deprived, rejecting micro-credit and other service delivery approaches. Composed of local-level landless groups, the landless organisation is a collective through which members develop themselves as critical citizens, mobilise for their rights and participate in the broader political and economic processes. At present, Nijera Kori is working in 1,168 villages, 147 unions, 32 *upazila* and 14 districts of Bangladesh.

## Pawan Dhall

Pawan Dhall has been engaged with queer community mobilization in eastern and other parts of India since the early 1990s. He was a founder member of Counsel Club, Kolkata (1993–2002) and “Pravartak” (1991–92), among the first queer support forums and publications in India. He spent over a decade with SAATHII, an NGO that promotes universal access to health and social justice. Pawan now leads Varta Trust, a Kolkata-based gender and sexuality publishing and advocacy non-profit, and edits its monthly webzine “Varta”. His recent works include the book “Out of Line and Offline: Queer Mobilizations in ‘90s Eastern India” published by Seagull Books, Kolkata.

## Parth Maniktala

Parth Maniktala is a final year student of Campus Law Centre, University of Delhi.

## Rachna Mudroboyina

Rachna Mudroboyina is a board member for the Human Rights Law Network and their Acting Director for LGBT Issues. She is one of the founding members of the Telangana Hijra Intersex Transgender Committee, which was formed in

2014, and of the YouTube channel TransVision. She has previously worked as a technical consultant for training NGOs in HIV prevention and communication skills with the NGO Path in India, as well as a research assistant with various other projects.

## **Reeta Minz**

Reeta Minz is an Assistant Public Prosecutor in Jharsuguda, Odisha.

## **Ruchika Baweja**

Ruchika Baweja is a student of National Law University, Jodhpur

## **Renu Adhikari**

Renu Adhikari is the founder of the Women's Rehabilitation Centre (WOREC). WOREC is a leading women's rights organisation based in Nepal. After working as a medical doctor in the remote areas of Nepal for several years, Renu became a women rights activist upon meeting a trafficked woman in the 90s. She has been a strong advocate for women's rights and has played an important role in empowering women of various communities affected by conflict and violence. She is the Chairperson of the National Women Human Rights Defender and a founding coordinator of the Alliance Against Trafficking in Women and Children.

## **Sarala Emmanuel**

Sarala Emmanuel has been part of feminist networks, working in Batticaloa, Sri Lanka, for more than 15 years. Her experience has been in supporting women survivors during the war, in the post- tsunami context and more recently following the Easter attacks, as well as now in the COVID- 19 context. She works extensively with a lot of local women's networks: her longest involvement was with Suriya Women's Development Centre, where she worked for over a decade, which provides everyday support for women survivors of gender based violence such as legal support, immediate emergency responses, group processes of healing and individual psychosocial support. Currently she is also working with women in the informal sector on labor rights.

## **Shruthi Venkatachalam**

Shruti Venkatachalam is a PhD Candidate at the Center for Gender and Violence Research, School for Policy Studies, University of Bristol, UK. Her research interests include gender, disability and access to justice. Her post-graduate research was focused on the encounters of disabled women with the criminal justice system with a specific emphasis on disabled women rape survivors and my current ongoing research investigating how disabled women survivors understand and perceive the right to access justice.

## **Stuti Srivastava**

Stuti Srivastava is a student at Rajiv Gandhi National University of Law, Patiala.

## **Surbhi Karwa**

Surbhi Karwa is an alumnus of RMLNLU-Lucknow and NLU-Delhi. She has worked on issues of gender violence as Convenor of Legal Aid Committee, Lucknow and as volunteer of various civil society organisations. She frequently writes at various platforms including EPW, The Wire, Outlook and Mainstream Weekly. She is currently working for publication of her LL.M. thesis where she undertook a feminist critique of Constituent Assembly of India.

## **Ujjwala Kadrekar**

Ujjwala Kadrekar is a women and child rights lawyer, a researcher and a National Trainer. She has contributed in the drafting of the Protection of Women from Domestic Violence Act, (PWDVA) the Sexual Harassment of Women at Workplace and the Criminal Law (Amendment) Act 2013 and has been part of monitoring and evaluation of the PWDVA for 10 years. She worked as Officer on Special Duty with Maharashtra State Commission for Women and Director-Training for Lawyers Collective. She conducts trainings of Judicial Officer, Police and other stake holders on laws related to women and children. She has worked on UNTF, UNDP, UN Women, British High Commission projects. She is currently working as an Independent consultant with UNFPA and Oxfam India



## **Vatsal Raj**

Vatsal Raj is a second-year law student at National Law University, Lucknow.

## **Zakia Soman**

Zakia Soman is the co-founder of the BMMA along with Noorjehan Safia Niaz. Influenced by the women she was helping in the aftermath of the Gujarat communal riots, Zakia began social work. After meeting Noorjehan and many other women, she worked to organize Muslim women in various parts of the country. Currently, Zakia is a member of the South Asian Alliance for Poverty Eradication and is the leader of the Peace and Human Security theme at ActionAid. She has also been a university lecturer and a newspaper editor in Ahmedabad.

# THE SHADOW PANDEMIC





## **TRANSCRIPT OF PANEL DISCUSSION 'THE SHADOW PANDEMIC: THE CHALLENGE OF DOMESTIC VIOLENCE**

The session started at 1700 hours IST.

The moderator, Prof. Sarasu Esther Thomas, started the session by welcoming everyone including the speakers and the participants. She introduced the organisers which was the Law and Society Committee, NLSIU, the Centre for Women and the Law, which is the oldest research centre at NLSIU and is headed by Prof. Sarasu herself, and, the Leaflet, which has been founded by Ms. Indira Jaising and Mr. Anand Grover.

She highlighted the significance of the topic of the panel discussion by saying that the incidents of domestic violence were on the rise in the wake of the coronavirus outbreak. Further, there was the problem of barriers to justice due to the lockdown. She added that she looked forward to a fruitful and insightful discussion.

She went on to introduce the speakers. The order in which the speakers were to speak was as follows:

1. T.K. Rajalakshmi, Senior Editor, Frontline
2. Adrija Bose, Associate Editor, News 18
3. Anuradha Kapoor, Director, Swayam
4. Indira Jaising, Founder, Lawyers' Collective
5. Jhuma Sen, CHRS, Jindal Global Law School
6. Sangeeta Rege, Coordinator, CEHAT

7. Padma Deosthali, Public Health Speaker, Bihar.


Then, she extended her heartfelt gratitude to all the speakers for taking out time for joining the Webinar and requested the first speaker to start off the discussion.

**T. K. Rajalakshmi:**

She was the 1<sup>st</sup> speaker. She started her speech at around 5:00 p.m and spoke for about 7 minutes.

She began her speech by saying that she was extremely glad to be part of such an eminent panel chaired by Ms. Indira Jaising who is an expert and complete authority on the issue of domestic violence and the laws dealing with it.

She highlighted that in her limited experience of writing on the issues of domestic violence and the Covid -19 pandemic, she found that the issue of violence against women in the time of the pandemic was highly neglected. She mentioned that the United Nations Secretary General had recently spoken about this issue. In India, the National Commission for Women had also recently brought out statistics relating to the rise in number of cases of domestic violence during the pandemic. She commented that the escalation of the number of cases is not surprising. The Pandemic gave an opportunity for patriarchy and unequal gender relations to be reinforced within the four walls of the house. She commented that the recourse available to women subjected to domestic violence was very limited in the time of this crisis. She mentioned how Anganwadi workers and women health workers were being beaten up by the police for reporting to their workplaces. She commented on how there was apathy on the part of the Government, with there being no action taken by the Ministry of Women and Child Development or the National Commission for Women. She noted how in the present as well as the previous term of the government, there existed an echo against the Domestic Violence Act 2005 as well as Section 498A of the Indian Penal Code on the grounds that they were being misused. She spoke about how the lockdown was affecting the economically vulnerable groups and women. She was concerned particularly about the health of those women and children, walking long distances to get to



their homes, who had surfaced when the lockdown was announced. Another factor increasing the instances of violence against women, she added, was the economic vulnerability that the lockdown has pushed several families into. The lockdown has caused a loss of jobs to people working in the IT sector as well as the Construction sector. This has affected the unorganized sectors hugely. The lockdown has several economic as well as social costs, she added. She mentioned how these economic costs often lead to social costs and stressed that this be looked into more. She commented on how the helplines for both domestic violence and Covid- 19 did not work, and how the NIMHANS helpline for dealing with all mental problems was a highly unrealistic approach.

She concluded by saying that the approach taken presently for dealing with the range of issues arising from this pandemic was very narrow and insufficient.

After the speech, Prof. Sarasu thanked Ms. Rajalakshmi for her insightful observations and handed over the baton to the next speaker

### **Ms. Adrija Bose:**

Being the second speaker, Ms. Bose began her speech at approximately 15 minutes past 5 and spoke for nearly 6 minutes. She focused primarily on her reporting on incidents of Domestic Violence during the ongoing COVID-19 Pandemic.

She elaborated on an extremely surprising detail that she came across post getting in touch with NGOs dealing with women – related issues, the National Commission for Women(NCW) and the UP Police. Complaints of domestic violence had considerably dropped after the imposition of the nationwide lockdown, as indicated by the low NCW figures.


While the cases of domestic violence had surged globally, the number in India had unexpectedly dwindled, in spite of the fact that every 3<sup>rd</sup> woman in this country has faced violence at some point of time in her life, according to the findings of a recent report. Additionally, this report stated that in 90 percent of such cases, the victims are well-acquainted with the perpetrators. She remarked that this is undoubtedly a pretty worrisome situation where domestic violence victims were unable to report the abuse they face to the concerned authorities.

To add insult to injury, a lot of women's organizations that Ms. Bose had talked with asserted that they would be able to properly assess the severity of this situation only after the lockdown was lifted. She also talked about the WhatsApp helpline number that was recently released by the NCW and how the lack of proper access to technology could hamper the report of violence by victims, as opposed to facilitating the lodging of complaints against their abusers. She cited a study that showed that while 71% of men in India had access to a mobile phone, their female counterparts' number stood at a meagre percentage of 38%.

She talked about the steps taken by the UP Police towards ameliorating the situation; she stated that these had been quite limited and inadequate, comprising merely of the publication of the all-encompassing emergency number ('112'), and not a distinct, much needed helpline for domestic violence victims only. With regard to the measures taken by the NCW, she referred to her interaction with the commission and how they told her that they had been encouraging more emails as their method of communication, instead of postal services, in light of the lockdown. While she appreciated these new NCW initiatives – a welcome change from their previous archaic measures – she highlighted that the lack of access to technology was still an issue for full utilization of such ameliorative steps.

Ms. Bose also highlighted the fact that it was of paramount significance for everyone to comprehend how many of such complaints of domestic abuse would be seriously dealt with by the concerned authorities, in times of the ongoing crisis, when police forces were overstretched and helpline numbers were receiving way more calls than usual. She mentioned an incident published in the Times of India on 20/04/2020 where a woman was forced into sexual intercourse by her husband who had stopped taking showers post the lockdown. Following her multiple refusals, she was brutally beaten up by her husband. She also mentioned that she had come across several instances of men throughout India gloating over the imposition of the lockdown, since they were being served snacks and delicacies every hour by their doting wives.

Ms. Bose also delved into the abuse being faced by members of the queer community on account of their clothing choices by their family members at



home and, also, on the various forms of exploitation occurring in houses, making it even tougher for victims to co-exist with their abusers.

She mentioned that as opposed to the very limited response to these incidents by the Indian Government, some countries like France and Spain had taken steps to help domestic violence victims out in these difficult times. She said that measures of such kind were not even a part of the Indian Government's messaging. She said that in India, women were unable to lodge complaints against their abusers at home, since reaching out to the police was not easy due to the lockdown. Adding to this problem was the lingering fear of getting beaten up by the police forces if they stepped out of their respective dwelling places. Concluding her immensely insightful speech, she suggested the promulgation of social media campaigns against domestic violence and the expansion of government messaging to assist the registration of complaints by victims with inadequate access to technological facilities in times like these.

After this, Prof. Sarasu extended her gratitude for the informative talk and asked the next speaker to take over.

### **Anuradha Kapoor, Director of SWAYAM:**

She started off by talking about the organization SWAYAM which had been working on this issue for the past 25 years, and she added that she looked forward to sharing her organization's experience in the last 20 days of lockdown. She felt that domestic violence had always been an issue that had been ignored to a large extent and had been condoned by society. She added that the pandemic had brought domestic violence to the forefront and had also made people think about it. She highlighted that the statistics showed that more than 10,000 women were killed due to domestic violence on a yearly basis, and this was something we didn't normally talk about. She rued that it actually took a pandemic to bring this issue upfront.

She further said that the pandemic had increased domestic violence because women were at home 24/7 with their abusers. She reasoned further saying that since they were at home with their entire family, their work pressures had also increased. She pointed out that the stress levels were high and the possibility of violence was bound to increase in such a situation. The problem



was that now, with the lockdown, their access to any sort of support was taken away.

She illustrated this by pointing out that if a woman wanted to get out of the house, she could not do so. She added that women did not have access to transport due to the lockdown and many of them didn't have telephones; in fact many of them did not even have money to recharge their mobiles so they could not reach out for help.

She observed that the actual effect of domestic violence would be felt once the lockdown was lifted. She added after the lockdown would be lifted, we would actually get true numbers of the women who were being abused. Since there was no provision made by the government to support women in this situation, the fate of these women was really left in the hands of some organizations like hers.

She shared one of the cases she handled immediately after the lockdown in which the victim was so badly beaten up by her husband that she locked herself up in a room, and the police had to rescue her. She managed to get out and reach out to a friend. But, subsequently she pointed out that they had had many cases in which women were locked up in their houses and were not able to get out because they did not have any external support.

She highlighted that shelter homes were not accepting any new inmates due to fear of COVID 19. She added that there was no space that had been allocated by the state for these women who were facing domestic violence at home. She pointed out that they would not be able to get out unless the police intervened. She added that this intervention was not being done by the police because they were overburdened.

She said that their organization had been getting a lot of cases of young unmarried women who were living in their parental homes and were facing domestic violence.

She mentioned that their organization had observed a pattern where these women had been living outside and had come back because of the lockdown. While their mothers were being abused over past years, now the girls who had been working outside had come back home and were protesting against the



male abuse; she mentioned that these girls were also being abused and beaten up.

She pointed out that there was an alternative for dealing with this problem which was to remove the perpetrator from the house, but even that was not being done. She asserted that the plight of the domestic violence victims was not understood by the government. They didn't even think about how people were going to get food and other basic necessities.

She mentioned about cases in which women had come to their parental homes before the lockdown, and now they were stuck. There was pressure on them to go back due to shortage of money. While talking about the women who were married, she said that they had also reported cases of torture. She talked about one case where the woman was living in her husband's house for 8 years without him, and because of the lockdown he had come back, and now the woman complained that she was being beaten up and was being forced to have sex with him. She was just unable to get him out of the house. She highlighted that these were the kinds of situations that were arising, and their organization was trying to reach out to the police. She regretted that the police did not take action in such cases, even when everything was normal. But, now, when everything was shut amidst the pandemic and the lockdown, they were being even more unresponsive to calls for help.

She surmised that the women got support and help in cases where they had friends and external support. She added that the ones who did not have such support were left in the lurch. Earlier women could go to their natal homes, but that was not possible due to the lockdown and the travel restrictions in place. She also remarked that the legal system and the protection officers were not working to the best of their capacities. She added that there had been an economic impact as well. Since a lot of women were dependent on maintenance and now the men were not paying up, many of these financially dependent women were suffering. She added that female daily wage earners and self-employed women were facing economic distress. She said that some of the men snatched the ration cards of the women, so that they could not get rations to feed themselves.

She added that, although the state was assuring that everybody would get rations, she was aware of the ground reality. She said that the organization she working for was offering psychological support and safety guidelines to the victims, but that even they could not function to the fullest because of the lockdown restrictions. She highlighted the fact that most women did not even know where they could complain. She suggested that the helpline number needed to be widely advertised just as in the case of COVID helpline numbers. She drew the attention of the participants towards the fact that the police were also pushing women back into the houses while enforcing the lockdown restrictions. She suggested that there was a need to support the women who were being abused by moving them to the shelter homes. Another option could be to put the abuser in to institutional quarantine facilities, so that the women and children were safe. She further added that the violence had not only impacted women, but has also very much impacted children who were witnessing the violence. She mentioned that the organization had been offering counselling services to these children.


Lastly, she remarked that, if normally 10,000 women were being killed due to domestic violence, the numbers might be shockingly high in the present situation.

After her speech, Prof. Sarasu added that the domestic violence was not only being faced by married women, but children, young girls, daughters and sisters were also facing abuse. She went on to thank the panelist and asked Ms. Jaising to give her insights.

### **Indira Jaising:**

Ms. Jaising started off by assessing the current situation and highlighting the purpose of the Domestic Violence Act. She said that there were a lot of cases in which women had marital problems, but they did not demand divorce. Divorce was not a solution to their problems. Therefore, the Domestic Violence Act was enacted in the year of 2006. S.498A was also inserted in Indian Penal Code, giving a criminal law remedy to domestic violence. There was a need for a civil remedy to domestic violence which was provided through DV Act. While drafting DV Act, the questions like how to define Domestic Violence or






whom to cover under the scope of the Act were much debated. After much struggle, it was accepted that, under the Act, access to justice must be available only to women. Legal argumentation was given to support the same. It was argued that under the scheme of our constitution, there was a provision for ‘affirmative action.’

Through the DV Act, the concept of ‘protection officer’ was introduced, who was neither a lawyer, nor a police personnel. The definition of domestic violence was widened to include emotional, mental harassment, also. She highlighted that the law described how to get into a marriage. It also described how to get out of marriage. But, it did not tell how to deal with what happens between the two points of marriage and divorce.

She mentioned that the DV Act provided protection to the married woman who may be asked to vacate her matrimonial house immediately by her in laws. Because, this was peculiar to India – that a married woman was usually thrown out of her matrimonial home and was asked to go to her parental house.

She explained that in other countries woman who faced domestic violence were not sent out of their home, even when such women wanted to escape from the household, unlike India. She further added that this pandemic had turned houses into prisons. Though the DV Act gave protection against such evacuation, the Supreme Court had been disappointing everyone by deciding against the purpose of the Act. She said that, in the case of *Batra vs. Batra*, the apex court had decided that the right against evacuation was only available to the married woman if the owner of the matrimonial house was her spouse. Further, if the title of the matrimonial house was with anyone else amongst her in-laws besides her partner, then such right to stay in the matrimonial house could not be exercised.

She mentioned that it was important to look into the question of why married women in India did not want to leave their matrimonial house even after violence. She said that apart from patriarchal notions, the reason was ‘really money.’ She explained that the woman leaving her matrimonial house did not have any right to her matrimonial property. She added that in India, divorce was like a civil death. It is not only about the stigma attached to divorce, but is



also about the loss of real money. She emphasized on the need to ensure that woman did not lose out on the money, at least. It was only then that the women facing violence could leave their abusive partners.

She, further, said that, due to the pandemic, we were driven to work, using a digital platform. She strongly recommended that all police officers or, at least some of them, needed to be made ‘protection officers’ in order to curb domestic violence. She observed that even a slight fear induced in the mind of the male oppressor of the arrival of a police officer on a mere phone call made on 100 by the woman, could help a lot.

After she concluded, the moderator thanked her for her legal insights and powerful suggestions to deal with the crisis and handed over the baton to the next speaker, i.e., Prof. Jhuma Sen.


### **Jhuma Sen:**

She was the 5<sup>th</sup> speaker. She started her speech at around 5:45 PM and spoke for about 10 minutes.

She remarked that the speakers before her made some lovely presentations.

She went on to say that she was actually thinking about the irony of this situation. Right from WhatsApp forwards to the messages of the political leaders, and right from beautiful stories to other cultural depictions, it was an established and accepted fact that the home was the safest place. But, the incidents of domestic violence amidst this pandemic showed that the home was not the safest place, and on the contrary, she felt that it was actually the most intimate site of violence. She further said that this spike in incidents of domestic violence in India was a result of an unplanned lockdown. An unplanned lockdown was also the reason for the plight of the migrants who were stranded on the streets.

She added that Domestic violence was a result of stress, financial constraints, hunger, poverty, alcohol consumption. Furthermore, she mentioned about several studies which showed that unemployment led to more domestic violence. Along with alcohol consumption, studies showed that forced



reduction in alcohol consumption, also, led to intimate partner violence against women.

She asserted that we need to re-formulate the perception of what a home was. She felt that lockdown has had gendered implications. She mentioned that men and women had different needs. Women had menstrual cycles and they needed sanitary napkins, which men didn't. Initially, sanitary napkins were considered to be non-essential goods, but the position was changed later.


In this context, she exhorted the participants to re-think and see what the underlying meaning of 'home' was, and what the arrangement of work from home actually entails.

She added that 'Work' had changed its contours. She said, in utter disappointment, that unpaid work by women had always been out of the picture and the statistics. The work in the home had now increased due to the pandemic and the lockdown. This requires more emotional labor. The efforts put in by women were invisible in data, as unpaid work done by women was not accounted for or respected.

She said that for the working women at least, home and office work had collided with one another. For homemakers, the burden of domestic chores had increased due to the fact that all the family members were staying at home for the whole day and, also, being more demanding.

She highlighted that the whole concept of 'work from home' was very complex in the case of women. There were motivational messages on social media which highlighted that Isaac Newton and Albert Einstein did amazing work during the pandemic in Europe, because they were free mind at home. They could perform better amidst the pandemic because they were men, and the whole burden of household chores did not fall on them. This analogy could not be drawn in the case of women, at least.

She asserted that due to the shutting down of schools, nurseries and such services, the burden on the privileged middle class women had also increased significantly.



As opposed to the increased productivity of Einstein and Newton during the bubonic plague, a UK journal reported that the submissions from female authors during lockdown had seen the biggest drop of all times.


Further, many women were working in the informal sector and were not earning much before the lockdown. They were likely to lose jobs after the restrictions were lifted, because the economy had been hit hard due to the Covid-19 break out. They would not be left with any savings, and this would make them financially dependent. She further added that the data already showed that the lack of financial security was a major reason for the under-reporting of domestic violence incidents. This would force women to stay in violent relationships and would stop them from speaking up against the perpetrator.

She stressed on the need to think critically. She said that Women did unpaid work; they were the caretakers of the home, their spouses, the children and the elderly. Yet, they did not have rights to matrimonial property. (As had been rightly pointed out by Ms. Jaising)

She reminded that the UN had already declared domestic violence as being a shadow pandemic. She warned that if it was not taken seriously, it could lead to an economic loss of 1.5 trillion USD due to the exclusion of women from the workforce after the situation got back to normal.

The UN had initially urged the governments to deal with the crisis seriously and has also urged them to keep the strategy to curb domestic violence at the center of their policy in dealing with the pandemic.

She suggested that the helplines needed to be made into essential services. There was a need to provide requisite funding for these programs which were designed to support women who were facing abuse. The government and the NGOs needed to make attempts to reach out to the women who do not have access to phones or other communication devices. As per her, this had become even more crucial because nearly  $\frac{1}{3}$  of women in India did not have access to phones. She added that families did not allow women to access phones, as it was seen as a means through which women can interact with the outside world. This was considered to be a taboo.



The Jammu and Kashmir high court has already taken some steps to curb the menace of domestic violence amidst this health emergency, and the court has also perused the report of the United Nations.

But, before the honorable court took note of the UN report, or the UN had referred to the domestic violence as being a shadow pandemic, the women's rights groups were already vary of the situation, and they very well knew the consequences that were to befall women once the lockdown was announced. Given this prior knowledge, the lockdown should have been planned in a better way, she suggested.

She finally suggested that all the services which were meant to help women to deal with domestic violence needed to be considered as being essential services, and she also asserted that they should have been funded and publicized properly.


While closing her speech, she remarked that the numbers that were being reported were just the tip of the iceberg, because it was a well-known fact that most of the domestic violence cases went unreported. This established that the actual numbers might be shockingly high. She ended by intimating her willingness to answer all the questions that may be asked by the participants towards the end of the session.

After her speech, Prof. Sarasu said that her insights were very useful and contributed a lot to the discussion. Then, she asked the next panelist to start off with her speech.

### **Sangeeta Rege:**

She was the sixth speaker. She started her speech at around 5:55 PM and spoke for about 8 minutes.

She focused on strategies that were developed to respond to violence against women during the lockdown period, mainly focusing on Mumbai because the Coronavirus pandemic had affected Maharashtra and, specifically, Mumbai the most. According to her, such an unprecedented situation created a worse situation, specifically in Mumbai. She made a reference to an earlier




speaker regarding the mobile based organization and NGO she worked in. She mentioned her organization's association with the Bombay Municipal Corporation to respond to the issue of violence against women.

She pointed out different facilities provided by them like hospital based crisis centres which were providing psychological support to women and children. Those were the government entities because they were funded by the National Urban Health Mission.

She mentioned that before the official lockdown was imposed, they had a dialogue with the Bombay Municipal Corporation to recognize Dilasa's services as a part of the essential services. According to her explanation, by doing that they were able to ensure that all the 13 Dilasa centre across the central and westerns suburbs in Mumbai would remain open.

She explained different difficulties faced by the staff due to the situation. The staff was expected to come to the centre, but due to lockdown, their movement was restricted. Unless they had ID cards which granted them permission to reach out to households for reporting acts of domestic violence, their efforts would be futile. Other than that, she also mentioned the idea of reaching hospitals and negotiating with the municipal corporation to help them with the logistical support. Also, around the issues of safety of Dilasa teams, she mentioned the issue of ensuring their health security, because they were working in public hospitals many of which had wards dedicated for quarantine or isolation. The major problem she mentioned was to conduct training of those teams. They explained to them about modes of transmission in cases of physical counselling, the distance that is supposed to be maintained between clients and themselves, usage of mask and hand sanitizers. Besides the work that they were doing on violence, they were engaged to carry out awareness about coronavirus amongst the patient populations, which brought an added responsibility on them.

In that time, they established chain counsellors, about which she made a reference to an example in a lockdown situation when a survivor of violence reached the hospital; how do they adapt a safety plan. Many women were not able to leave the house in such situations. So, those teams had contacted



shelter homes in advance realising that many women would not be able to go back to their homes. On that, she also referred to some previous speakers regarding a prior coronavirus testing of those women.

She also made a reference to the cases of survivors of rape in hospitals in this situation. They had received about seven rape survivors across the hospitals and crisis centres. That made for an additional issue for them, regarding unwanted pregnancies and abortion. To deal with that, she put forward the idea of explaining the Ministry of Health and Family Welfare's guidelines regarding abortions, which was issued a few weeks ago and carries a component on sexual and reproductive health services, where medical termination to pregnancy was included as an essential service.

Besides that, the Dilasa team also did a research directly pertaining to NGOs; community based organizations were also doing relief work because women were reaching hospitals and asking for directions to get counselling aid. She further mentioned about the psychological toll because of lockdown and domestic violence, which needed a counsellor to deal with it.

They trained the counsellors to provide basic suicide prevention counselling on the telephone line. In fact, she mentioned that they had gone a step ahead and trained some of their counsellors to enable them to speak to the person who was being abusive. If a woman asked the counsellor to do so, it was supposed to be done in a manner that would not threaten him but ensure that he would not continue with his abusive behaviour.

She mentioned Dilasa's efforts in contacting the survivors even after their counselling and resolving their issue to ensure their well-being. For the problem of motivating the counsellors, she referred to Dilasa's mechanism by which they made a daily inspection across all the 11 crisis centres to motivate them to continue going to hospitals and for reducing their workload.

Regarding Sehat, she mentioned that it had a helpline which was set up at the national level. It was a 24x7 helpline. They also made it public on social media for public outreach. She also mentioned the efforts of Shakti Shalini who, also, said that their Facebook page and Instagram page carried it, and they were receiving calls from women belonging to different classes.

The main challenges, she concluded, were regarding reaching out and transportation. She also described the kind of help Dilasa and Schat took, like headway with the police where they got 103 police vans that actually went to the sites. They also had dialogues with abusers and would move the woman out of the unsafe place. Lastly, she mentioned the help they took from NC regarding transportation of victims.

After this, Prof. Sarasu thanked the speaker and requested her to stay around for answering questions towards the end. She asked the last speaker to throw some light on the subject of the discussion.

### **Padma Deosthali:**


She was the last speaker. She started her speech at around 6:05 PM and spoke for about 8 minutes.

She started her speech by thanking the organisers for organising the discussion. She mentioned the point about how different centres across the country are dealing with the issue of domestic violence in the times of Coronavirus pandemic by making reference to the crisis centres in Mumbai, Haryana and Kerala.

According to her, people need to integrate the entire response to Domestic Violence and recognize it as a public health issue and integrate the messaging and response within the covered response that the government has planned. She also mentioned that the organisations and government have a huge opportunity to integrate the DV response into the public health response, which has been conducted on a larger scale and which, she believed, had already been championed by the Ministry of Health. By making that observation, she gave the example of the state of Bihar and how it deals with the issue of domestic violence.

She referred to an organisation called Care India which has been working with the government of Bihar to improve the health system's response. It mainly worked for strengthening health systems regarding the issue of domestic violence, maternal health, reducing maternal mortality neonatal mortality and malnutrition, and for improving immunization and access to reproductive health services.





She also referred to an initiative of Care India and government of Bihar called Sajha, which has been setting up a health systems response in a district in two phases. The first phase in which six health care facilities at the district level had been strengthened through training of healthcare providers and appointment of counsellors to respond to women who are identified by the health facilities as experiencing domestic violence and rape. The second phase was regarding the outreach work, which was to reach out to the frontline workers, create awareness about domestic violence, its impact on health of victim, and make them aware of those services, so that they become a link between the women in the community and those healthcare facilities. Later, when the Covid pandemic happened, the entire Care team started working with the government of Bihar in responding to Covid 19. This required them to call people, and each person was contacting more than a hundred people for creating health literacy. She also mentioned the work done by Sajha team when it was asked to take this on. She later on made an observation regarding the dip in the number of women coming, which she had observed as a part of the team. The reason for the dip, she said, was because of the OPDs that were closed, and hardly anything was happening in those health facilities the moment the lockdown was announced. They already had survivors before they could create a mechanism to deal with the issue. They made them aware of the guidelines that were based on responding to gender-based violence in society. She also made a reference to the previous speaker's point about training the staff to use the guidelines to deal with the issue. Another problem she referred to was regarding the situation created by the lockdown, which reduced the efficiency of the staff as they were required to work from home and were unable to reach the victims due to restrictions imposed on movement.

She mentioned the solution they found for that issue by involving Ashas, and involving the village head as reaching villages was more problematic. They were asked to send a message across that domestic violence would not be tolerated. Later on, she referred to a couple of cases where the victims had been thrown out of the house, and the mukhia was asked to deal with the issue. She also mentioned about PRIs, which she referred to as a gender-biased instrument, but they were bound to take their help in such an unprecedented situation. She said that Care India has been integrating that whole response to violence

against women in all its effort to improve access to sexual and reproductive health services, which were severely affected because of the pandemic.

With this she came to the last point of her speech regarding the overall infrastructural development for dealing with the issue, specifically the WCD. They had WCDs' press note of 17 Jan where they said that 279 OSC were operational, and almost all 32 states have help lines. At last, she concluded by mentioning the biggest challenge in the current situation regarding the connectivity of healthcare workers and organisations with the victims across the country in different states. For that, she gave a solution of asking for a whole infrastructure and funds that were going to these facilities to be allocated wisely by training a substantial number of workers to respond to domestic violence in the peculiar situation. According to her, those changes were necessary, as for domestic violence, not just women, but also children are witnessing domestic violence.


### **Question/Answer Session:**

After this, Prof. Sarasu thanked all the panellists and asked for their consent to take questions. Then, she opened the floor for any questions, clarifications, observations for all the 300 participants who had joined the discussion.

Q. A participant asked why the government was not taking the issue of domestic violence seriously, and why was this issue not being prioritised?

A. Ms. Anuradha responded to this question by saying that the government was not responding because domestic violence had not been a priority for the government since time immemorial. Though the domestic violence act was passed, the government did not fund it properly from the outset, itself. Similarly, the services that are to be provided to the women who are facing abuse were not being provided properly. She said that this was happening due to the lack of executive commitment. Further, women did not have any remedy because of the over-burdened courts and uninterested law enforcement authorities.

Q. Another participant asked if protection officers could be appointed in various NGOs, because the number of protection officers was very inadequate to serve the needs of all the women who were facing abuse.



A. Ms. Anuradha responded saying that protection officers had a very specific function, and they had the support and the backing of the government. Protection officers could be appointed in NGOs only if NGOs were given proper support and backing by the government.


Observation: Another participant made an observation saying that the problem of domestic violence was not only about access to telephone, or no access to telephone. It was not about access to alcohol, or no access to alcohol. The menace of domestic violence could only be curbed if mothers started sensitizing their sons and started treating them equally.

Response: To this, Ms. Anuradha responded saying that domestic violence had nothing to do with alcohol or telephones or any other thing. The main causal factor was the sense of entitlement wherein men felt that they had the power to beat the women under their authority. She added that men felt that women would not retaliate or speak up against them. She pointed out that men could not beat their bosses and could only re-assert their authority by beating up their wives.

To the second point, she responded by saying that it was a good idea to sensitize men, but she also warned against placing the burden of educating men only on the mothers. She said that the mothers, fathers, schools and all the other stakeholders jointly needed to take up this responsibility of educating and sensitizing young men. Men needed to self-introspect and set their behavior right. Moreover, there was a need to enable women to de-internalize patriarchy.

Q. Major General Sudhir pointed out that there were many women who were not ready to speak up against the abusers because they did not have support. He also cited the example of a woman in his neighborhood who was being subjected to abuse by her husband and was still not willing to do anything about it. He then asked what an individual could do in such a situation to help out the victims in such cases.

A. Ms. Anuradha said that in such a situation, any individual should help the victim in all ways possible. She exhorted the participants to think critically



and try to come up with practical solutions to her problem, because a victim did not report only because she did not have any support. In such a case, she said that, any individual who is willing to help needed to give her the practical support that she needed.


Q. Another participant, Sarah Malkani, asked what could lawyers do to help the women who were being subjected to intimate partner violence?

A. Ms. Anuradha responded saying that the best way in which the lawyers could contribute in such a situation was by providing the much needed legal counselling to the victims. She further added that there was a need to provide for video conferencing whereby the protection officers, lawyers and the victims could interact, and the victims could be heard.

Q. A participant asked about how could women in distress be supported?

A. Ms. Adrija responded saying that we had always criticised the police for being insensitive and apathetic. But, she said they were helpful sometimes. She exhorted all the participants to spread the message that the victims of intimate partner violence could reach out to the police and the helpline numbers, also. She added that it was helpful sometimes. Further, she also urged the participants to be more aware. She cited a story that she had covered some time back. In this she reported about some children who were abducted and were locked up in a house. The children kept on crying, and then the neighbors realized the same. They reported it by reaching out to one of the helpline numbers, and there was a quick state response. The point she was trying to establish was the state machinery can be helpful sometimes and women should not be hesitant in demanding the services women are entitled to.

A. Ms. Sangeeta observed domestic violence had always been a big menace, and she added that the problem was bound to intensify due to the pandemic. She asserted that since the problem was bigger, the response also needed to be quicker and more efficient. She said that we needed to look at the pandemic and domestic violence as an emergency and the response also needed to be fitting.



She said that the government needed to send out a strong message about zero tolerance for domestic violence. She cited examples of P. Vijayan who had been interacting with the people of Kerala on a daily basis and has been regularly warning citizens that the perpetrators of domestic violence were to be sent from lockdown to lock ups. She added that this model was being followed by the Pune Zila Parishad also. She urged that sending out a strong message was indispensable.

Q. Ms. Sanghamitra Acharya pointed out that the data regarding domestic violence was not segregated as per gender, and it was a matter of concern.

To this, Ms. Sangeeta responded saying that it was a matter of concern because there was a lack of transparency and a lot of panic and things could not get any better till the time we could find a cure for Covid-19.

Observation by Ms. Padma: She said that various organisations in Mumbai, Chhattisgarh and Bihar were working towards helping the women who were facing intimate partner violence. She stressed on the need to create safe spaces for women by warning the abusers and shifting them to institutional quarantine facilities if they were abusing the women under their authority.

Another participant, Nimisha Shrivastav said that she was working for an organization which worked in the interest of children who were facing any kind of abuse. She suggested that there was a need to develop a multi-dimensional strategy wherein, not only counsellors, but also the lawyers could talk to the victims over these helpline numbers.

Q. A participant asked if the abusers could be removed and sent to institutional quarantine facilities and how far this could be helpful.

A. Ms. Padma responded saying that the abusers, whomsoever they are, whether a man or a woman, could be removed from the house and be put under institutional quarantine. Instead of removing the women and the children who were being abused by a single abuser - this was not workable - in those situations the male abuser could be removed. All in all it was important to send out a strong message that domestic violence would not be tolerated.

Q. Another participant who was working with point of view, asked how could the other organisations which were engaging with women in one way or the other, but were not directly working in the area of DV, help such women.

A. Ms. Anuradha responded saying that such organisations could provide women with the helpline numbers that they could call on when they were in distress. She also suggested that various organisations could use TV, radio, social media to spread information about the organisations working to support the victims of domestic violence and could share the numbers of the helplines with these women by using all means of mass communication.

Ms. Anuradha cited a case of a child who was abused earlier, and because of the lockdown, she could talk to her mother about the fact that she was abused before the lockdown when her mother was not at home.

Ms. Sangeeta, in her concluding remarks, said that the women were to be provided not only support, counselling and so on, but they also were to be provided food and ration, so that they could survive in these trying times. She further added that this situation could only be handled by the government and the NGOs together, and NGOs could not replace the state because they only had limited resources and authority.

After this, the moderator, Prof. Sarasu Esther Thomas, thanked all the speakers for their insightful observations and handed over the baton to Mr. Prannv Dhawan, the Joint Convener of Law and Society Committee, NLSIU, Bangalore.

Mr. Prannv Dhawan concluded by saying that domestic violence was a shadow pandemic, and this discussion was very helpful in understanding the implications of this pandemic that had arisen amid the Covid-19 crisis.

He thanked the speakers for their time and for their generous gesture of sharing their ideas and observations with the listeners. He also thanked Ms. Jaising for her legal insights. He extended his gratitude towards CWL and the Leaflet which collaborated with LawSoc to organize the webinar.

Lastly, he thanked the participants for their time and interest.

# STAY HOME STAY UNSAFE: THE VIOLENT FALLOUT OF A GENDER-BLIND COVID-19 RESPONSE

- Vatsal Raj

## Abstract

*This essay is an effort in scholarship, attempting to highlight the varied consequences of a gender-blind pandemic response system. The pandemic-induced lockdown has trapped millions of women with their abusers with no respite in sight. The lockdown is a perfect case of hermeneutical injustice towards women and spells captivity rather than safety for most. The essay illustrates the inadequacy of proactive policy based measures geared towards protecting women from specific and exclusive harms that may befall them, given the inaccessibility of socio-economic support mechanisms. The author engages with novel scholarly concepts such as 'feminisation of poverty' and 'pyramid of reporting,' to provide a more nuanced class-based analysis of domestic violence and its varied repercussions, based on socio-economic inequalities amongst women. In doing so, the author acknowledges the treatment of women as a monolithic whole and argues for its rectification by imbuing greater sensitivity towards intersecting inequalities faced by women in varied rural and urban settings. The author lays emphasis on the indispensability of community healthcare activists, such as ASHA workers, in protecting rural as well as urban populations from pandemic-related harms including domestic violence. The COVID-19 pandemic has brought long-standing inequities to the fore. The gendered impacts must be redressed with sincerity, and a gendered recovery must lead to a more equal world.*

***Keywords: crisis of care, feminisation of poverty, economic empowerment, gender-sensitive public health response.***

## **I. Introduction**

Home a place of dwelling, conveying familial togetherness, privacy, freedom and a sense of belonging and security.<sup>1</sup> However, as the shadow pandemic of domestic violence looms large in India, amidst the largest COVID-19 lockdown in the world, this definition could not have been any further from the truth. The government's appeal to "Stay Home, Stay Safe" is oxymoronic. Today, the 'home' has become synonymous with the cyclical reproduction of a patriarchal ethos entrenched in long-standing gendered inequities.<sup>2</sup> According to the National Commission for Women (NCW), domestic violence complaints have doubled since the nation-wide lockdown was effectuated.<sup>3</sup> Women are trapped with their abusers and feel most threatened where they should feel safest – their homes. In an attempt to flatten the fatal Coronavirus curve, the gender-blind national policies seem to have sped up the alarming rise in the domestic violence curve. The increasing urgency to mitigate severe imbalances in the gendered impacts of the outbreak demands an unprecedented gender-sensitive response from the State. Women's lives cannot be put in lockdown until we emerge out of the pandemic.

In 2018, India was named as the most dangerous place in the world to be in if a woman.<sup>4</sup> According to the National Crime Research Bureau, a crime is recorded against a woman in India every 1.7 minutes, and a woman is subjected to domestic violence every 4.4 minutes.<sup>5</sup> Gender based violence (GBV) tends

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1 Linda McDowell, *Place and Space: A Concise Companion to Feminist Theory* (David Bradshaw ed, Blackwell Publishing 2003).

2 Amber Peterman et al, 'Pandemics and Violence Against Women and Children' (2020) Centre For Public Development Working Paper 528 <<https://www.cgdev.org/publication/pandemics-and-violence-against-women-and-children>> accessed 10 May 2020.

3 'COVID-19, Domestic Abuse and Violence' (*EPW Engage*, 17 April 2020) <<https://www.epw.in/engage/article/covid-19-domestic-abuse-and-violence-where-do>> accessed 10 May 2020.

4 Belinda Goldsmith and Meka Beresford, 'India Most Dangerous Country for Women with Sexual Violence Rife' (*Reuters*, 26 June 2018) <<https://in.reuters.com/article/women-dangerous-poll/india-most-dangerous-country-for-women-with-sexual-violence-rife-global-poll-idINKBN4JMo76>> accessed 12 May 2020.

5 Ministry of Home Affairs, *Crime in India 2018* (2018) <<https://ncrb.gov.in/crime-india-2018>> accessed 10 May 2020.



to spike in times of crisis; women's bodies too often become the battlefields. Confinement, such as the lockdown, is the most conducive breeding ground for domestic violence. According to UN projections, the lockdown could result in an additional 31 million domestic violence cases, globally.<sup>6</sup> As the world celebrates the 110<sup>th</sup> anniversary of International Women's Day, the breakthroughs and limited progress made towards achieving gender equality are at a serious risk of reversal.

Women's rights are human rights. The UN Secretary-General, Antonio Guterres, has termed the Coronavirus crisis, "above all, a human crisis" and has called for a domestic violence 'ceasefire' amid an alarming global surge in violence against women and children (VAW/C).<sup>7</sup> In an atmosphere riven with normalized notions of 'narcotised patriarchy',<sup>8</sup> women often find themselves as an afterthought in national policies, underrepresented and othered. The crippling insufficiency of women's representation at national COVID-19 decision-making platforms makes for a perfect case of hermeneutical injustice.<sup>9</sup> The 21-member Committee for Public Health Experts, the national body for healthcare policies, has only two female healthcare experts as its members.<sup>10</sup> The lockdown is proving to be cataclysmically insensitive towards the gendered and intersectional realities of COVID-19.

## II. Gender Equality – Locked Down

In India, women play a disproportionate role in disease response, both at home and at the workplace. Unfortunately, the crisis response has failed to create strategies that safeguard the harder hit half.

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6 UNFPA, *Projections Predict Calamitous Impact on Women's Health as COVID-19 Pandemic Continues* (2020) <<https://www.unfpa.org/press/new-unfpa-projections-predict-calamitous-impact-womens-health-covid-19-pandemic-continues>> accessed 10 May 2020.

7 UN Women, *Policy Brief: The Impact of COVID-19 on Women* (2020) <<https://www.unwomen.org/en/digital-library/publications/2020/04/policy-brief-the-impact-of-covid-19-on-women#view>> accessed 10 May 2020.

8 Dilip Chavan and Madhuri Dixit, 'Gendering the COVID-19 Pandemic' (2020) 55 (17) EPW 13.

9 Katharine Jenkins, 'Rape Myths and Domestic Abuse Myths as Hermeneutical Injustices' (2017) 34 (2) *Journal of Applied Philosophy*.

10 Aditi Ratho, 'The Gendered Footprint of COVID-19 in India' (*ORF*, 1 March 2020) <<https://www.orfonline.org/expert-speak/the-gendered-footprint-of-covid19-in-india-63767/>> accessed 10 May 2020.

VAW stems from gendered inequality in power dynamics, both at home and at work.<sup>11</sup> The inequality in power dynamics is notably skewed against marginalised women. Although, the Domestic Violence Act<sup>12</sup> attempts to acknowledge the multidimensionality of domestic violence, according to Flavia Agnes, the assurances made under the Domestic Violence Act have not been actualised due to decadal overriding legislative lethargy.<sup>13</sup> As times changed, the legislature failed to develop a more nuanced appraisal of domestic violence. Agnes observes that the Domestic Violence Act suffers from a fatal flaw – it treats women as a monolithic whole. The Domestic Violence Act is insensitive towards the deep socio-economic class inequalities that exist among women in India. A pandemic has the tendency to exacerbate socio-economic inequalities, leading to a wider divide in class-dependent access to healthcare and legal mechanisms.<sup>14</sup> While the Domestic Violence Act lays emphasis on legal reforms, it is overshadowed by the social reality of inaccessibility to legal mechanisms that plagues the marginalised and, especially, disadvantaged women in poor urban households and rural areas.<sup>15</sup> Thereby, disallowing the effective implementation of intended legal reforms.

The clearest lesson learnt from past pandemics is that pandemics compound existing gender vulnerabilities to the extent that, at times, the collateral damage is worse than the actual impact itself. The currents of discrimination and restricted access to resources combine to create intersecting inequalities that are more severely felt by the underprivileged.

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11 Global Health 50/50, *Power, Privilege and Priorities* (2020) <<https://globalhealth5050.org/wp-content/uploads/2020/03/Power-Privilege-and-Priorities-2020-Global-Health-5050-Report.pdf>> accessed 11 May 2020.

12 Domestic Violence Act 2005.

13 Flavia Agnes, 'What Survivors of Domestic Violence Need from Their New Government' (2019) 54 (17) EPW < <https://www.epw.in/engage/article/what-survivors-domestic-violence-need-their-new>> accessed 10 May 2020.

14 UN Human Rights Office of the High Commissioner, *COVID is "a Colossal Test of Leadership" Requiring Coordinated Action* (2020) <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25785&LangID=E>> accessed 25 June 2020.

15 Flavia Agnes, 'What Survivors of Domestic Violence Need from Their New Government' (2019) 54 (17) EPW < <https://www.epw.in/engage/article/what-survivors-domestic-violence-need-their-new>> accessed 10 May 2020.

## A. The Care Crisis

The world's formal economies are built on and sustained by invisible and unpaid labour of women. According to Oxfam's "Time to Care" report,<sup>16</sup> women and girls in India spend 3.26 billion hours in unpaid care work every day. The Economic Survey 2020 revealed that 60% of women in India between the ages of 15 and 59 are engaged in full-time household work.<sup>17</sup> This pandemic is a care crisis. The unpaid care economy is the backbone of the COVID-19 response, valued at a staggering ₹19 lakh crore per year, which is equivalent to 20 times the entire education budget of India.

The widespread narrative which characterises domestic work as a 'woman's duty,' is influenced by the heteropatriarchy rooted in Indian settings. Gendered familial-ism reduces a woman's 'affective labour' to mere dehumanised care. Gender determines the differential power and control women exercise over the psychosocial determinants of their mental health and lives.<sup>18</sup> The national pandemic response seems to have overlooked the need to integrate domestic violence and its mental health repercussions into the public health preparedness and emergency response plans. By redirecting critical resources, including sexual, reproductive and mental health services, governments are deprioritizing the assistance needed by women.<sup>19</sup>

Women's organisations engaged in community healthcare are particularly vulnerable, and many are worried about their financial and organisational survival. In times of crisis, women caregivers are often at ground-zero within communities, enabling them to identify early signs of domestic violence and intervene effectively. Nine lakh Accredited Social Health Activists (ASHA) are on the frontlines of the COVID-19 response. The Ministry of Health and Family Welfare's Model Micro Plan for Containing Local Transmission of Coronavirus Disease, mandates ASHA workers to conduct door-to-door visits to educate

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16 Oxfam, *Time to Care* (2020) <<https://oxfamilibrary.openrepository.com/bitstream/handle/10546/620928/bp-time-to-care-inequality-200120-en.pdf>> accessed 11 May 2020.

17 Ministry of Finance, *Economic Survey 2019-20* (2020) <<https://www.indiabudget.gov.in/economicsurvey/>> accessed 27 June 2020.

18 Savita Malhotra and Ruchita Shah, 'Women and Mental Health in India' (2015) 57 (2) *Indian Journal of Psychiatry* < <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4539863/>> accessed 11 May 2020.

19 'COVID-19, Domestic Abuse and Violence' (*EPW Engage*, 17 April 2020) <<https://www.epw.in/engage/article/covid-19-domestic-abuse-and-violence-where-do>> accessed 11 May 2020.

residents in an effort to curb the pandemic.<sup>20</sup> However, ASHA workers are poorly paid and tragically unprotected.<sup>21</sup> Reports suggest that ASHA workers on the frontline are paid as little as ₹30 per day for risking their lives. The COVID-19 response fails to be appreciative of the fact that India's community healthcare programmes, especially in rural areas with little to no formal healthcare infrastructure, rely on the heroic and high-risk efforts of grass-roots healthcare workers. Instead of offering greater protection to ASHA workers, the Ministry's guidelines on Rational Use of Personal Protective Equipment (PPE), classifies ASHA workers as low-risk healthcare workers; thereby, deprioritising their access to PPE.<sup>22</sup> As women find themselves cloistered within four walls with their batterers, ASHA workers face physical violence and increased risk of infection while striving to protect such women.

### ***B. The Feminisation of Poverty***<sup>23</sup>

Unemployment has rocketed since the lockdown, rising from 8% to 23%.<sup>24</sup> Reports suggest, in a heavily male-dominant workforce, instances of domestic violence and sexual exploitation spike when households are placed under unprecedented stress which emanates from the lack of economic security.<sup>25</sup> Cecile Jackson, in her widely cited paper, refers to the feminisation of poverty while highlighting the urgency to evaluate and redress gender bias in poverty-reduction policies of the government. Women's loss of income adversely affects access to support systems that depend on a woman's financial independence. The pandemic has severely affected highly feminised services within the informal sector, such as retail and hospitality, resulting in unprecedented rates of unemployment within the female workforce.

20 Ministry of Health and Family Welfare, *Micro Plan for Containing Local Transmission of Coronavirus Disease (COVID-19)* (2020) <<https://www.mohfw.gov.in/pdf/ModelMicroplanforcontainmentoflocaltransmissionofCOVID19.pdf>> accessed 25 June 2020.

21 'The Underpaid and Unprotected Women Leading the COVID-19 War' *BBC News* (London, 17 April 2020) <<https://www.bbc.com/news/world-asia-india-52279025>> accessed 12 May 2020.

22 Ministry of Health and Family Welfare, *Novel Coronavirus Disease 2019 (COVID-19): Guidelines on Rational Use of Personal Protective Equipment* (2020) <<https://www.mohfw.gov.in/pdf/GuidelinesonrationaluseofPersonalProtectiveEquipment.pdf>> accessed 25 June 2020.

23 Cecile Jackson, 'Rescuing Gender From the Poverty Trap' (1996) 24 (3) *World Development* 489.

24 Arunoday Mukharji, 'Coronavirus: India's Bailout May Not be Enough to Save the Economy' *BBC News* (London, 3 April 2020) <<https://www.bbc.com/news/world-asia-india-52117704>> accessed 12 May 2020.

25 UN Women Executive Director, *COVID-19: Women Front and Centre* (2020) <<https://www.unwomen.org/en/news/stories/2020/3/statement-ed-phumzile-covid-19-women-front-and-centre>> accessed 12 May 2020.

The lack of state supported assistance schemes, specifically for women, leaves them vulnerable to conditions of poverty and at the mercy of their abusers. Despite the widespread availability of data citing a strong correlation between alcohol consumption and surge in instances of GBV,<sup>26</sup> India's pandemic response prioritised the opening of liquor shops over declaring this crisis.<sup>27</sup> Therefore, placing women at the heart of stimulus plans is paramount.

### III. Tailoring A Gender Sensitive Response

The COVID-19 pandemic does not discriminate and neither should our response to it. Our ability to bounce back from this crisis is dependent wholly on how inclusive our response is.

In a pandemic, stigma spreads faster than the virus. As a result, women are subjected to restrictive social norms emanating from detrimental stereotyping. The systematic normalisation of stigma against marginalised women can be countered by the timely sensitisation of communities by ASHA workers and grass-roots activists.

The National Family Health Survey found that 1 in every 3 women has experienced domestic violence.<sup>28</sup> Shockingly, the same survey also discovered that 99% of such cases go unreported. The NCW acknowledges that the current situation creates additional barriers to reporting. While women are locked down with their abusers, accessing a phone to report violence might be a challenge in itself, especially when 57% of India's women do not have access to phones.<sup>29</sup> Moreover, the pyramid of reporting domestic violence cases ensures that complaints rarely reach the authorities.<sup>30</sup> Drawing from Jacob and

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26 World Health Organisation, *Intimate Partner Violence and Alcohol* (2006) <<https://www.canada.ca/content/dam/phac-aspc/migration/phac-aspc/sfv-avf/sources/fem/fem-intin-alco/pdf/fem-whoms-alco-eng.pdf>> accessed 26 June 2020.

27 'Government Starts Disbursal of Third Instalment to Women Jan Dhan Account Holders' *DD News* (New Delhi, 5 June 2020) <<https://bit.ly/2ZRNilB>> accessed 8 July 2020.

28 Ministry of Health and Family Welfare, *National Family Health Survey – 4 2015-2016* (2017) <<http://rchiips.org/NFHS/NFHS-4Reports/India.pdf>> accessed 10 May 2020.

29 Harvard Kennedy School, Evidence for Policy Design, *A Tough Call: Understanding Barriers to and Impacts of Women's Mobile Phone Adoption in India* (2018) <[https://epod.cid.harvard.edu/sites/default/files/2018-10/A\\_Tough\\_Call.pdf](https://epod.cid.harvard.edu/sites/default/files/2018-10/A_Tough_Call.pdf)> accessed 12 May 2020.

30 Suraj Jacob and Sreeparna Chattopadhyay, 'The Pyramid of Reporting Domestic Violence in India' (2019) 54 (1) EPW 53.

Chattopadhyay's groundbreaking research, a recent study suggests that, among the survivors who sought help, only 7% reached out to the relevant authorities, while over 90% of the incidents were reported only to the immediate family.<sup>31</sup> This in turn has an adverse effect on preventive and reactive policy measures due to the lack of representative data at the governmental level.

The majority domestic violence reporting is technology driven. India suffers from a massive gender and class based digital divide. According to UNICEF, only 29% of Indian women have access to the internet.<sup>32</sup> Most of these women are educated and live in urban areas. Therefore, the massive COVID-19 sanitation-awareness drive must be incorporative of an equally effective nationwide domestic violence awareness campaign to highlight the various alternative modes through which complaints can be filed. Citizens must be sensitised towards initiatives such as “red dot”<sup>33</sup>, similar to the “mask 19” campaign in France and Spain, where survivors are asked to draw a red dot on their palm to alert neighbours and authorities. For the economically and socially disempowered women battling GBV, the lockdown is punitive and social distancing, a privilege. Shelter homes and organisations must be categorised as essential services, so that women do not feel trapped and have guaranteed access to basic physical safety and psychological care.

The Delhi High Court recently directed the Central Government to ensure effective implementation of the Domestic Violence Act in the wake of the increase in cases of domestic violence during the lockdown.<sup>34</sup> No child is born an abuser; patriarchy makes him one. The vicious cycle of observational learning at home, where the victim of abuse suffers inordinately, must be broken. Section 17 of the Domestic Violence Act ensures the woman's right to residence; however, in practice, it is the victims who are forced to relocate

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31 Vignesh Radhakrishnan and Sumant Sen, 'Domestic Violence Complaints at a 10-year High during COVID-19 Lockdown' *The Hindu* (Chennai, 22 June 2020) <<https://www.thehindu.com/data/data-domestic-violence-complaints-at-a-10-year-high-during-covid-19-lockdown/article31885001.ece>> accessed 26 June 2020.

32 UNICEF, *Children in a Digital World* (2017) <[https://www.unicef.org/publications/files/SOWC\\_2017\\_ENG\\_WEB.pdf](https://www.unicef.org/publications/files/SOWC_2017_ENG_WEB.pdf)> accessed 26 June 2020.

33 PTI, 'Using Red-dot Signal Women Seek Help to Escape Domestic Violence during Lockdown' *Deccan Herald* (New Delhi, 4 April 2020) <<https://www.deccanherald.com/national/north-and-central/using-red-dot-signal-women-seek-help-to-escape-domestic-violence-during-lockdown-821281.html>> accessed 8 July 2020.

34 AICHLS v Uol [2020] SCC OnLine Del 537.

to shelter homes, exposing themselves to a high risk of infection, while the perpetrator of the crime enjoys residence. Female Protection Officers, under Section 8, should be sensitised to provide immediate assistance. Justice must be seen to be done under the Act to nip patriarchy in the bud.

To achieve this, the importance of grass-roots activism cannot be overstated. As discussed earlier, ASHA workers suffer from a severe shortage of PPE, receive incommensurate pay and, also, sustain continuous physical and verbal attacks from the very community they intend to serve.<sup>35</sup> This must be remedied at the earliest. The inhuman fallout of the recent opening of liquor shops reaffirms that women's assets are often disposed of first in an economic crisis. The ambit of Section 3(b) of the Domestic Violence Act should be strengthened; especially, to safeguard women's financial independence during this pandemic, granting her exclusive and actual control over her savings and property as a means of empowerment. Strong gender analysis based on decentralised sex disaggregated data must become a reflex embedded in the national health and emergency response systems.

#### IV. Conclusion

The COVID-19 pandemic should not be treated as a chance encounter with the harsh realities of gender inequality. It is true that the COVID-19 pandemic has changed us forever, with long-standing inequities brought to the fore. The gendered impacts must be redressed with sincerity, and a gender-sensitive recovery must lead to a more equal world.

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35 Aswati Warriar, 'The Women Warriors Fighting COVID-19 at the Frontline: ASHA Workers Left Without Hope' (*Amnesty International India*, 21 May 2020) <<https://amnesty.org.in/the-women-warriors-fighting-covid-19-at-the-frontline-asha-workers-left-without-hope/>> accessed 27 June 2020.

# HOW THE CORONAVIRUS PANDEMIC DISRUPTED CHILDREN'S LIVES

- Adrija Bose<sup>1</sup>

## Abstract

*This article discusses the impact of Covid-19 on the children whose parents earn livelihood as daily wage workers or are employed in informal sectors. The article discusses the impact on education of girl child and increase in child marriage where the girls who were supposed to go to school are now being married off because their parents think of them as an economic burden. Finally the article throws light upon the adverse impact lockdown has had on the nutrition of the children who were dependent upon the Mid-Day meal scheme being provided at school.*

**Keywords:** *Child Education, Mid-Day Meal, Child Abduction, Child marriage*


No going out. No parks, no friends. No school. No laptop. Going to bed hungry. India has the largest child population in the world with 472 million children. The pandemic and, in turn, the lockdown, campaigners say, has impacted around 40 million children from poor families. But these are just the estimates. The reality is possibly far worse.

The impact of the Coronavirus pandemic on children can't be captured in one photograph - it's in layers. It's on their education, their nutrition, their mental health and their lives.

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<sup>1</sup> Adrija Bose is the Associate Editor of News 18. She reports and writes on issues of gender justice, child rights and other social issues.





While India's Covid-19 cases have been peaking, experts believe, by the time the pandemic is over, 10 million children may never return to school.

In Rajasthan's Beer village, Pinky, an eighth-grade dropout, has been preparing for her enrollment in open school examination. As the pandemic hit, the family lost all sources of income and became dependent on the ration that was provided by the Panchayat. With help from locals, they were able to get MNREGA card — their only source of income.

However, when liquor shops reopened, as the government started easing the lockdown rules, Pinky's alcoholic father, who was drinking country-made liquor, beat her, her three sisters and their mother to take away the remaining money left in the house. A few days later, he sold off the gas cylinder, so he could buy more alcohol. With no other income left and very little options, Pinky may not be able to get back to school.

More than 1.5 billion children are out of school due to the disruption caused by the global coronavirus pandemic. In India, schools have been shut since the end of March. While many of those schools have moved to a system of online classrooms, it means very little to Pinky and a thousand others who have only heard of the word 'Google.'


That isn't all!

The lockdown – a mass effort across the world – to save lives has put one vulnerable group at risk. It isn't surprising, though. A lockdown would mean many women and children sharing the same roof with their abusers. From Brazil to Germany, Italy to China, there are reports of increasing cases of domestic violence. The calls to helpline numbers have surged.

## **Violence at the Safest Place: Home**

While this is not new, the pandemic has unveiled what has been hidden in plain sight – the high levels of violence that children and women experience in the very place of refuge from this Coronavirus – the home.

A day after the lockdown, in a colony, someone heard screams of children from the building opposite to theirs. They called Akancha Srivastava and told



her about the suspicious behaviour of their neighbour who would disappear for long periods, leaving the children behind. They said they hadn't seen the children before in the house. They were sure their neighbour was abusing the children. Akancha Srivastava, founder of 'Akancha Against Harassment,' helped the police track down the man and rescue the children. The neighbours' suspicions were right; the children had been abducted.

Srivastava said that domestic violence and child abuse will rise 'exponentially.' Meanwhile, the police machinery, she said, is 'overburdened and overstressed.'


Within 10 days after the lockdown was imposed, the Childline India helpline received more than 92,000 SOS calls asking for protection from abuse and violence. This was a sombre indication that the lockdown had turned into extended captivity not just for many women, but also for children trapped with their abusers at home.

## **Pulled Out of School, Pushed into Marriage**

Over a decade ago, India passed the landmark Right to Education (RTE) Act that made education free and compulsory for children between the ages 6 and 14 in 2009. The enrolment of girls in schools has increased, but for many reasons, the RTE Act did not help in keeping girls in schools. The shutting down of schools has made the already difficult lives of young girls more challenging, especially in rural India.

"Girls will drop out, they will be made to drop out," said Poonam Muttreja, executive director of Population Foundation of India. Muttreja noted that the pandemic coupled with the lockdown will be especially hard on teenage girls. "Their mid-day meals are gone, they are not getting sanitary napkins which were provided by schools, they are closed inside homes with no interaction with friends," she said.

Earlier this month, a 14-year-old from Kerala killed herself over not being able to attend online classes because she did not have access to the internet or television. The 10th grader who lived in the Mankeri Dalit colony in Walanchery in Malappuram district had bagged the Ayyankali scholarship. Her father, a



daily wage labourer, had lost his job during the lockdown and did not have the means to repair the television.

Kerala is one of the very few states where the government is trying to intervene in the disrupted education system. But, in a country where more girls are enrolled in government schools and boys in private ones, a shift to online classrooms would benefit, if at all, students in private schools. It means, most girls would be left out.


“My daughter has been sitting idle at home. We don’t have to pay the tuition fee because she goes to a government school. But, how long will she sit at home? Her father has lost his job, and I am the sole bread earner. I want her to study, but what options do I have?” asked Rinku, a domestic help in Delhi. Her daughter is in the 7th grade. “If I find a good partner for her, maybe I will...” Rinku stops short of finishing the sentence, but her plans for her daughter’s future are obvious.

The 14th Annual Status of Education Report (ASER) for 2019, based on a survey conducted in 26 districts across 24 states in India, notes that “Gender gaps are visible even among young children, with more girls than boys enrolled in government institutions and more boys than girls enrolled in private institutions.”

The ASER report notes that among children between the ages of 4 and 5, 56.8% of girls are enrolled in government schools, compared to 50.4% of boys, while 43.2% girls and 49.6% boys are enrolled in private pre-schools or schools. The difference gets wider with their age. In the 6–8 years age bracket, 61.1% of the girls attend a government school, versus 52.1% of all boys.

The pandemic has also brought forward what the landmark RTE Act had failed to acknowledge and address. The biggest reason why girls have been unable to go to schools — housework.

The burden of housework on Indian girls has been a spiralling crisis for India. “Even before Covid-19, girls in India did substantially more unpaid care work than boys. This mirrors Indian adults – Indian women have among the highest number of hours spent per day on care work (297 minutes a day), while



Indian men have among the lowest (31 minutes),” said Antara Ganguly, Gender Specialist at UNICEF India.

In its 2015 report on gender inequality in India, the McKinsey Global Institute found that Indian women perform nearly 10 times the unpaid care work as men. That’s almost three times more than the global average. The 2018 report found that girls who do two hours of housework per day have a 63 percent probability of finishing secondary school.


Rinku’s 15-year-old daughter now cooks and cleans her house, as her mother steps out to work in others’ houses.

“In India, girls are generally less likely than boys to transition to and graduate from secondary school. We are concerned that as Covid-19 impacts parents’ ability to invest in all their children’s education, some of these tough choices will come down even harder on girls,” said Ganguly.

India’s stark gender digital divide was pointed out by the 2020 GSMA Mobile Gender Gap report that noted that women are 20 per cent less likely to use mobile internet than men. It also noted that more than 300 million fewer women than men access the internet on a mobile, particularly in South Asia where that gap is at around 51 per cent. This gap is even higher in rural areas.

Shabnam Aziiz, project leader for Adolescent Girls Programme that is a part of the NGO ‘Educate Girls,’ says that most girls in rural India are not allowed to use phones in the fear that they will ‘taste freedom.’

Eighteen-year-old Seema from Nawab village in Rajasthan attempted suicide by consuming poison after her brother slapped her for using her cellphone ‘very frequently.’ Seema, a class 8 dropout, was forcibly withdrawn from school, so she can help in domestic chores. The family had purchased a mobile phone for use at home. During the lockdown, as Seema’s brother and father stayed home, they observed that she was using the phone. The abuse and violence began soon after, and had it not been for quick treatment, Seema wouldn’t have been alive.



When Seema got slightly better, her family sent her back to her husband's house. Everyone in the village found out. Families of three other younger girls in the village sent their daughters back to their abusive in-laws fearing losing honour if they get 'influenced' by Seema.


In Odisha's Nayagarh district, a month after the lockdown, 16-year-old Soubhagyabati's father, a daily wage labourer, decided to get her married off to a 26-year-old man, a truck driver. With frontline workers busy with the pandemic crisis and the lockdown, he thought he could conduct the marriage without the authorities knowing. The wedding, he thought, would also cost less as the social distancing rules meant he would have to invite only a few guests. Soubhagyabati's friend, who worked at the Anganwadi centre with her, came to her rescue with a call to the childcare helpline.

There was a dramatic upswing in child marriages and trafficking following the Nepal earthquake in 2015. After the Ebola crisis, the number of girls who dropped out of schools almost tripled in countries that suffered. Following the 2004 tsunami, girls in Indonesia, India and Sri Lanka were forced into marriage with tsunami widowers and in many instances did so to receive state subsidies for marrying and starting a family. In Bangladesh and Northeast India, there's enough evidence to show that increased extreme poverty provoked by river erosion and floods often push families to adopt child marriage as a survival strategy.

Worldwide, an estimated 12 million girls are married every year before the age of 18, which amounts to nearly one girl every three seconds. Last month, the UN warned that the pandemic could lead to an extra 13 million child marriages over the next decade.

"Many girls won't return to school because they will be kept at home for caregiving, domestic work, farm grazing and marriage. Child marriage will increase exponentially, as families already see girls as a liability and getting them married off will mean one less mouth to feed," said Safeena Husain, founder and executive director at Educate Girls.

An additional four million girls are at risk of child marriage in the next two years because of the coronavirus pandemic, a report by global charity World



Vision has warned, as deepening poverty is likely to drive many families to marry off their daughters. The report also warns that up to 85 million children face physical, sexual and emotional violence at home and in their communities over the next three months as the financial and emotional pressures of the pandemic worsen.

## **Mid-Day Meals No More. Result: Going Hungry**

The other crisis that needs to be solved is hunger. “It can be take-home ration or meals in schools, but hunger has to be addressed for children to go back to school,” Safeena Husain said.

A cooked mid-day meal, though measly, is a right that India’s children gained from the highest judicial intervention in routine schooling. Before the pandemic hit, students up to class 8 were served cooked, nutritious meals during school hour. The coronavirus has disrupted this routine.

The Centre on March 20 directed states to either provide cooked meals or food allowance to students till schools reopen.

In Delhi, despite the Centre’s order to provide food security allowance to students amid the lockdown, parents of students of both government and municipal schools say they have not received the subsidy since April.

Meanwhile, officials say that the government has started the procedure of transferring food security allowance to the accounts of the students. The delay, they say, is because majority of the officials have been engaged in Covid-19 duties since March.

*(The original version of this article was first published on News18.com)*

# MUSLIM WOMEN AND THE SILENT PANDEMIC: OF RELIEF, DOMESTIC VIOLENCE, AND ADVOCACY DURING COVID – AN INTERVIEW WITH ZAKIA SOMAN, FOUNDING MEMBER, BHARATIYA MUSLIM MAHILA ANDOLAN

– Akshat Agarwal and Prannv Dhawan<sup>1</sup>

## Abstract

*Bhartiya Muslim Mahila Andolan is an autonomous, secular, rights-based mass organisation led by Muslim women. Formally established in January 2007, BMMA was organised as a small group of Muslim women in the aftermath of the 2002 communal riots. It was formed with an aim to bring Muslim women together under a democratic organisation, as a progressive voice for the Muslim community. The BMMA has more than 100,000 members. It has worked for the economic empowerment of women by establishing Karwaan Centres in various cities. It has campaigned for law and policy reform by engaging in activities to foster literacy and education, increasing employment opportunities and improving the livelihood of women. In this interview Zakia Soman of the BMMA talks about the experiences of Muslim women during the pandemic.*

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<sup>1</sup> Akshat Agarwal is an alumnus of the National Law School of India University (NLSIU). Prannv Dhawan is a student at NLSIU. Akshat and Prannv interviewed Ms. Zakia Soman about the work of the BMMA during the pandemic and the position of women in the Muslim community. They would like to acknowledge Heramb Mishra for his Editorial Assistance..

***Keywords: Muslim Community, Domestic Violence, Lockdown, Marginalisation***

## **1. How has the public health crisis affected the women you work with? With special reference to the lockdown, and its impact on physically preventing women from accessing legal services?**

The impact of this pandemic has been exacerbated by the lockdown. The impact on the poor, the excluded communities, including the communities where the Bhartiya Muslim Mahila Andolan ('BMMA') works, has been the worst. Almost all women who come to us, members of the BMMA, are daily wagers. They mostly engage in home-based work for meagre daily wages.

Initially, there was communalisation of the fight against the pandemic. It started in Delhi with the Tablighi Jamaat and the kind of stigmatisation that followed. Another sad fact about our democracy is the ghettoization of the Muslim community in India. These ghettos have poor public infrastructure such as a lack of proper roads, electricity, water, poor public health infrastructure, etc. The poorer Muslim population in many cities has been deprived of civic amenities, normal entitlements, and government schemes. So, because of the initial communalisation, no one cared to visit the ghettos to disseminate basic information about social distancing and hygiene in these areas.

The corona jihad discourse spread by the Hindi news channels aggravated the feeling of vulnerability in the Muslim community, because people were already being forced out of their livelihoods and deprived of meals.

Initially, we undertook ration distribution in early April. The requirement was much higher than we had anticipated and prepared for. We raised resources by asking people for support. Some people supplied ration kits. Even people who were earning dignified livelihoods were in need of ration kits. We reached out to around fifty thousand families across 7-8 states. It is really unfortunate for the country and the informal sector. The lockdown has been a disaster for the Muslim community because a large section of the community is employed in the informal sector. It has also been a disaster for women, barring some exceptions.



## **2. Were there any government schemes for people who had lost the livelihoods or did existing schemes like the PDS reach people who were below poverty line? Are there schemes that reach ghettos, in the first place?**

In the first round, we distributed rations informally. After we were able to raise our resources and reach larger numbers, we tried to ascertain whether extra rations announced by the governments were reaching these ghettos. We rarely found a family or a woman who claimed to be a beneficiary of these ration schemes. These ration schemes were not reaching the people.

## **3. In your experience, have there been more instances of violence against women?**

Our volunteers' work has been affected by the pandemic and the social distancing. We do not have PPEs for our volunteers, so they have not been able to physically contact women, which is very important to do. Usually, each volunteer interacts with more than two or three dozen women on a day. Women who normally accessed volunteers at their homes to express their problems have lost this option because of the pandemic.

But, we have received complaints of domestic violence during food distribution and through phone calls and emails. Based on this evidence, I can say that there have certainly been complaints by women. There have also been reports of triple talaq despite the law. These cases have been reported from places such as Delhi, Ahmedabad, Hyderabad, and Bombay.

As part of triple talaq, domestic violence is part of the deal. Therefore, indirectly, we have received evidence of increased violence against women. We have not been able to do the work we would have normally done, and it seems that this is going to be the case for quite some time.

So, we have evidence to support the fact, as indicated by the National Commission for Women and the United Nations figures, that there has been a greater burden on women and girls.

#### **4. What has been the effect of The Muslim Women (Protection of Rights on Marriage) Act?**


In most cities, we have had a problem in filing First Information Reports under the Act. The police are not sufficiently aware of the law. The law entitles women to certain protections and to demand action on the part of the police, but we have struggled to get the police to act. Also, this law was on top of the government's political agenda. Similar to laws on dowry and domestic violence, this law has failed to change the situation on the ground. The women have had a hard time filing FIRs. The police know that if they file FIRs, they will be expected to perform some actions. Also, in some cases, husbands have bought their way out by bribing the police. I would say that the law has not been effectively implemented on the ground, and this has worsened during the pandemic.

The pandemic has rendered many institutions inactive. Beyond domestic abuse and triple talaq, patients suffering from serious illnesses have not been receiving treatment and attention. Government agencies have claimed that they are prioritising the pandemic. But, people who tested positive for COVID and lost family members during the pandemic are reporting that even they are not receiving any attention. Stories about people sitting outside hospitals and unresponsive municipal corporations have become common.

In a patriarchal society, issues such as triple talaq and domestic violence, which are important from a woman's point of view, are ignored. So, the pandemic has perpetuated and consolidated this patriarchal exclusion of women.

#### **5. Are there different vulnerabilities based on factors like class or caste within the Muslim community?**

The Muslim community is not monolithic. Apart from being religiously diverse, the Muslim community is also diverse by way of disparities. It is diverse in terms of caste, gender, and class. But, now, it would not be an overstatement to say that the Muslim community in India is going to be the Dalit community of tomorrow. The community has been deprived of its economic rights, education rights and the right to life even. Of course, the Muslim community has always been economically and socially backward, but now there has been



a direct political onslaught. Laws like the CAA, open hatred, and stereotyping have been part of this onslaught. The community lacks leaders who can stand up to this onslaught.

This is a violation of equal citizenship rights. But, due to the lack of leaders and democracy within the community, there are no forces that can stand up to this challenge. No matter the extent of repression, the challenge can only be through democratic means. For this, we need democratisation within the community, which is singularly lacking. So, the Muslim community is under an onslaught both from within and from outside.

This pandemic is only going to worsen the situation. After the tussle with China is over, we will be back to communal politics, because the seeds have already been sown with phrases like “corona jihad.”

The arrests following the Delhi riots have been shocking. People who have lost their homes and family members are being arrested while those who were caught on tape instigating the violence do not figure in FIRs and charge sheets. It looks like this is going to be the order of the day. I had witnessed similar things in the aftermath of the 2002 communal riots.

## **6. Are there other pandemic-specific initiatives to provide protection to women or raise awareness about this “silent pandemic” in our houses?**

There is a small number of groups within the Muslim community that are working for gender justice. Apart from BMMA, there are two initiatives in Tamil Nadu. The Steppes Organisation and Adv. Badr Sayyed’s organisation are engaged in relief work and food distribution. They are also engaged in building awareness in the community through women. In Uttar Pradesh, there are some organisations led by Muslim women. They are localised NGOs, but we’re working together. There are very few organisations led by Muslim women that unequivocally believe in gender justice and gender equality. We provide strength to each other. We continuously work to educate the community through the women and girls, and in some states, through boys. We believe that it is important that boys are educated in this way because,

tomorrow, every boy is going to be a man. And, every man has the potential for domestic abuse and violence. I know, I'm making this sweeping exaggeration, but I am stating this to drive home the point about the need to involve boys and men in this process.

**7. In addition to Muslim women organisations, considering the importance of the mosque in Muslim society, especially in the ghettos that you were talking about, has there been any community initiative from these quarters?**

There have been many initiatives that have engaged in providing food, healthcare facilities, etc. But, these organisations have solely focused on providing relief, rehabilitation, charity, etc. They are not following the rights-based approach concerning Muslim women and men. I attribute this to the lack of democratisation in the Muslim community. There's no one in the larger Muslim community who talks about justice and equality for the Muslim girl or the Muslim woman. Religious organisations, such as the Jamiat Ulema-e-Hind and the Jamaat-e-Islami, have women wings, but they are weak subsidiaries to the male wings. These women are obedient to the conservative patriarchal paradigm that has been set by the larger organisations.

It is a challenge to get people to accept the perspective that women and girls are equal human beings, equal citizens, and therefore, need equal treatment in all spheres of life.

Any woman who talks about this is labelled as 'not a good woman,' a westernised feminist, or worse, an agent of the BJP/RSS. I have been called all kinds of names. It is very difficult to approach these issues. Only if you are grounded in the community, or are a liberal humanist who believes with conviction that girls and women should get their due, will you be able to venture into this. Otherwise, you will keep quiet because of the intense social pressure.

In times of crisis, even in the best groups, women and girls are relegated to the background. They always say that it is not the right time to deal with these issues for one reason or the other. For example, fighting COVID and saving lives, or dealing with the BJP. The time for women's equality is never right.

## **8. So, the BMMA is involved in advocacy work related to personal law, etc. How has the pandemic affected your advocacy work?**

So, we would have examined the triple talaq law by looking for loopholes, lacunae, etc. We would have prepared a list of these issues and started a campaign for amendments. There was a lot of opposition to this law because it criminalises triple talaq. On that front, we would have put together our learnings and various experiences to call for amendments. But, that opportunity has been lost because of the pandemic.

We are also campaigning for a legal ban on polygamy and for raising the age of marriage to 18 and 21. But, due to the pandemic, the law reform issue has completely been put on the back burner. We can only work on these issues after the pandemic is over. Our strength comes from community mobilisation and community organisation. This is not possible due to social distancing and the infectious nature of the virus. We have a petition in the Supreme Court against polygamy and *nikah halala*, but our lawyer has not been able to file it because of the pandemic.

# CALL FOR SAFE SPACE: INTERSECTIONAL EXPERIENCES OF MINORITY WOMEN FACING DOMESTIC VIOLENCE DURING CORONAVIRUS PANDEMIC IN INDIA

*Iram Khan<sup>1</sup>*

## Abstract

*The focus of this paper is on the experiences of Muslim women facing domestic violence during the Coronavirus pandemic in India. Owing to being a religious minority, Muslim women face a particular kind of barrier while accessing legal options to address domestic violence under both criminal law (Section 498A IPC) and civil law (Protection of Women from Domestic Violence Act, 2005). Domestic violence, in many cases, is followed by a threat to divorce or polygamy in a Muslim household. Because of the weak economic position of Muslim women facing domestic violence, often they do not want to be divorced. The paper suggests better enforcement of law and some legal reforms to protect women against domestic violence. On the preventive level giving proper dower, equal inheritance rights to daughters and the role of religious leaders in preaching against domestic violence are other viable options.*

## 1. Introduction

Domestic violence is a humiliating and painful everyday experience of millions of women across nationalities, religions, caste and class. The pendulum of

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social responses to a domestic violence survivor in our society swings between “This happens to everyone!” to “Why didn’t you just leave?” Usually, in the beginning phase of the domestic violence, the woman in question is hurt, yet confused, about the abuse. At this stage, she is often discouraged from complaining by making her feel that it is a pervasive phenomenon. Later, when the violence gets unbearable for her, and she approaches law enforcement authorities, she is taunted and asked about why she sustained the abuse for that long a time (in a way suggesting that it is her fault that she was subjected to domestic violence). In the present COVID-19 pandemic times, the number of domestic violence cases has risen sharply around the world. The United Nations (UN) has called domestic violence a ‘shadow pandemic’.<sup>2</sup> In India the number of reported domestic violence cases doubled<sup>3</sup> in this pandemic; still, the truth is much harsher, as studies about India have found that “86% women who experience domestic violence do not ask for help and 77% of the victims do not even mention the incident to anyone.”<sup>4</sup> Coronavirus is a good spotlight not just on our weak and broken health systems, but also on every pre-existing socio-economic-legal issue of our society in a much-amplified form. Leaving aside the aspirational value of the UN report on the human rights crisis in the world, nothing can be more oxymoronic in these pandemic times than the title of this UN report: *COVID-19 and Human Rights: We are all in this together*.<sup>5</sup> It should come across as no surprise that, in reality, we are not all in this together. The worst hit in this pandemic are the already marginalized identities of our society. One such identity is the “subaltern Muslim women”<sup>6</sup>

2 ‘The COVID-19 shadow pandemic: Domestic violence in the world of work: A call to action for the private sector’ UN Women <<https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2020/brief-covid-19-domestic-violence-in-the-world-of-work-en.pdf?la=en&vs=5715>> accessed on 20 July 2020

3 Scroll Staff, ‘Covid-19 lockdown: Domestic violence cases reported to NCW nearly double in last 25 days’ *The Scroll* (17 April 2020) <<https://scroll.in/latest/959515/covid-19-lockdown-domestic-violence-cases-reported-to-ncw-nearly-double-in-last-25-days>> accessed on 21 July 2020

4 Vignesh Radhakrishnan, Sumant Sen, Naresh Singaravelu, ‘Data | Domestic violence complaints at a 10-year high during COVID-19 lockdown’ *The Hindu* (22 June 2020) <<https://www.thehindu.com/data/data-domestic-violence-complaints-at-a-10-year-high-during-covid-19-lockdown/article31885001.ece>> accessed on 20 July 2020.

5 ‘COVID-19 and Human Rights: We are all in this together’ UN <[https://www.un.org/victimsofterrorism/sites/www.un.org.victimsofterrorism/files/un\\_-\\_human\\_rights\\_and\\_covid\\_april\\_2020.pdf](https://www.un.org/victimsofterrorism/sites/www.un.org.victimsofterrorism/files/un_-_human_rights_and_covid_april_2020.pdf)> accessed on 20 July 2020

6 Flavia Agnes, ‘From Shah Bano to Kausar Bano - Contextualizing the “Muslim Woman” within a Communalized Polity’ in Ania Loomba and Ritty A Lukose (eds.) *South Asian Feminisms* (Duke

who are the largest religious minority group in India. Thus, it is of value to study the intersectional experiences of Muslim women in India facing domestic violence during this pandemic. This short paper is divided into three sections. In the first section, I investigate the legal protection regime against domestic violence in international and Indian law. In the second section, I focus on the issues of intersectionality and how they affect Muslim women facing domestic violence. And in the third section, I explore the role of religion in preventing domestic violence.

## 2. Law & Domestic Violence

Under international law, *jus cogens* norm is a norm accepted and recognized by the international community of States from which no derogation is permitted.<sup>7</sup> There have been studies that have argued for recognizing a right against violence as *jus cogens* by placing domestic violence as torture.<sup>8</sup> On a careful perusal of the manner in which States are responding to domestic violence within their jurisdictions, it has been contended that there is an “evidence of customary international law<sup>9</sup> in the making.”<sup>10</sup> While these claims help us in building a stronger case for ensuring violence free world for women, the gains for women have not been much.<sup>11</sup>

Under the Indian law, a domestic violence survivor – irrespective of her religion – has two options: for seeking criminal remedies, she can file a case under Section 498A Indian Penal Code and for seeking civil remedies, she can proceed under the Protection of Women from Domestic Violence Act, 2005 (PWDVA).

Section 498A provides protection to women against dowry related harassment and cruelty committed by her husband or his relatives. It prescribes a

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University Press 2012) 33

7 Article 53 of Vienna Convention on the Law of the Treaties, 1969

8 Rhonda Copelon, ‘Intimate Terror: Understanding Domestic Violence as Torture, in Human Rights of Women’ in Cook R (ed), Human Rights of Women – National and International Perspectives (University of Pennsylvania Press 1994) 116–152

9 Article 38 1(b) ICJ Statute states Customary International Law as a binding source of international law.

10 Bonita Meyersfeld, *Domestic Violence and International Law* (Hart Publishing Ltd 2010) 107

11 UN Women, ‘Facts and figures: Ending violence against women’ <<https://www.unwomen.org/en/what-we-do/ending-violence-against-women/facts-and-figures>> accessed on 20 July 2020



punishment of 3 years and a fine. Along with this, the Dowry Prohibition Act, 1961 also makes taking, demanding and giving of dowry a punishable act. Section 498A came as a result of rigorous demands by the women's movement, and despite its limitations, it has come out to be useful for women in terms of creating a deterrent.<sup>12</sup> The unfounded furore over misuse of Section 498A IPC misses the point that often it is not in the interest of wives to push for the conviction of their husbands. Hence, higher acquittal in these cases does not imply misuse of the law or the innocence of the husbands.<sup>13</sup>

Under PWDVA, the definition of domestic violence is all encompassing, including within its purview: physical, verbal, emotional, sexual and economic violence. The PWDVA provides seeking various reliefs, like applying for payment of compensation or damages by the aggrieved woman, right to reside in a shared household irrespective of the title of the same, etc. Flavia Agnes has argued that one of the immediate needs of a domestic violence survivor is providing her with some financial support. She has suggested that the government must create a fund at the easy disposal of judges before whom the maintenance applications are filed by these aggrieved women. Later, the said amount can be recovered from the husbands.<sup>14</sup>

Recently, Vidhi Centre for Legal Policy<sup>15</sup> came out with a report where they highlighted the issue of less numbers of Protection Officers who are a crucial link between “*the aggrieved women and courts, police, lawyers and other support services.*” The report calls for appointment of more Protection Officers, as under the worsening situation of pandemic, women would continue to find it difficult to approach intervention.

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12 Flavia Agnes, 'Protecting Women against Violence - Review of a Decade of Legislation, 1980-89' 27(17) EPW (April 1992)

13 Prashant K Trivedi and Smriti Singh, 'Fallacies of a Supreme Court Judgment Section 498A and the Dynamics of Acquittals' XLIX(52) EPW (December 2014)

14 Flavia Agnes, 'What Survivors of Domestic Violence Need from Their New Government' 54(17) EPW (April 2019)

15 Vidhi Centre, 'Towards a Post-Covid India: 25 Governance Challenges and Legal Reform (30 June 2020) 24-25 <<https://vidhilegalpolicy.in/research/towards-a-post-covid-india-25-governance-challenges-and-legal-reforms/>> accessed on 22 July 2020

### 3. Muslim women, Intersectionality and Domestic Violence in COVID-19 pandemic

As per 2011 census, there are 66.8 million Muslim women in India. Conforming to their stereotypical image, Muslim women are “triply disadvantaged” owing to their gender, religious minority status and abject poverty stricken lives.<sup>16</sup> Zoya Hasan and Ritu Menon state in their study on Muslim women in India about the impact of violence on their private lives: “*Violence, or the threat of violence, within the home—where she spends the greater part of her life—and the lack of any viable options to it, keep her in a highly subordinated and often abusive relationship, while cultural and social norms, suffused with a pervasive patriarchy, allow her little choice or decisional autonomy in practically every aspect of her life.*”<sup>17</sup> From the unsuccessful claim of Shehnaaz Sheikh in 1983<sup>18</sup> to Shayara Bano, Aafreen Rehman, Gulshan Parveen, Ishrat Jahan and Atiya Sabri’s<sup>19</sup> successful intervention in Supreme Court<sup>20</sup> resulting in getting triple divorce pronounced as invalid in 2017, the one common denominator in the lives of all these women has been that they all are domestic violence survivors.

Like the impact of COVID-19 has been felt differently based on where one is placed on the socio-economic ladder, it comes as no surprise that the experiences of all women cannot be the same while facing domestic violence and, also, while facing domestic violence during this pandemic. The kind of redressal options easily accessible (even if available) are not the same. Employing Kimberle Crenshaw’s intersectionality theory,<sup>21</sup> it can be easily illustrated how women coming from certain identities would be the worst hit during this pandemic. Other identities like class, caste, race and religion,

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16 Zoya Hasan and Ritu Menon, *The Diversity of Muslim Women’s Lives*, OUP, 2005, 6-7

17 Zoya Hasan and Ritu Menon, *Unequal Citizens: A Study of Muslim Women in India*, Oxford University Press, 2004, 241.

18 Jyoti Punwani, ‘I’ve been laughing and crying,’ says woman who first challenged Muslim personal law in SC in 1983’ Scroll (4 September 2017) <<https://scroll.in/article/848680/ive-been-laughing-and-crying-says-woman-who-first-challenged-muslim-personal-law-in-sc-in-1983>> accessed on 20 July 2020

19 Divya Arya, ‘Triple talaq: The women who fought instant divorce in India’ The BBC (22 August 2017) <<https://www.bbc.com/news/world-asia-india-40897519>> accessed on 20 July 2020

20 Shayara Bano vs Union of India (2017) 9 SCC 1

21 Kimberle Crenshaw, ‘Demarginalizing the Intersection of Race and Sex : A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Anti-racist Politics,’ [1989] The University of Chicago Legal Forum, 139.

along with gender are bound to play a role in exacerbating the position of women living on the margins. With a wide digital divide and huge economic disparity in our society, despite the spike in reporting, it does not fully encompass the magnitude of domestic violence cases during this pandemic, as reporting of cases has been largely using WhatsApp or other online services.<sup>22</sup> The anti-coronavirus measures undertaken by the State in terms of lockdown measures and categorization of essential and non-essential services is adversely impacting access of women to avail services regarding relief from domestic violence. There is no explicit mention in any government order about exemption from lockdown measures for the women facing domestic violence. There are serious lapses in the approach of the government, and as more empirical data would come out in times to come, Muslim women – owing to their weak economic position – would be one of the worst hit sections of this pandemic. Also, studies have shown that stress and poverty can often increase violence at home.<sup>23</sup> This pandemic is resulting in severe economic consequences in terms of businesses closing down and jobs getting cut; again Muslim women would be severely impacted directly and indirectly as a result of the economic fallouts.

Studying domestic violence faced by Muslim women is a difficult terrain. One needs to be sensitive towards not adding to the existing Islamophobic or racist attitudes against the men of minority communities. At the same time it should be acknowledged that men from marginalized communities are no less patriarchal or abusive than any other men.<sup>24</sup> It is difficult to avoid the value loaded debates around triple divorce or polygamy in India that, also, encapsulates the issue of domestic violence. Often, the supporters of triple talaq have argued that triple divorce gives women an easy way out of abusive marriages, without considering that owing to their economic dependence on

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22 Ambika Tandon and Mira Swaminathan, 'How useful are Calls to Domestic Abuse Helplines during Lockdown' *The Quint* (14 May 2020) <<https://www.thequint.com/voices/blogs/coronavirus-lockdown-domestic-abuse-are-helpline-numbers-useful>> accessed on 21 July 2020

23 Helen Lewis, 'The coronavirus is a disaster for feminism' *The Atlantic* (19 March 2020) <[www.theatlantic.com/international/archive/2020/03/feminism-womens-rights-coronavirus-covid19/608302/](http://www.theatlantic.com/international/archive/2020/03/feminism-womens-rights-coronavirus-covid19/608302/)> accessed on 20 July 2020

24 Sunaina Arya, 'Dalit or Brahmanical Patriarchy? Rethinking Indian Feminism' [2020] *CASTE – A Global Journal on Social Exclusion*, 1(1), 217–228.

their husbands, these women do not want divorces, but protection against domestic violence.

While marriage in Islam is viewed as completion of half of one's religious duties,<sup>25</sup> given the unequal powers, especially regarding divorce to husbands and the financial insecurity faced by wives initiating divorce (khula) like forfeiting dower amount,<sup>26</sup> a Muslim marriage is as strong or as weak as the husband wants it to be! As only Muslim men and not women hold the unfettered power to divorce, the situation around domestic violence in a Muslim household gets complicated. So, the recent criminalization of triple divorce by way of *Muslim Women (Protection of Rights on Marriage) Act, 2019* is a welcome step.<sup>27</sup> This Act gives Muslim women some bargaining power to set the balance in her favor to some extent. The argument used by critics<sup>28</sup> that the said law would be used to target Muslim men seems to make an argument that is often given against making marital rape a crime.<sup>29</sup> Muslim men need to be protected from the biased investigative agencies implicating them in false terror charges,<sup>30</sup> and not from their own wives. Leaving aside the effectiveness of the criminal justice system, the law is bound to have a good deterrent effect. Further, Muslim personal law allows for polygamy. It is not necessarily something that Muslim men do, but often just like to threaten divorce; they also give threats that they would marry again and desert their present wife, which can tantamount to mental cruelty or emotional domestic violence.

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- 25 Imani Jaafar-Mohammad and Charlie Lehmann, Charlie, 'Women's Rights in Islam Regarding Marriage and Divorce,' *Journal of Law and Practice*, 2011, 4 (3), 2. <<https://open.mitchellhamline.edu/cgi/viewcontent.cgi?article=1020&context=lawandpractice>> accessed on 20 July 2020
- 26 Sylvia Vatuk, *Marriage and its Discontent: Women, Islam and Law in India* (Women Unlimited 2017)
- 27 Zakia Soman and Noorjehan Niaz, 'Amid Politicisation of Triple Talaq, Let's Not Forget Why the Law Is Really Needed' *The Wire* (22 September 2018) <<https://thewire.in/law/instant-triple-talaq-law-muslim-women-politicisation>> accessed on 20 July 2020
- 28 Flavia Agnes, 'The Politics behind Criminalising Triple Talaq' *EPW* 53(1) (6 January 2018) <[https://www.epw.in/journal/2018/1/commentary/politics-behind-criminalising-triple-talaq.html?o=ip\\_login\\_no\\_cache%3Dae86eacca62ece0e17dac18b9fbee066](https://www.epw.in/journal/2018/1/commentary/politics-behind-criminalising-triple-talaq.html?o=ip_login_no_cache%3Dae86eacca62ece0e17dac18b9fbee066)> accessed on 20 July 2020
- 29 —, 'Criminalising Marital Rape Will Threaten the Institution of Marriage, Centre Tells Delhi HC' *The Wire* (30 August 2017) <<https://thewire.in/gender/criminalising-marital-rape-will-threaten-institution-marriage-centre-tells-delhi-hc>> accessed on 20 July 2020
- 30 Sankalita Dey and Anagha Deshpande, 'One in two Indian Muslims fears being falsely accused in terrorism cases, finds study' *The Print* (12 June 2018) <<https://theprint.in/india/governance/one-in-two-indian-muslims-fears-being-falsely-accused-in-terrorism-cases-finds-study/69295/>> accessed on 21 July 2020

Adding to these discriminatory or unjust religious practices are the experiences of Muslim women dealing with the State or any of its agencies, like the police, which complicates their experiences of domestic violence. The complicity of the State in many grave situations of violence against Muslims creates a blockage for Muslim women who do not trust the police or fear that extreme harsh measures might be taken up against their husbands, if they file domestic violence complaints.<sup>31</sup> It is interesting to observe that while Muslim women feel empathetic towards the weak position of the men in their community in the eyes of the State and thus resist from complaining, Muslim men do not reciprocate it in any manner. Indeed, they often blame their own women for their plight, like not being religious enough, or not praying, or not dressing modestly, etc.,<sup>32</sup> and therefore their bad situation is viewed as a result of wrath from God. This puts more pressure on Muslim women not to report domestic violence cases.

#### 4. Religion & Domestic Violence

The argument that Islam allows for wife-beating is used both within and outside the community for different motives. The conservative-patriarchal section within the Muslim community uses it as an opportunity to subjugate and control the Muslim women within their community. Citing the behavior of the Muslim right, the extremists among the majoritarian religion use it as an example to demonise the entire Muslim community.<sup>33</sup> Similar to the analogy of dowry related domestic violence considered a typical form of “Indian domestic violence,”<sup>34</sup> a typical Indian-Muslim domestic violence has an additional attribute of threat to divorce or polygamy by abusive husbands, along with demands for dowry. It is interesting to note that while religion-sanctioned dower is very often not given to a Muslim wife, the custom of

31 Geetanjali Gangoli, *Indian Feminisms Law, Patriarchies and Violence in India* (Ashgate Publishing Ltd. 2007) 110–111

32 Geetanjali Gangoli, *Indian Feminisms Law, Patriarchies and Violence in India* (Ashgate Publishing Ltd. 2007) 112

33 Levi Geir Eidhamar (2018) ‘My Husband is My Key to Paradise.’ Attitudes of Muslims in Indonesia and Norway to Spousal Roles and Wife-Beating, *Islam and Christian-Muslim Relations*, 2018, 29:2, 241–264

34 Geetanjali Gangoli, *Indian Feminisms Law, Patriarchies and Violence in India* (Ashgate Publishing Ltd. 2007) 99

dowry with no Islamic backing is forced upon Muslim women and their families.

A 2015 published Report of Bhartiya Muslim Mahila Andolan titled, '*Seeking Justice Within Family – A National Study on Muslim Women's Views on Reforms in Muslim Personal Law*,' while acknowledging the poverty amongst Muslims, also states, "If a large number of women are without property, specifically without a home of their own, it implies that they are dependent on their husbands for their residence and consequent security. If she has nowhere to go, and if the parents are not supportive or are poor, then she has no choice but to put up with the violence and abuse inflicted by the husband."<sup>35</sup> Thus, ensuring proper dowry at the time of marriage to wives and equal inheritance rights to daughters, including title of their parental house can play a much more effective role in making them economically sound and preventing domestic violence. Also, religious leaders who have huge following amongst the community must be called upon to speak against domestic violence during Friday sermons or Eid sermons. Again, quite often, it is witnessed that the sermons revolve more towards the duties of a wife and less about her rights under Islam. This course correction can be a powerful means for reforms from within the community.

The engagement with religion is more important in COVID-19 pandemic times. The pandemic is causing large scale suffering in terms of loss to human life and livelihood opportunities. When people feel abandoned by their governments to suffer their plight and no plausible cure comes from science, people tend to turn towards religion to seek some sense of certainty. Though it is challenging, we cannot let the conservative section dictate their whims and fancies as religion to the people in these trying times. The example of Indonesia's Aceh province is a good reminder. Post 2004 tsunami the region has seen the rise of stricter Islamic law.<sup>36</sup>

35 BMMA, 'Seeking Justice Within Family – A National Study on Muslim Women's Views on Reforms in Muslim Personal Law' (bmmaindia.com, August 2015) 47 <<https://bmmaindia.com/2015/08/10/bmmpublication-seeking-justice-within-family-a-national-study-on-muslim-womens-views-on-reforms-in-muslim-personal-law/>> accessed on 21 July 2020

36 Richard C Paddock, 'In Indonesia's Aceh, Stricter Islam Followed Tsunami' *The Wall Street Journal* (24 December 2014) <<https://www.wsj.com/articles/in-indonesias-aceh-stricter-islam-followed-tsunami-1419453104>> accessed on 23 July 2020

## 5. Conclusion

Violence against women is a global concern and there is no such thing as one size fits all, so law must provide multiple legal options from which a woman can choose based on her need to protect herself from domestic violence – it could be Sec.498A IPC in certain situations, resorting to PWDVA, or approaching religious bodies or women’s NGOs for negotiation and mediation,<sup>37</sup> and now, with criminalization of triple divorce, seeking relief under Muslim Women Act, 2019. Also, as suggested by Flavia Agnes, it might be important to link civil and criminal law on domestic violence to provide a more comprehensive solution to the women.<sup>38</sup> The issues around domestic violence faced by Muslim women in India grapples with the question of discriminatory personal laws, biased State machinery and a section of callous conservative Muslim community. The present COVID-19 pandemic time is an unprecedented time. Unprecedented times call for unprecedented measures; but, with the rise of authoritarian nationalism around the world, including India, not much change can be expected in the situation of Muslim women facing domestic violence. Yet, to merely aim to bring down the number of domestic violence cases to pre-COVID-19 pandemic days is too low an aim. We need to work holistically to tackle this menace. We should be brave enough to answer some difficult questions regarding our family structure, our religious values and the rise in authoritarianism around the globe. Without this, we cannot address domestic violence in the COVID-19 and the post COVID-19 world.

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37 Kalpana Kannabiran, ‘India’ in Mahnaz Afkhami, Yakın Ertürk, and Ann Elizabeth Mayer (eds.) *Feminist Advocacy, Family Law and Violence Against Women – International Perspectives* (Routledge 2019) 60

38 Flavia Agnes, ‘Section 498A, Marital Rape and Adverse Propaganda’ [2015] L(23) EPW 14

# THE DALIT WOMAN AND THE PANDEMIC: EXPLORING DOMESTIC VIOLENCE FROM AN INTERSECTIONAL PERSPECTIVE

– Ishan Bhatnagar<sup>1</sup>

*This paper seeks to evaluate the potential impact of the pandemic on the lives of Dalit women and seeks to amalgamate theories on domestic violence, caste, identity and masculinity in doing so. It also critiques governmental response and postulates possible courses of action, having identified the factors undermining the efficiency of existing institutional mechanisms and the short-term and long-term solutions thereto.*

***Keywords: Caste and domestic violence; brahminical patriarchy; double discrimination; government response; structural barriers***

It is in moments of tremendous adversity that a person's true character is revealed. And so it is for democracies and their institutions. Given the overwhelming pressures of the situation, our choices betray our true priorities. Recent events tell us that we live in a deeply unequal and fundamentally unjust world: While it is true that the Coronavirus itself does not differentiate on the basis of gender, region or caste, its impact has been disproportionately higher for marginalized and disadvantaged populations.<sup>2</sup> State action, far from mitigating such harm, has only served to magnify the harm caused.

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<sup>2</sup> Global Ministries, Covid-19: Indiscriminate Disease, Unequal Vulnerability and Inspiration for Human Resilience (2020) GM <[https://d3n8a8pro7vhmx.cloudfront.net/globalministries/pages/15275/attachments/original/1587421174/GM\\_COVID-19\\_AE\\_Commentary\\_%2812%29.pdf?1587421174](https://d3n8a8pro7vhmx.cloudfront.net/globalministries/pages/15275/attachments/original/1587421174/GM_COVID-19_AE_Commentary_%2812%29.pdf?1587421174)> accessed 22 July 2020.



In the course of the pandemic, women have found themselves being assaulted on three fronts: on the economic front and in terms of job security, added burden as primary caregivers due to lack of access, and through forcible confinement with their abusers, leading to explosions of violence.<sup>3</sup> The horrifying global surge in domestic violence following the immediate aftermath of the COVID-19 pandemic-induced lockdowns bears testimony to this truth.<sup>4</sup> We need only look inwards to see a similar trend back home with the NCW reporting a spike of a hundred and fifty percent in the number of cases that are reported to the Commission,<sup>5</sup> to say nothing of the, possibly, gargantuan hidden figures.<sup>6</sup>

The pandemic has also contributed to immense suffering amongst the depressed classes, with the response to the pandemic itself being a “caste atrocity.”<sup>7</sup> The migrant crisis that came about as a consequence of a hastily imposed lockdown, leading to immense suffering and even death for the workers, has a marked caste component.<sup>8</sup> So does the gradual erosion of labor rights that has taken place in the wake of the pandemic.<sup>9</sup>

While there has been some discourse both on the shadow pandemic that imprisons women in their very homes and, also, the caste dimensions of the

- 3 Debbie Langston, ‘What Covid-19 reveals about gender inequality’ (The Guardian, 28 April 2020) <<https://www.theguardian.pe.ca/opinion/local-perspectives/guest-opinion-what-covid-19-reveals-about-gender-inequality-443156/>> accessed 22 July 2020.
- 4 UN News, ‘UN Chief calls for domestic violence ceasefire amid horrifying global surge’ (UN News, 6 April 2020) <<https://news.un.org/en/story/2020/04/1061052>> accessed 24 July 2020.
- 5 Jagriti Chandra, ‘NCW records sharp spike in domestic violence amidst lockdown’ (*The Hindu*, 15 June 2020) <<https://www.thehindu.com/news/national/ncw-records-sharp-spike-in-domestic-violence-amid-lockdown/article31835105.ece>> accessed 22 July 2020.
- 6 There’s research indicating that nearly seventy percent of Domestic Violence victims do not seek any help. Sreeparna Chattopadhyay and Suraj Jacob, ‘Victims of Domestic Violence in India rarely come forward or seek help’ (*The Wire*, 11 January, 2019) <<https://thewire.in/women/domestic-violence-india-reporting>> accessed 22 July, 2020.
- 7 Chitrangada Choudhury and Aniket Aga, ‘India’s Pandemic Response is a caste atrocity’ (NDTV, 27 May 2020) <<https://www.ndtv.com/opinion/india-s-pandemic-response-is-a-caste-atrocity-2236094>> accessed 22 July, 2020.
- 8 Suraj Yengde, ‘What makes injustice to migrant workers more acute is the fact that many of them are Dalits’ (*The Indian Express*, 5 April 2020) <<https://indianexpress.com/article/opinion/columns/dalitlity-the-caste-factor-in-social-distancing-coronavirus-6347623/>> accessed 22 July, 2020.
- 9 Arun Kumar, ‘The Pandemic is Changing the Fact of Indian Labour’ (*The Wire*, 8 May 2020) <<https://thewire.in/economy/covid-19-pandemic-indian-labour>> accessed 22 July, 2020.

pandemic, the impact of the pandemic on the intersecting vulnerabilities of gender and caste, much like the subjects of such an analysis, remains ignored. Dalit women form a distinct class of Indian citizens that suffer the triple burden of gender bias, caste discrimination and economic deprivation.<sup>10</sup> They face immense exploitation not only on account of their caste status, but also at the hands of their husbands and marital families.<sup>11</sup>

Through this paper, I seek to argue how the pandemic especially endangers the rights of Dalit women as a distinct class of marginalized individuals in the context of domestic violence. This is done with two ends in mind.

Firstly, there is an enormous lack of research on domestic violence in India in general, to say nothing of research dealing with domestic violence amongst Dalit women, and it is intended to stimulate such a debate. Secondly, having established the distinct marginalized status of Dalit women, the state now has a Constitutional commitment to proactively respond to the situation, and I also suggest possible lines of action to that end.

## Definitions and Determinants: Why Caste Matters

Domestic violence as defined under the Protection of Women from Domestic Violence Act, 2005 refers to conduct that harms or injures or endangers health, safety or well-being, whether mental and physical, or tends to do so, and includes physical verbal, emotional or economic abuse.<sup>12</sup> While the Act applies to a variety of situations and defines many stakeholders, I shall mostly restrict my analysis to the narrower issue of intimate partner violence.

## Empirics

Before moving on to the specific implications of caste in examining domestic violence, I seek first to demonstrate that such an analysis has some empirical justification. The research, directly and indirectly, consistently shows how caste is an important marker for domestic violence.

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10 Nidhi Sadana \*Agarwal/Sabharwal and Wandana Sonalkar, 'Dalit women in India: At the crossroads of gender, class and caste' (2015) 8 1 GJTPR <<https://doi.org/10.21248/gjin.8.1.54>> accessed 24 July, 2020.

11 D Sujatha, 'Redefining Domestic Violence: Experiences of Dalit Women' (2014) 49 47 EPW 19, 20.

12 Section 3, Protection of Women from Domestic Violence Act (PWDVA), 2005.

Research conducted by the National Campaign on Dalit Human Rights demonstrates not only the prevalence of domestic violence against Dalit Women (roughly 43% of the respondents recorded regular incidents of domestic violence, which is markedly higher than the NFHS survey national figure of one in three Indian women), but the many dimensions to it, with the home being the second most common site of violence against Dalit women.<sup>13</sup>

Research conducted by the International Center for Research on Women demonstrates socioeconomic status as an important determinant of domestic violence, with the domestic violence also having strong association with the unemployment status of both the husband and wife.<sup>14</sup> Other research very clearly shows the bearing caste has on socioeconomic status.<sup>15</sup>

Michelle Hackett's work is instrumental in presenting a model of domestic violence that makes sense of these statistics in the way it traces the extent of the violence as being a response to socially structured stress that is disproportionately high in families low in socioeconomic status, such as those among the lowest castes and tribes, those in rural poverty, urban slums and those that are socially outcast.<sup>16</sup> Meerambika Mahapatro, RN Gupta and Vinay Gupta also reaffirm the finding that lower caste status, among other things, correlates to higher rates of domestic violence.<sup>17</sup> However, there is tremendous need for further research that helps us ascertain the exact impact that caste has on domestic violence rates, having adjusted the same for other socioeconomic factors.

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13 National Campaign on Dalit Human Rights, *Dalit Women Speak Out: Domestic Violence against Dalit Women in India*, (NDHR, 2006) 5-7 <[https://idsn.org/uploads/media/Violence\\_against\\_Dalit\\_Women.pdf](https://idsn.org/uploads/media/Violence_against_Dalit_Women.pdf)> accessed on 24 July, 2020.

14 International Center for Research on Women, *Domestic Violence in India: A summary report of a multi-site household survey*, (ICRW, 2000) 24 <<https://www.icrw.org/wp-content/uploads/2016/10/Domestic-Violence-in-India-3-A-Summary-Report-of-a-Multi-Site-Household-Survey.pdf>> accessed on 24 July, 2020.

15 Sonalde Desai and Amaresh Dubey, 'Caste in 21<sup>st</sup> Century India: Competing Narratives' (2011) 46 (11) EPW 40, 44.

16 Michelle T Hackett, 'Domestic Violence against women: statistical analysis of crimes across India' (2011) 42 (2) Journal of Comparative Family Studies 267, 270.

17 Meerambika Mahapatro, RN Gupta and Vinay Gupta, 'The Risk Factor of Domestic Violence in India' (2012) 37 (3) Indian Journal of Community Medicine 153, 157 <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3483507/>> accessed 24 July, 2020.

## Intermeshed questions

I draw from an outstanding and diverse academic legacy when I say that gender and caste are both intermeshed questions. Dr. B.R. Ambedkar traced the violent control imposed over women's sexuality back to a system of endogamy that ultimately forms the bedrock of a caste-based society.<sup>18</sup> Uma Chakravarti's work on Brahmanical Patriarchy articulates a view on women's general subordination being the mechanism of control over women's sexuality and this, in turn, being sanctioned by a larger structure that bases itself on the subordination of women.<sup>19</sup>

The arguments in this paper are grounded in the reality of gender and caste, both being institutions that subsist upon the exercise of power, which is often through the use of force. Kalpana Kannabiran's analysis of gender within caste society being defined and structured in such a manner that the 'manhood' of the caste is defined both by the *degree of control men exercise over women* and the *degree of passivity of the women* of the caste forms the bedrock of subsequent analysis.<sup>20</sup> This is corroborated by the finding that most of the domestic violence against Dalit women can be traced back to the social need of a patriarchal system to keep women "in their place," which in turn arises from a combination of factors such as internalized gender discrimination, poverty, dominant discourses of dowry and wifely fidelity and duties.<sup>21</sup>

## Concerns and Implications

The first set of implications flows from conceptualizing domestic violence under the overarching *family stress* framework that rests on two propositions<sup>22</sup>: Firstly, that stress is unevenly distributed in society and is specifically a result of unequal employment opportunities and income exposure and other indicators of disadvantage. And, secondly, given violence being an accepted

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18 Dr. B.R. Ambedkar, 'Castes in India: Their mechanism, genesis and development,' [1916] XLI Indian Antiquary 3, 21.

19 Uma Chakravarti, 'Conceptualising Brahmanical Patriarchy in Early India: Gender, Caste, Class and State,' (1993) 28 (14) EPW 579, 583.

20 Vasanth Kannabiran and Kalpana Kannabiran, 'Caste and Gender: Understanding Dynamics of Power and Violence' (1991) 26 (37) EPW 2130, 2131.

21 n (11) 16.

22 n (14).

response or adaptation to stress, this socially structured and inequitably distributed stress leads to varying degrees of domestic violence. These indicators of disadvantage seem to have a direct bearing on domestic violence, as per the family stress model.

There is abundant research that demonstrates how caste continues to be a determinant of the many indicators of disadvantage that become the substratum within which domestic violence operates within the framework. However, particularly in the context of the present pandemic, the hastily imposed lockdown, the watering down of labour laws, as also the fact that Dalit jobs are being disproportionately impacted, family stress would peak in Dalit households.<sup>23</sup> Since the pandemic in India has disproportionately impacted marginalized communities that already have high levels of family stress, leading to further increases in family stress, the situation is dire, indeed, and would require prompt and effective intervention.

Research on *masculine discrepancy stress* and intimate partner violence suggests that a man's failure to conform to gender roles increases the likelihood of domestic violence.<sup>24</sup> Masculinity, when threatened, may then be demonstrated through intimate partner aggression, and the higher the threat, higher the likelihood of such aggression.<sup>25</sup> It pays to revisit Kannibaran's insight into the construction of masculinity of a particular caste through its control over women.<sup>26</sup> The caste system artificially, structurally and somewhat permanently places the Dalit male in a position of constant masculine discrepancy stress.

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23 Amnesty International India, 'The Novel Coronavirus and its impact on the most marginalized communities,' (*Amnesty International*, 14 April 2020) <<https://amnesty.org.in/opinion-the-novel-coronavirus-and-its-impact-on-the-most-marginalised-communities/>> accessed 24 July, 2020.

24 Dennis E. Reidy, Danielle S. Berke, Brittany Gentile, Amos Zeichner, 'Man Enough? Masculine discrepancy stress and Intimate Partner Violence' (2018) HHS <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5868426/>> accessed 24 July, 2020.

25 Claire G. Lisco, Ruschelle M. Leone, Kathryn E. Gallagher and Dominic J. Parrott, "'Demonstrating Masculinity" Via Intimate Partner Aggression: The Moderating Effect of Heavy Episodic Drinking,' (2015) HHS <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4594881/>> accessed 24 July, 2020.

26 n (19).

What is more, Kannibaran also cites instances of caste atrocities being particularly aimed at ‘castrating’ the Dalit male through public humiliation,<sup>27</sup> thereby heightening both the sense of the threat to their masculinity and the corresponding masculine discrepancy stress. Given the social and economic deprivations that form part and parcel of being lower caste, it would be increasingly difficult for the Dalit man to meet ideals of masculinity in a neoliberal India where access to capital and education determine social status, which have been demonstrated to be mere modern manifestations of caste.<sup>28</sup> Coming to the Covid-19 pandemic, even in the absence of a disproportionate impact on marginalized communities, given the overall impact of the economy, it is the lower strata that are most likely to be priced out of even basic necessities, breaking down the perceived role of the male as provider and thereby heightening his sense of masculine discrepancy.

The *second* set of implications flow from the occupational nature of the caste system.

## Barriers to Seeking Help and the Way Forward

### Barriers to seeking help

In our country, healthcare professionals and police personnel are often first responders to domestic violence. The healthcare system, poorly funded (at about 1.3% of GDP) and severely deficient in healthcare workers, seems to be headed towards a collapse under the immense pressure of an ever-increasing number of Covid-19 cases.<sup>29</sup> Due to a severe paucity in resources and funding, most healthcare workers are not trained to investigate violence or to respond to the needs of survivors.<sup>30</sup> Moreover, caste remains an important factor

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27 n (18).

28 Satish Deshpande, ‘Caste and Castelessness: Towards a biography of the ‘General Category,’ (2013) 48 (15) EPW 51, 52.

29 Cheena Kapoor, Covid-19: Is the Indian healthcare system heading for collapse? (AA, 10 June, 2020) <<https://www.aa.com.tr/en/asia-pacific/covid-19-is-indian-healthcare-system-heading-for-collapse/1871871>> accessed 24 July, 2020.

30 International Center for Research on Women, ‘*Role of the health sector in addressing intimate partner violence in India*, (ICRW, 2018) 9 <[https://www.icrw.org/wp-content/uploads/2018/12/Health-report\\_29Nov2018-Web.pdf](https://www.icrw.org/wp-content/uploads/2018/12/Health-report_29Nov2018-Web.pdf)> accessed 24 July, 2020.

when it comes to access to healthcare in India. Caste determines whether the woman would have access to the healthcare system in the first place.<sup>31</sup>

There's a persistence of unfavorable and discriminatory environments for Dalits and the domination of non-Dalits in health services.<sup>32</sup> Not only would the Dalit woman facing intimate partner violence have lesser access to health services, her access in any case typically being limited only to public healthcare providers, but she would also end up encountering a hostile and discriminatory setup that is unlikely to prioritize her needs. D Sujatha discusses the barriers that Dalit women face even while asking for help: Dalit women find counselling centers to be unapproachable on account of their patronizing treatment of Dalit women.<sup>33</sup>

Policing in India has become notorious for its unwarranted use of force, with torture in custody being a routine occurrence, which is, more often than not, directed at the minorities of the country.<sup>34</sup> In fact, in the Indian setting, the police becomes another agent of oppression of the Dalit woman, which either lets upper caste men get away with atrocities and exploitation with impunity or sometimes even criminalizes the woman complainant.<sup>35</sup> Dalit women are arrested on untenable grounds and subjected to custodial violence.<sup>36</sup>

Thus, the Police, far from becoming the institution that Dalit women can rely upon to rescue them out of an abusive setting, would only serve to compound the cycle of abuse and exploitation. Dalit women also would not approach the police because they are similarly fearful that their husbands would be custodially tortured if they were to make a complaint.<sup>37</sup>

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31 K. S. Jacob, 'Caste and inequalities in health,' (*The Hindu*, 22 August, 2009) <<https://www.thehindu.com/opinion/lead/Caste-and-inequalities-in-health/article16876113.ece>> accessed 24 July, 2020.

32 Sobin George, 'Reconciliations of Caste and Medical Power in Rural Public Health,' (2019) 54 (40) EPW 45, 47.

33 n (9) 20.

34 Sidhartha Bhatia, 'Why Indians don't come out on the streets against regular police brutality' (*The Wire*, 1 June, 2020) <<https://thewire.in/rights/george-floyd-protests-india-police-brutality>> accessed 24 July, 2020.

35 Human Rights Watch, *Broken People: Caste Violence Against India's "Untouchables,"* (HRW, 1999) ch. 5 <[https://www.hrw.org/reports/1999/india/India994-07.htm#P1120\\_219907](https://www.hrw.org/reports/1999/india/India994-07.htm#P1120_219907)> accessed 24 July, 2020.

36 Ibid.

37 n (9) 21.

The third set of institutional mechanisms would be those established under the Protection of Women from Domestic Violence Act, 2005 inclusive of, but not limited to, the protection officers and service providers as provided for under the Act. However, the institutional framework under the Act is far from robust: gaps, such as non-appointment of protection officers, absence of regulatory frameworks, poor convergence mechanisms, dismally low resource allocation and low levels of awareness of legal provisions, have accrued due to a serious lack of commitment from the government both in terms of absence of adequate fiscal allocation and accountability mechanism.<sup>38</sup> In fact, it appears that even though more than a decade has passed since the passing of the Act, the institution of the Protection officer, which was expected to usher in a new system that did not subject the victim to the harrowing experience of engaging with the legal process, riddled with its delays and uncertainty, has almost entirely failed in that regard.<sup>39</sup>

## Government response so far and the way ahead

So far, the Government response, predicated almost entirely on establishing new helplines and WhatsApp numbers,<sup>40</sup> is not only grossly inadequate in light of the sheer magnitude of the problem, but also remains unaware of the considerations regarding Dalit women that have been highlighted through this paper. Only forty three percent of Indian women own mobile phones,<sup>41</sup> not to mention that the percentage would be significantly lower for Dalit women, seeing how Dalits have largely been excluded from the digital revolution.<sup>42</sup>

38 Oxfam India, 'Protection of Women from Domestic Violence Act: Lessons from Implementation,' (Oxfam, 2016) <<https://www.oxfamindia.org/sites/default/files/Protection-of-women-from-domestic-violence-act-2005.pdf>> accessed 24 July, 2020.

39 Bhumika Jhamb, 'The Missing Link in the Domestic Violence Act,' (2011) 46 (33) EPW 45, 47.

40 Shalu Nigam, 'Covid-19: India's response to domestic violence needs rethinking' (*South Asia Journal*, 14 May 2020) <[http://southasiajournal.net/covid-19-indias-response-to-domestic-violence-needs-rethinking/#\\_edn14](http://southasiajournal.net/covid-19-indias-response-to-domestic-violence-needs-rethinking/#_edn14)> accessed 24 July, 2020.

41 India actually has the highest gender gap in this regard when compared against eighteen similarly situated countries. Karishma Mehrotra, 'Internet in India: Gaping gender gap' (*The Indian Express*, 8 August 2020) <<https://indianexpress.com/article/technology/tech-news-technology/internet-in-india-gaping-gender-gap-5296818/>> accessed 24 July, 2020.

42 Anant Kamath and Vinay Kumar, 'In India, accessible phones lead to inaccessible opportunities' (*The Wire*, 24 November 2017) <<https://thewire.in/caste/india-accessible-phones-still-lead-inaccessible-opportunities>> accessed 24 July, 2020.



Two high courts have taken cognizance of the issue so far. The Hon'ble Jammu and Kashmir High Court first took suo moto cognizance of the rampant increase in domestic violence cases and issued a large number of directives under the PWDVA, imputing upon the state to ensure awareness and legal literacy, creating a "dedicated fund" to address the issue and make provisions for call-in and counselling facilities, as also provision for "safe places" for women among other things. The Hon'ble Delhi High Court also directed the Delhi Government and Central Government to ensure the effective implementation of the PWDVA, in addition to directing the seven Respondents to the case to convene meetings at the highest levels in order to deliberate on the suggestions laid out by All India Council of Human Rights, Liberties and Social Justice (AICHLS) in the petition that includes appointing nodal officers to attend distress calls, to activate and widely publicize helplines, to create an awareness drive through all possible channels, to offer free counselling services and to establish shelters for victims, etc. So far, these objectives have not been met.

The High Court decisions, though far more comprehensive in their treatment of the situation than the initial governmental response, have also failed to take heed of the considerations surrounding Dalit women that have been discussed. They rely on helplines and institutional mechanisms, both of which would be insufficient to deal with the present situation.

A study on access to justice for Dalit women conducted by the Navsarjan Trust has shown a statistical connection between the involvement of a local civil society organization working on behalf of Dalit women's rights and greater adherence to the legal provisions for filing and processing cases of violence against Dalit women by police stations and other institutional mechanisms.<sup>43</sup> Therefore, in order to truly circumvent the trust deficit as also the prejudiced and/or ineffective nature of our public institutions, the Government must actively partner with civil society organizations, particularly those dealing with the rights of Dalit women. Moreover, funds and grants should be made

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43 Navsarjan Trust, *Gender-Violence and Access to Justice for the Dalit Woman*, (Navsarjan Trust, 2011) 8<[https://idsn.org/wp-content/uploads/user\\_folder/pdf/New\\_files/India/2012/Gender-violence\\_and\\_access\\_to\\_justice\\_for\\_Dalit\\_women\\_2011\\_Navsarjan\\_Trust.pdf](https://idsn.org/wp-content/uploads/user_folder/pdf/New_files/India/2012/Gender-violence_and_access_to_justice_for_Dalit_women_2011_Navsarjan_Trust.pdf)> accessed 24 July, 2020.

available, so as to empower these organizations and enable them to be able to reach Dalit women even in rural India. However, the Government seems to be doing the exact opposite of this. The Union Minister for Women and Child Development, Smt. Smriti Irani, even went on to dismiss concerns regarding increased domestic violence amidst the pandemic as a 'scare-mongering tactic' employed by NGOs.<sup>44</sup>

Institutional mistrust can only be countered by making our institutions more representative and by sensitizing healthcare workers and police personnel and putting in place set procedures to deal with instances of domestic violence. Special women's police task forces with adequate representation from the Dalit community must be constituted to that end.

However, our approach to the problem cannot be as narrow as just this. To quote from Dr. Indu Agnihotri's article in *The Wire*, "So long as the mass of women and men in India continue to be denied food, shelter and livelihood, the vision of a violence-free society for women shall remain nothing more than a distant dream."<sup>45</sup> The paper emphasizes family stress predictions in order to prompt a general discussion on the lines of what we can do to make the experience of the pandemic less strenuous on the most oppressed and marginalized sections. Merely introducing piecemeal reforms in our systems will not radically alter the situation, unless we can find ways to change the structural inequality that seems to underlie these institutions.

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44 PTI, 'Smriti Irani denies domestic violence increase during lockdown' (*The Hindu*, 8 June, 2020)<<https://www.thehindu.com/news/national/irani-denies-domestic-violence-increase-during-lockdown/article31776591.ece>> accessed 24 July, 2020.

45 Indu Agnihotri, 'What violence against women says about the social crisis of our times' (*The Wire*, 16 May, 2020)<<https://thewire.in/women/violence-against-women-social-crisis>> accessed 24 July, 2020.

# TRACING THE INTERSECTIONAL SILENCE ON UNDERSTANDING AND ADDRESSING THE VIOLENCE IN THE LIVES OF DISABLED WOMEN

- Shruthi Venkatachalam<sup>1</sup>


## Abstract

*This paper attempts to trace the complex discourse and practices that generally obscure the conversation in understanding and addressing violence against disabled women. The paper grapples with different intersectional factors and underlines how these multiple interlocking identities create space in silencing the voices and visibility of disabled women and their experience of violence. In the process of unravelling the issue of violence against disabled women, three aspects like self, system and solutions are deliberated to understand and address the issue from multiple perspectives which calls for action from individual, group and systemic level. The paper has outlined some of the problems in understanding the issue of violence in the lives of disabled women, highlights how the socio-cultural norms and legal policies contribute in marginalizing and silencing disabled women and, finally, suggests a few areas of intervention in addressing the violence against disabled women.*

**Keywords:** *Disabled women, violence, intersectionality, marginalization*

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The presence of disabled women in Indian society has been blurred or even made invisible for long. Images of disabled women are often permeated with a sense of the weak, infertile, dependant, powerless, and so on. Such perceptions have had a profound impact on comprehending what violence means in the lives of disabled women. When we attempt to understand and address gender-based violence in general, there are certain underpinning values like equality, dignity, justice, and so on, that we embody and foster through a different process of our analysis and in our action in addressing gender-based violence.

In general, understanding violence against women is a complex deliberation, as the experience and the notion of violence among women differs from person to person depending on their background and the position that they occupy. When we talk about violence, at times we happen to slip in between the cracks and fail to understand the nature, intensity, and the type of violence, where we consider certain forms of violence as more severe than the other. Various intersectional and interlocking markers like caste, class, disability, gender, sexuality, religion, education, geographic setting, etc., further broaden the possibility of slipping in between the slippery cracks, and thereby the experience of violence gets suppressed.

In the context of gender-based violence, the various intersectional and interlocking identities within the women's group suppress the disabled women even further, and they are more likely to slip in between the cracks due to multiple marginalized identities. As a result, the consideration and deliberation on violence against disabled women often becomes invisible and inadequate in many forums and policies that address gender-based violence.

When we talk about what violence means to disabled women, the unique experiences and difficulties caused in relation to the gender status and the nature of impairment generally do not get reflected in the mainstream understanding of violence against women. To have a serious conversation about violence against disabled women in a mainstream platform, the nature and intensity of violence is often measured and used as evaluating points that determine the worthiness of the crime to be even noticed. To substantiate this, a crime against disabled women in most of the cases has sought some attention




from the media and spaces of social and political activism only when there is the subjection of sexual and physical violence. The exertion of violence in the form of coercive control, intimidation, denial of support services, and other forms of emotional abuse generally becomes imperceptible and normalized as part of the everyday experiences of disabled women.

To understand and address violence against disabled women, there is a need to unravel multiple interlocking systems in our society which connect, control, and regulate human action. Firstly, the existing dominant attitude and perception about disabled women as weak and vulnerable positions them as the soft targets of perpetuating violence. Secondly, the cultural and social norms like patriarchy and ableism when combined with marginalizing factors like caste, class, gender, sexuality, religion, education and geographical settings exacerbate the potential risk of experiencing violence. These factors lay a significant foundation in normalizing the experience of violence and, also, further exemplify the adverse effect when disabled women attempt to voice-out their experience of violence, seek support to end or escape violence and seek justice.

Thirdly, when we look at the existing policies and laws on gender and disability, in both aspects, there are considerable pitfalls in understanding and addressing violence as experienced by disabled women.

Some of these are outlined below:

- The existing legislation on addressing gender-based violence does not have an adequate provision that includes and reflects the challenges and limitations that disabled women encounter in accessing the law.
- The Rights of Persons with Disabilities Act, 2016 includes provisions about prevention of disabled women and girls from experiencing abuse and violence; however, the legal architecture is limited to substantive provisions without transcending into procedural measures.
- The Criminal Law Amendment Act, 2013 had brought crucial changes in the Indian Penal Code, especially with sections related to rape wherein disabled women have been mentioned as one of the potential




victims, and appropriate procedures have been suggested during the investigation process. Nevertheless, the procedure lacks implementation and awareness among the criminal justice agencies, legal and medical professionals, and among the disabled communities.

Along with the systemic barriers and challenges which have relegated the issue of violence against disabled women, the entrenched stigma around disability, gender and violence has developed a sense of aversion and dishonour in accepting and accommodating disabled women victim-survivors by their close ones. Disabled women from privileged backgrounds also struggle to vocalise their experiences of violence, mainly due to the absence of a flexible support system that does not exclude and silence their voices.

The sanctioned practice of institutionalizing disabled women in the name of providing care support becomes a safe tool to disregard and disown their presence both from privileged and unprivileged families. The privilege here refers to the benefits and entitlements that an individual or the family access, based on their intersectional background. The practice of institutionalization itself is an expression of violence, especially in the event where there is an absence of consent sought from the disabled women. Furthermore, there are many media reports and many instances confirm that government and private run institutions for disabled women and girls have become a safe zone for perpetrating different forms of violence due to ineffective and periodic supervision.

Further the different complexities across various systems and practices in comprehending violence against disabled women, the change in time and situation has a profound impact in increasing the susceptibility, where disabled women happened to experience violence that could leave them with compounded oppression and trauma. The change in time and situation could be either a rapid structural change in the name of development or emergencies like a natural and human disaster, pandemic, migration and so on. In such a situation, talking about violence, in general, occupies less space in any conversation, and for disabled women who suffer from the absence of support in any form, it becomes unimaginable to talk about their experience of violence.


To illustrate this further, the current Covid-19 pandemic situation and uninformed lockdown measures and restrictions have resulted in an increase



in the rate of domestic violence in the lives of disabled women and girls. Many instances of domestic violence were shared through an online support group which I co-facilitate for disabled women, where we provide emotional and referral support for wellbeing. The shared highlights revealed that disabled women experience massive emotional violence in the form of neglect, isolation, humiliation, threat, and so on. A few disabled women also shared indirectly that their friends who are disabled – or someone that they know – get subjected to physical and sexual violence. They are petrified to report the violence, as they might end up facing severe consequences in the absence of appropriate support services. This accentuates the silence and the failure of different systems which include both the State and the society who continue to deny and ignore the presence of disabled women and the struggles that they endure. Furthermore, it is crucial to consider the manifestation of violence is extremely shaped by the intersectional factors that aggravate the silence and invisibility of disabled women who have no space to speak about their violence, as it becomes their last concern, because they already struggle for the basic needs and survival during such abnormal and tough times.

To address the silence and ignorance in talking about violence against disabled women, we need to work from multiple entry points to address the issue with a holistic approach. Some of the areas of intervention include strengthening the voices and participation of disabled women in different social movements, particularly disability and women's movements which have the agenda of combating violence and discrimination from a gender and disability lens explicitly. At the same time, there is also the need to build strong linkages among various social movements and include disability as one of its focus in their crucial agenda that fosters collective activism. This could minimize the common practice of disregarding the concerns of disabled women, which does also reflect the respective intersectional barriers and struggles in speaking about violence even within various activism spaces.

Further, the sites of intervention involve creating awareness and education on existing legal provisions that uphold human rights of disabled women among various groups like criminal justice agencies, legal professionals, medical professionals, media professionals, civil society groups working on various intersectional concerns including disability and gender, disabled people



themselves and so on. Reinforcing any programs and schemes that address gender-based violence should be mandated to include disabled women as one of its target groups. Disabled women's voices and participation should be counted in different phases and stages of designing and developing any programs or policies that counter gender-based violence. The huge shortage in providing support services for disabled women survivors of violence should be established with sensitive and sensible resources that support disabled women survivors at different levels. The support services could be psycho-social support like counselling and accessible shelter homes, financial assistance, accessible and affordable legal and medical aid, and providing accessible information and communication which enables the disabled women to make informed decision making. Any preparedness program and policies for addressing emergency situations should consider the specific concerns of disabled women which could potentially prevent the risk and occurrence of violence against disabled women. The mainstream narrative on violence against women should incorporate and reflect the voices of disabled women which, in turn, prevents the possibility of reducing or overpowering the pain and suffering as a 'normal' act. The corroboration process in the event of legal remedy should consider and provide different needs and adjustments which might support in validating disabled women's testimony. Above all, any conversations or intervention measures should use specific terms like 'disabled women' rather than using general terms like 'disabled people,' which will enable in capturing and responding to the experience of violence which reflects unique concerns and challenges. One could say that using specific terms and identities may not be comfortable and appropriate for many disabled women; yet, when we want to combat and prevent violence against disabled women, recognizing different identities becomes crucial in understanding and addressing their unique struggles and sufferings.

As a concluding remark when we attempt to understand and address violence against disabled women, we need to work from a space that fosters universal values that are missing in the problems we address, having a clear understanding of different systemic issues that are interconnected and entwined and, finally, identify workable solutions that shift systems for a sustainable response. When we miss out on any of these aspects, our efforts result in partial response to the problem.



# THE URGENCY OF TREATING DOMESTIC VIOLENCE AS A HEALTHCARE ISSUE

- Stuti Srivastava and Khushali Mahajan<sup>1</sup>

*Amidst the shadow pandemic of domestic violence, this essay shall investigate the links between the pandemic and the surge in cases of DV. The authors have attempted to develop an understanding of the issue on lines of law and public policy. Further, the article proceeds to gauge the reasons why DV should be treated and solved like a healthcare issue, with institutional help. While it is recognised that men too are victims of DV, the scope of this essay shall remain limited to DV committed against women.*

**Keywords:** *Domestic violence; public health; emergency responses; policy*

## Introduction

On 11<sup>th</sup> March 2020, the World Health Organisation (*hereinafter*, “WHO”) announced the fast spreading virus, COVID-19 as a pandemic, bringing the entire world to a halt.<sup>2</sup> In the wake of the pandemic, confining to the domestic space of our homes has been recommended to be one of the most pertinent tools to arrest the spread of the virus.

While the lockdown is a blessing for those who wish to spend more time with their families, it is a bane for households plagued with violence and abuse.

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<sup>2</sup> WHO Director-General's opening remarks at the media briefing on COVID-19 - 11 March 2020, WORLD HEALTH ORGANIZATION (Mar. 11, 2020), <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19--11-march-2020>.

One of the most debilitating acts of violence perpetrated within the domestic sphere is domestic violence (*hereinafter*, “DV”).

In contemporary times, a surge in the number of cases reported of DV has been observed systematically, when regional or national lockdowns owing to the coronavirus pandemic were announced all over the world.<sup>3</sup> Most victims of DV now find themselves more trapped, with little or no recourse, because the fear of contracting the virus coexists with the threat they face to their well-being because of DV. However, it should be kept in mind that the pandemic has not revealed the problem of DV, but has just exposed a broken socio-legal system that allows it to prevail. While the world is combating the health emergency posed by the pandemic, the issue of DV runs parallel as a ‘shadow pandemic.’<sup>4</sup>

This essay shall investigate the links between the pandemic and the surge in cases of DV. The authors have attempted to develop an understanding of the issue on lines of law and public policy. Further, the article proceeds to gauge the reasons why DV should be treated and solved like a healthcare issue, with institutional help. While it is recognised that men too are victims of DV, the scope of this essay shall remain limited to DV committed against women.

## Background

The Declaration on the Elimination of Violence against Women, 1994, regards DV as “physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation.”<sup>5</sup> This internationally recognised definition acknowledges many dimensions of DV, namely, physical, sexual, psychological and social,

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3 Emma Graham-Harrison, et. al., *Lockdowns around the world bring rise in domestic violence*, THE GUARDIAN (Mar. 28, 2020), <https://www.theguardian.com/society/2020/mar/28/lockdowns-world-rise-domestic-violence>.

4 Phumzile Mlambo-Ngcuka, Executive Director of UN Women, *Violence against women and girls: the shadow pandemic*, UN WOMEN (Apr. 6, 2020), <https://www.unwomen.org/en/news/stories/2020/4/statement-ed-phumzile-violence-against-women-during-pandemic>.

5 General Assembly Resolution 48/104, Declaration on the Elimination of Violence against Women, U.N. Doc. A/RES/48/104 (Feb. 23, 1994), [https://www.un.org/ga/search/view\\_doc.asp?symbol=A/RES/48/104](https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/48/104)

and directs one to the bitter reality of the engulfing nature of this prevalent practice.

Similarly, in India, the statutory definition of DV in the Protection of Women from Domestic Violence Act, 2005 (*hereinafter*, “the DV Act”) provides for an extensive view of DV with a view to curb DV in all its forms.<sup>6</sup>

The WHO has long recognised and acknowledged violence as a public health problem<sup>7</sup> and has also researched the consequences of DV in terms of health. The WHO defines health as “a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.”<sup>8</sup> Thus, the WHO rejects a narrow definition of ‘health’ which relies simply on illness.<sup>9</sup> It is hence, that the Director General of the WHO called for countries to take action against DV, even during this pandemic.<sup>10</sup> These consequences can be “immediate and acute, long-lasting and chronic, and/or fatal.”<sup>11</sup>

### ***The Socio-Cultural Root of Domestic Violence***

While DV has been criminalised by statutes,<sup>12</sup> it has found sanction in religion<sup>13</sup> and has been normalised by society and the State,<sup>14</sup> because of which the graveness of the problem is severely diluted. The most prominent reason behind DV is the widespread practice of gender discrimination, bolstered by

6 The Protection of Women from Domestic Violence Act, No. 43 of 2006, § 3 (2005).

7 World Health Organisation Res. WHA49.25, *Prevention of violence: A public health priority* (May 25, 1996).

8 Constitution of the World Health Organisation, Preamble, *opened for signature* Jul. 22, 1946, 14 U.N.T.S 186 (entered into force Apr. 7, 1948).

9 ANNE MURRAY, FROM OUTRAGE TO COURAGE 5 (2<sup>nd</sup> ed. 2013).

10 *Coronavirus lockdown: WHO says domestic violence on rise, asks states to take measures*, BUSINESS TODAY, May 5, 2020, <https://www.businesstoday.in/latest/trends/coronavirus-lockdown-who-says-domestic-violence-on-rise-asks-nations-to-take-measures/story/400191.html>.

11 Claudia Garcia-Moreno, et. al., UNDERSTANDING AND ADDRESSING VIOLENCE AGAINST WOMEN, WORLD HEALTH ORGANISATION (2012), [https://apps.who.int/iris/bitstream/handle/10665/77431/WHO\\_RHR\\_12.43\\_eng.pdf;jsessionid=A8E1DC72484E4821E2D1CADC6DBD8F5C?sequence=1](https://apps.who.int/iris/bitstream/handle/10665/77431/WHO_RHR_12.43_eng.pdf;jsessionid=A8E1DC72484E4821E2D1CADC6DBD8F5C?sequence=1).

12 The Protection of Women from Domestic Violence Act, No. 43, Acts of Parliament, 2005; The Indian Penal Code, Act No. 45 of 1860, PEN. CODE, §498A (1860).

13 THE HOLY QURAN, Verse 4:34.

14 Rashida Manjoo (Special Rapporteur on violence against women, its causes and consequences), *Rep. on Violence Against Women, its Causes and Consequences*, U.N. Doc. A/HRC/26/38, (Apr. 1, 2014), <https://undocs.org/en/A/HRC/26/38>.

societal attitude towards the subordinate position of women and gender roles. The “lack of social and economic value for women” has led to the internalisation of gender inequality.<sup>15</sup>

Another reason behind the normalisation of domestic abuse is the inequality in the decision making powers of partners in a marital relationship. This inequality creates a disparity in the relationship, leading to creation of superior and inferior positions. Traditionally the localisation of decision making power has been in the male members of a family, thereby making women subservient and more susceptible to abuse.<sup>16</sup>

One of the major reasons behind the cultural acceptance of violence is when it is used liberally as a conflict resolution mechanism.<sup>17</sup> It has been found that if violence is resorted to as a means of disciplining a person, it is very likely that would be reflected in their interpersonal relationships, too.<sup>18</sup> Such practices are translated as cultural and societal norms, creating a vicious cycle of abuse and violence.

When women themselves start accepting DV, or become complacent about it, it becomes more challenging to arrest this act of violence. A study on a Nigerian community revealed that women accepted violence because of many reasons like prevention of family breakdown, infidelity, economic deprivation and many more.<sup>19</sup>

Normalisation of DV can, hence, be traced to normalisation of violence against the vulnerable and the subsequent complacency of the victims and the society

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15 UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, SEXUAL AND GENDER-BASED VIOLENCE AGAINST REFUGEES, RETURNEES AND INTERNALLY DISPLACED PERSONS 21 (2003), <https://cms.emergency.unhcr.org/documents/11982/51689/UNHCR%2C+Sexual+and+Gender-Based+Violence+against+Refugees%2C+Returnees+and+Internally+Displaced+Persons.+Guidelines+for+Prevention+and+Response%2C+2003/9591f62d-4f6a-4faf-8c03-df0d6bacf871>.

16 Vivian Go, et. al., *Crossing the Threshold: Engendered Definitions of Socially Acceptable Domestic Violence in Chennai, India*, 5(5) CULTURE, HEALTH AND SEXUALITY, 393–408 (2003).

17 WORLD HEALTH ORGANISATION, CHANGING CULTURAL AND SOCIAL NORMS THAT SUPPORT VIOLENCE, p. 3, [https://www.who.int/violence\\_injury\\_prevention/violence/norms.pdf](https://www.who.int/violence_injury_prevention/violence/norms.pdf).

18 Jennifer Lansford & Kenneth Dodge, *Cultural Norms for Adult Corporal Punishment of Children and Societal Rates of Endorsement and Use of Violence*, 8(3) PARENT SCI. PRACT, 257–270 (2008), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2774244/>.

19 Amobi Ilika, *Women's Perception of Partner Violence in a Rural Igbo Community*, 9(3) AFRICAN JOURNAL OF REPRODUCTIVE HEALTH, 77–88 (2005), JSTOR, [www.jstor.org/stable/3583414](http://www.jstor.org/stable/3583414).

at large. It's because of this normalisation that it is regarded as a social problem, rather than a health one. The impacts of DV are largely physical, mental, sexual and reproductive health related. Hence, mitigating the issue of DV can be best done by treating it as a healthcare issue, so that it is financially and institutionally tackled like one.

### ***The Link between Emergencies and Rise in Domestic Violence***

An acceleration in the magnitude of DV is particularly noticed when an emergency starts affecting the socio-economic life of the general population. The rise in DV cases noticed in the present pandemic is a fragment of a wider pattern.

When the Ebola virus started consuming West Africa in 2013-14, government and health professionals localised their efforts in order to give relief to the virus-affected population.<sup>20</sup> Since fighting the virus became the top priority, medical help that ought to have been provided to victims of violence was sidelined. In this ignorance, women continued to become acutely vulnerable to DV.<sup>21</sup> A similar situation was noticed in the outbreak of Zika virus in 2015-16.<sup>22</sup>

Not only in epidemics, but also during the time of natural disasters, a rise in the cases of DV is observed. A 98% increase of intimate partner violence (IPV) was observed following the catastrophic Hurricane Katrina,<sup>23</sup> a 50% increase in spousal abuse during Hurricane Andrew,<sup>24</sup> a 111% increase in turnover at DV shelters in the Missouri River floods, and so on.<sup>25</sup>

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20 Monica Adhiambo Onyango & Alexandra Regan, *Sexual and gender-based violence during COVID-19: lessons from Ebola*, THE CONVERSATION (May 10, 2020), <https://theconversation.com/sexual-and-gender-based-violence-during-covid-19-lessons-from-ebola-137541>.

21 Dala Korkoyah & Francis F. Wreh, *Ebola Impact Revealed: An Assessment of the Differing Impact of the Outbreak on Women and Men in Liberia*, OXFAM INTERNATIONAL (2015), [https://www.oxfam.org/sites/www.oxfam.org/files/file\\_attachments/rr-ebola-impact-women-men-liberia-010715-en.pdf](https://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/rr-ebola-impact-women-men-liberia-010715-en.pdf).

22 Zobeyda Cepeda, et. al., *Dominican Republic Gender Analysis: A Study of the Impact of the Zika Virus on Women, Girls, Boys and Men*, OXFAM INTERNATIONAL, (Apr. 21, 2017), <https://oxfamilibrary.openrepository.com/handle/10546/620261>.

23 Emily Harville, et. al., *Experience of Hurricane Katrina and reported intimate partner violence*, 26(4) J INTERPERS VIOLENCE, 833-845 (2011).

24 Sera Gearhart, et. al., *The Impact of Natural Disasters on Domestic Violence: An Analysis of Reports of Simple Assault in Florida (1999-2007)*, 5(2) VIOLENCE AND GENDER (2018).

25 BRENDA D. PHILLIPS, *DISASTER RECOVERY* 297 (CRC Press, 2009).

The WHO has noted several factors that contribute to this rise in violence: stress and feeling of powerlessness due to loss of life, property, livelihood; post-traumatic stress disorder and other similar mental health problems; and scarcity of basic provisions etc.<sup>26</sup> In the wake of Australia's Black Saturday bushfires, increased domestic violence was reported, and the reasons attributed for this increase were grief, loss, homelessness, unemployment as well as heightened tension due to sharing of cramped accommodations and the challenge to one's self of sense and safety.<sup>27</sup> Other research studies on the subject have also identified separation of families, collapse of social networks, limited resources, and uncertainty as factors to explain the link between violence and emergencies.<sup>28</sup> It has been observed that when one loses their sense of control and feels powerless with respect to the consequences of the disaster or emergency, they tend to exercise control and tighten authority at home.<sup>29</sup>

With respect to health emergencies, researchers have noted that stress, impoverishment, pre-occupation of government services in combating the epidemic and the consequent disruption of protective networks are key causes for the exacerbation of violence against women.<sup>30</sup>

Past evidence indicates a systematic increase in DV because of the inferior position that women are forced to assume. Mirroring of this evidence is being noticed in the present pandemic, too, while the emergency is in its nascent stage only.

### ***Domestic Violence as a HealthCare Issue***

The WHO estimates that one in three women will experience DV once in their life, which amounts to 35% of women across the globe.<sup>31</sup> With the

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- 26 *Violence and disasters*, WORLD HEALTH ORGANISATION (2005), [https://www.who.int/violence\\_injury\\_prevention/publications/violence/violence\\_disasters.pdf](https://www.who.int/violence_injury_prevention/publications/violence/violence_disasters.pdf).
  - 27 Debra Parkinson & Claire Zara, *The Hidden Disaster: Domestic Violence in the Aftermath of Natural Disaster*, 28 AUSTL. J. EMERGENCY MGMT. 28, 29-31 (2013).
  - 28 INT'L FED'N OF RED CROSS AND RED CRESCENT SOCIETIES, UNSEEN, UNHEARD: GENDER-BASED VIOLENCE IN DISASTERS 20 (2015).
  - 29 *Id.*
  - 30 *Id.*, at 35-36; *COVID-19 and violence against women, What the health sector/system can do*, WORLD HEALTH ORGANISATION (Apr. 7, 2020), <https://apps.who.int/iris/bitstream/handle/10665/331699/WHO-SRH-20.04-eng.pdf>.
  - 31 *Violence against women*, WORLD HEALTH ORGANISATION (Nov. 29, 2017), <https://www.who.int/news-room/fact-sheets/detail/violence-against-women>.

female population of the world being 49.7% of the entire world population of 7.8 billion,<sup>32</sup> using the statistics given by WHO, it can be calculated that approximately 1.3 billion women have experienced DV in their entire life. This large figure reflects the pervasiveness of this issue.

In light of the coronavirus outbreak, the problem of DV has emerged to be recognised as a ‘shadow epidemic,’<sup>33</sup> one which exists as a healthcare issue but is often overlooked. Violence against women remains a major threat to ‘public health,’<sup>34</sup> but as mentioned above, it is accentuated when coupled with high pressure situations, as in the present pandemic.

The nature of these consequences varies from being physical, mental, behavioural or sexual.<sup>35</sup> Women who have experienced violence are more likely to have overall poor health, depression, stress or anxiety disorders, and this is distinct from the immediate physical violence and trauma they undergo.<sup>36</sup> Victims of DV are also more likely to engage in “high risk behaviours, such as smoking and substance use.”<sup>37</sup> The victims are also at a higher risk of unintended pregnancies, poor pregnancy symptoms and outcomes, sexually transmitted diseases, as well as other chronic health conditions like asthma, high blood pressure, cardiovascular disease, etc.<sup>38</sup>

Additionally, the family, especially children, are also negatively impacted by these acts of violence. It has been observed that children who grew up in abusive households tend to have “higher rates of emergency department,

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32 *Population, female (% of total population)*, THE WORLD BANK, <https://data.worldbank.org/indicator/SP.POP.TOTL.FE.ZS>.

33 Note 3.

34 *COVID-19 and violence against women, What the health sector/system can do*, WORLD HEALTH ORGANISATION (Apr. 7, 2020), <https://apps.who.int/iris/bitstream/handle/10665/331699/WHO-SRH-20.04-eng.pdf>.

35 *Id.*

36 *Id.*

37 Eileen Salinsky, *Domestic Violence: A Public Health Priority*, GRANTMAKERS HEALTH, Jul. 2017, <https://www.gih.org/publication/domestic-violence-a-public-health-priority/>.

38 KARUNA CHHIBBER ET AL., DOMESTIC VIOLENCE LITERATURE REVIEW: ANALYSIS REPORT 4 (JSI Res. & Training Inst. 2016); Effects of Violence against Women, Office on Women's Health, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, <https://www.womenshealth.gov/relationships-and-safety/effects-violence-against-women>.

primary care, and mental health service utilisation.”<sup>39</sup> Research studies have also noted that children who witness violence undergo the same emotional and psychological trauma that the mother undergoes<sup>40</sup> and are at greater risk of adult victimization, violence perpetration and criminal activity.<sup>41</sup>

Due to the troubling implications of DV on a woman’s health, as well as its effect on the family, this public health issue should not be ignored by governments, even during a pandemic. In light of this, the United Nations Population Fund has recommended that states understand that quarantine experience differs for men and women, due to increased risk of violence.<sup>42</sup> It is pertinent to note that in India, the government, in its response plan to COVID-19, has failed to include any ways to deal with increased risk of violence at homes and has also failed to deem organisations catering to victims as an essential service.

It is, hence, suggested that the Indian government views this as a health problem and, thus, takes action on this, as is taken to combat a pandemic. This will help resolve the challenges it currently faces.

### ***Arguments against Treating Domestic Violence as a Health Issue***

The authors recognise the concerns that might crop up with the acknowledgement and treatment of DV as a health issue. *Firstly*, the public health infrastructure is already heavily burdened. In the Global Burden of Disease Study 2017, India was ranked at 154 out of 197 countries.<sup>43</sup> Similarly, as per the Global Health Expenditure database of the WHO, India ranks at 170 out of 188 countries.<sup>44</sup> The public spending on health in India for the past

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39 Note 36.

40 ELIZABETH ECKERMANN, WHO REGIONAL OFFICE FOR THE WESTERN PACIFIC, DOMESTIC VIOLENCE: A PRIORITY PUBLIC HEALTH ISSUE IN THE WESTERN PACIFIC REGION 37 (1998).

41 Note 37.

42 COVID-19: A GENDER LENS, UNITED NATIONS POPULATION FUND (2020), [https://www.unfpa.org/sites/default/files/resource-pdf/COVID-19\\_A\\_Gender\\_Lens\\_Guidance\\_Note.pdf](https://www.unfpa.org/sites/default/files/resource-pdf/COVID-19_A_Gender_Lens_Guidance_Note.pdf).

43 Suparna Dutt D’Cunha, *Despite A Booming Economy, India’s Public Health System is Still Failing Its Poor*, FORBES, Sept. 12, 2017, <https://www.forbes.com/sites/suparnadutt/2017/09/12/despite-a-booming-economy-indias-public-health-system-is-still-failing-its-poor/#16038c7f78e0>; India ranks 154 among 195 countries in Healthcare Index, THE WIRE, May 20, 2017, <https://thewire.in/health/india-rank-healthcare-index>.

44 Samrat Sharma, *India spending more on healthcare now, but not yet as much as others; here’s how much US, China spend*, FINANCIAL EXPRESS, Apr. 8, 2020, <https://www.financialexpress.com/economy/india-spending-more-on-healthcare-now-but-yet-not-as-much-as-others->



decade has been stuck at around only 1.15% of the GDP.<sup>45</sup> There is one doctor for every 1,453 patients in the country,<sup>46</sup> considerably behind the World Health Organization's recommended ratio of 1:1000.

Thus, during the ongoing pandemic, the already overburdened infrastructure has been stretched to its breaking point.<sup>47</sup> Since the treatment of DV as a health issue would require expending staff, funding and other resources, its treatment as a health issue *currently* shall be extremely difficult, if not, impossible.

*Secondly*, the public response to this concept may not be favourable, especially since the DV Act already recognises and provides for counselling services<sup>48</sup> and the National Commission for Women<sup>49</sup> and other State Commissions, as well as NGOs, provide counselling and rehabilitation services. This is due to the patriarchal mind-set prevalent in our society. Violence against women is more often than not, not treated as an 'issue' or is pardoned. Hence, this may seem redundant to a portion of our society.

While there may be more arguments against the treatment of DV as a health issue, it is submitted that the benefits from it being treated as a health issue would overpower these arguments.

### ***Implications of Treating Domestic Violence as a Public Health Issue***

Firstly, the acknowledgement of DV as a parallel public health issue shall force governments to deem organisations fighting against this menace as 'essential services.' UN Women has also recommended that states treat services for violence victims as essential.<sup>50,49</sup> During a public health emergency, countries

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heres-how-much-us-china-spend/1922253/.

45 Sadhika Tiwari, *India spent 1% of GDP on public health for 15 years. Result is vulnerability to crises*, INDIA SPEND, Jun. 26, 2020, <https://www.indiaspend.com/india-spent-1-of-gdp-on-public-health-for-15-years-result-is-vulnerability-to-crises/>.

46 Samyak Pandey and Abhishek Mishra, *Doctor's Day: Understaffed, overworked and target of anger, India's failing its physicians*, THE PRINT, Jul. 1, 2019, <https://theprint.in/health/doctors-day-understaffed-overworked-and-target-of-anger-indias-failing-its-physicians/256689/>.

47 *Supra*, note 44.

48 The Protection of Women from Domestic Violence Act, No. 43, Acts of Parliament, §14, 2005.

49 NATIONAL COMMISSION FOR WOMEN, Helplines, <http://www.ncw.nic.in/helplines>.

50 COVID-19 AND ENDING VIOLENCE AGAINST WOMEN AND GIRLS, UN WOMEN (2020), <https://www.unwomen.org/-/media/headquarters/attachments/sections/library/>

often divert resources to deal with the emergency<sup>51</sup> and, hence, may be wary of spending resources on DV interventions.<sup>52</sup> However, if they recognise and acknowledge this as a parallel public health issue then, funding and resources shall be allocated to it on a much larger scale. An increase in allocation of resources for addressing violence against girls and women shall also be in line with the recommendations of UN Women.<sup>53</sup>

### ***A Solution via Allocation of Resources***

The Union Budget of 2020 allocated a total of Rs. 26,800 crores to women specific schemes; however, this includes schemes other than those for safety and security.<sup>54</sup> The National Commission for Women, which has taken the lead in announcing new pathways for reporting DV, was allotted Rs. 26 crores, while the Nirbhaya Fund aimed at ensuring safety and security of women was allotted Rs. 500 crore.<sup>55</sup> This amount in comparison to the amount spent on countering COVID-19 is measly. Even after taking into account the difference between the fatality rates of the two public health issues, due to the increasing risk of DV, it is believed that funding needs to be increased.

Greater allocation of resources will allow governments to task enforcement agencies to counter this peril specifically as well as to update reporting mechanisms, keeping in mind the obstacles to the same. The increased funding can also be utilised to create the requisite infrastructure to tackle DV as a health issue, whether that be employment of psychologists, social workers, training of civic authorities or designing effective response services. Increased funding will also allow the government to provide training to authorities like the police forces, as well as healthcare and other essential workers, to recognise signs

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publications/2020/issue-brief-covid-19-and-ending-violence-against-women-and-girls-en.pdf?la=en&vs=5006.

51 UN General Assembly, Protecting Humanity from Future Health Crises: Report of the High Level Panel on the Global Response to Health Crises, UN Doc. A/70/723, at 43 (Feb. 9, 2016).

52 Theresa Puhr, *Opinion: Coronavirus is driving a domestic violence pandemic*, DEVEX, Apr. 21, 2020, <https://www.devex.com/news/opinion-coronavirus-is-driving-a-domestic-violence-pandemic-97028>.

53 Note 49.

54 Lavanya Arvind, *What Budget 2020 Does for Women – Where's the money going?* BLOOMBERG QUINT (Feb. 17, 2020), <https://www.bloombergquint.com/union-budget-2020/what-budget-2020-does-for-women-heres-the-money-going>.

55 *Id.*

of DV and to take appropriate action. A research study by the International Federation of Red Cross and Red Crescent Societies has identified that in case of health emergencies and where there are sensitivities with respect to women, health workers are best suited to identify and respond to victims of violence.<sup>56</sup>

### *A Legal Recourse*

While formulating a strategy to deal with DV, the State has to follow the due diligence standard so that the victims have access to some “form of enforceable protective measure.”<sup>57</sup>

In India, women can access protection against DV, by asserting their rights under the DV Act and the Indian Penal Code (*hereinafter*, “IPC”).<sup>58</sup> However, in the time of a lockdown, when movement is limited, establishing a connection between the victim and the law enforcement bodies is difficult.

One such way is to involve essential workers in recognizing symptoms of DV. Since in these times the contact with the world beyond the limits of domestic household is limited to essential workers, they can play a pivotal role in the protection of victims. Further, their role is intensified because of the failure of the central government in recognizing women shelters as essential service providers.<sup>59</sup>

With the pandemic limiting the abilities of victims in finding legal recourses, alternative sentencing strategies should be applied.<sup>60</sup> In Costa Rica, under

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56 Note 27, at 36.

57 Jeni Klugman, Gender based violence and the law, Background Paper for World Development Report (2017), <http://pubdocs.worldbank.org/en/232551485539744935/WDRI7-BP-Gender-based-violence-and-the-law.pdf>.

58 The Protection of Women from Domestic Violence Act, No. 43, Acts of Parliament, 2005; The Indian Penal Code, Act No. 45 of 1860, PEN. CODE, §498A (1860).

59 MINISTRY OF HOME AFFAIRS, GOVERNMENT OF INDIA, GUIDELINES ON THE MEASURES TO BE TAKEN BY MINISTRIES/ DEPARTMENTS OF GOVERNMENT OF INDIA, STATE/ UNION TERRITORY GOVERNMENTS AND STATE/ UNION TERRITORY AUTHORITIES FOR CONTAINMENT OF COVID-19 EPIDEMIC IN THE COUNTRY, (Mar. 24, 2020), [https://mofpi.nic.in/sites/default/files/mha\\_order\\_and\\_guidline\\_as\\_on\\_24.03.2020.pdf](https://mofpi.nic.in/sites/default/files/mha_order_and_guidline_as_on_24.03.2020.pdf).

60 DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS OF THE UNITED NATIONS, HANDBOOK FOR LEGISLATION ON VIOLENCE AGAINST WOMEN, 53 (2010), <https://www.un.org/womenwatch/daw/vaw/handbook/Handbook%20for%20legislation%20on%20violence%20>

the Criminalization of Violence against Women Law, 2007,<sup>61</sup> alternative strategies to correct abusive behaviour are applied. These include sending the perpetrators to rehabilitation centres and compulsory community service in cases of sentences below three years.<sup>62</sup> Modelling on this example, the alternative sentencing strategy of restraining a perpetrator of DV to separate compound should be implemented in the present time, too.

Under the lockdown guidelines, quarantine facilities are excluded from closure.<sup>63</sup> But these facilities are limited to the hospitality sector. The scope of this should be expanded to incorporate centres where abusers can be rehabilitated, so that their contact with their victim is reduced.

One of the ways in which DV victims have been entrenched in the pandemic is by manipulating them and perpetuating DV in the garb of following lockdown rules. In light of the pandemic, this psychological and physical manipulation should be categorised as a criminal activity and should be covered under Section 340 of the Indian Penal Code, which is the provision against wrongful confinement.<sup>64</sup> In the case of *State of Gujarat v. Keshav Lai Maganbhai Gujayan*,<sup>65</sup> it was held that “for a charge of wrongful confinement, proof of actual physical restriction is not essential. It is sufficient if the evidence shows that such an impression was produced in the mind of the victim, a reasonable apprehension in her mind that she was not free to depart.” The lockdown guidelines can be used by an abuser to manipulate the victims into feeling that they have no freedom to depart, thereby fulfilling the grounds for wrongful confinement. Therefore, any victim seeking a criminal action against her abuser should also be benefitted under this section.

In such a fragile time, creative legal solutions have to be formulated in order to address immediate threats. Any solution is not fool proof, and the lacunae

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against%2owomen.pdf.

61 Criminalization of Violence against Women Law (2007) (Costa Rica), <https://evaw-global-database.unwomen.org/pt/countries/americas/costa-rica/2007/criminalization-of-violence-against-women-law-2007#:~:text=Article%201%20of%20the%20Costa,based%20on%20gender%2C%20and%20specifically>

62 *Id.*, at 11.

63 Note 80, §7.

64 The Indian Penal Code, Act No. 45 of 1860, PEN. CODE, §340 (1860).

65 *State of Gujarat v. Keshav Lai Maganbhai Gujayan*, 1993 CrLJ 248 Guj.

in these are realised only when implemented. But, for that realisation to occur, steps towards an apt solution have to be taken first.

### ***Societal Sensitisation***

The Government can begin an awareness drive in order to sensitise the population regarding this issue as well as to encourage victims to come forward. These awareness drives, helplines for reporting and the involvement of enforcement agencies should be on the same level as that of the pandemic.

While the government may do this, even without declaring this as a parallel health issue, the most crucial effect of such a declaration will be on the mind-set of the society. The mind-set of our society towards domestic violence is, perhaps, the biggest challenge to it being treated as a healthcare issue. According to a report of the International Centre for Research on Women, 58% of the women surveyed reported that their immediate family members knew about the violence, and 41% reported that neighbours were aware of the violence.<sup>66</sup> Despite this, it was reported that half of the women needing healthcare were unable to access the same.<sup>67</sup> The condoning attitude of our society towards DV desperately needs to be changed.

Governments have always had an impact on the thinking and mind-set of the society, through policies, laws, etc. It has been recognised that policies, based on behavioural sciences, can help in increasing empathy and ensuring safe, cohesive societies.<sup>68</sup> Governments have the ability to change the values that people hold<sup>69</sup> through policies, laws, sanctions, public services, etc. If the government takes a strong stance condemning and preventing DV, as it is taking to prevent the spread of COVID-19, a message will be conveyed to

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66 INTERNATIONAL CENTER FOR RESEARCH ON WOMEN, DOMESTIC VIOLENCE IN INDIA, 27 (2000), <https://www.icrw.org/wp-content/uploads/2016/10/Domestic-Violence-in-India-3-A-Summary-Report-of-a-Multi-Site-Household-Survey.pdf>.

67 *Id.*, 17.

68 Carolina Sanchez-Paramo, et. al., *Behavioural Science in Public Policy: Future of Government?* WORLD BANK BLOGS (Apr. 25, 2019), <https://blogs.worldbank.org/developmenttalk/behavioral-science-public-policy-future-government>.

69 Eivind Hoff-Elimari, et. al., *Collective action problems: Disentangling possible feedback loops between government's policies and the public's value change*, EUR. J. GOV'T. & ECON. 24, 40-41 (2014).

the population at large. The One Stop Centre scheme of the government is an important step, as the Supreme Court has also highlighted,<sup>70</sup> towards the recognition of the multifaceted nature of DV as well as the need for dealing with the same in an integrated manner.<sup>71</sup>

## ***Conclusion***

For years, the issue of DV has persisted in our society, despite strong laws prohibiting and punishing it. One of the Sustainable Development Goals is to “eliminate all forms of violence against all women and girls in the public and private spheres”,<sup>72</sup> Hence it is important to question why these laws haven’t been effective. The authors believe that the patriarchal mind-set of the society has posed a major hindrance to the end of DV. We are mindful of the fact that the solutions presented above are not adequate to counter this menace and believe that unless society stops condoning domestic violence, in all its forms, it will not truly leave us. While laws and governmental action can help in bringing about a change in this mind-set, the authors are of the opinion that in the long term, it is only value education and gender sensitisation that can counter this peril.

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70 Nipun Saxena v. Union of India, 2018 SCCOnLineSC 2772.

71 *One Stop Centre Scheme*, NATIONAL REPOSITORY OF INFORMATION FOR WOMEN, <http://www.nari.nic.in/schemes/one-stop-centre-women-distress>.

72 Target 5.2, Sustainable Development Goals, <https://www.un.org/sustainabledevelopment/gender-equality/>.

**THE  
DYSFUNCTIONAL  
STATE PROTECTION**





# IMPLEMENTATION OF THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT (PWDVA), 2005 DURING LOCKDOWN

- Adv Ujjwala Kadrekar<sup>1</sup>

## Abstract

*The first part of the article traces the history of enactment of PWDVA and other sections under IPC which relates to dowry death. Second part details out the provisions of the Act. This part further entails the procedures to be followed under the Act. In the last part, the article delves into the implementation of the Act during lockdown; how the state machineries have failed in their functions and how the NGOs are stepping up and rendering services which were to be provided by the State.*

**Keywords:** Protection Officer, Courts, NGOs, Shared Households

## Introduction:

Home, supposed to be most safe, turns out to be the most unsafe place for women and girls equally, as offences like dowry harassment, dowry deaths, incest, child marriages, sex selection abortion, domestic violence, etc., are

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taking place in their own homes, and the perpetrator is not a stranger but someone close and known to them. Any form of violence against women violates their basic fundamental right to equality, life, dignity, personal liberty, bodily integrity and health. Do these fundamental human rights exist in the private domain that is home? Domestic violence, also known as intimate partner violence, is prevalent, but it also encompasses child and elder abuse, and abuse by any member of a household.<sup>2</sup>

Globally, over 35% women (1 in every 3 women) have experienced either physical and/or sexual intimate partner violence or sexual violence by a non-partner at some point in their lives. The NCRB 2018 data affirms that domestic violence tops crimes against women, with the “majority of the cases being registered under ‘cruelty by husband or his relatives’ at 31.9%.<sup>3</sup> Also, crime against women in India is reported every 1.7 minutes, and a woman is subjected to domestic violence every 4.4 minutes.<sup>4</sup> According to the NFHS, study of 2015–2016 records that almost 30% of married Indian women between the ages of 15 and 49 years are experiencing physical and sexual violence and only 24% reported instances of violence or sought help.<sup>5</sup>

## **What legal recourse was available to a woman facing domestic violence prior to enactment of PWDVA?**

Before the inception of PWDVA in 2005, the abused women had two legal options: civil (personal laws) and criminal remedies (IPC). A woman opting for the available civil remedies, like maintenance, restitution of conjugal rights, custody of her children, or divorce, was required to file separate applications in different courts – a Section 125 CrPC application for maintenance before the Magistrate and a divorce petition before the Family Court. The court procedure resulted in a lot of hardship to the woman. Interestingly though, the aggrieved woman through her petition would bring to the notice of the court about the violence that she faced at home; however, it went unaddressed and only reliefs


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2 [https://apps.who.int/iris/bitstream/handle/10665/77432/WHO\\_RHR\\_12.36\\_eng.pdf;jsessionid=C875FDC2858E9DB90226115FC50DBBAC?sequence=1](https://apps.who.int/iris/bitstream/handle/10665/77432/WHO_RHR_12.36_eng.pdf;jsessionid=C875FDC2858E9DB90226115FC50DBBAC?sequence=1)

3 <https://www.orfonline.org/expert-speak/addressing-domestic-violence-a-forgotten-agenda-while-locking-india-down-64301/>

4 Crime in India Report 2018 published by National Crime Record Bureau (NCRB)

5 <http://rchiips.org/NFHS/pdf/NFHS4/India.pdf>



were granted. These civil laws gave her relief but didn't give her any respite from violence that she faced. In the 1980s, the mothers of young women who were burnt alive for dowry, along with women's groups, widely protested. This led to introduction of the provisions of Sections 498A in 1983 and 304B in 1986 in the IPC, which penalized cruelty within the matrimonial home and created a presumption of "dowry death" in case of an unnatural death within seven years of marriage, and it can be shown that she was subjected to harassment or dowry demands soon before her death, respectively.<sup>6</sup> Remarkably, it may be noted that these penal provisions were for legal recognition of violence within matrimonial relationships. However, there were still no immediate legal remedies like protection from future violence, financial security and custody of children made available for victim/survivor(s) of such violence. Section 498 A could be invoked while she was alive and section 304 B only after her death. It is gathered that after the death of the married woman, the entire Criminal Justice System gets activated to give her justice, but there is no actual justice as the woman is dead. Unfortunately, when women approach the system for seeking justice, it is said that she is misusing the law, as many 498 A cases lead to acquittal for want of evidence. Ironically, while the courts convict husbands in case of dowry deaths, the woman's invocation of section 498 A when she fears for her life or demands her share of the matrimonial home, earns her the accusation of being a 'disgruntled wife.' This journey of a woman from section 498 A to sec 304 B of IPC is her journey from life to death. It was essential to bridge this gap. Further, the existing penal provisions only addressed violence in matrimonial relationships, and left out mothers, daughters, sisters, and women in live-in relationships.

## **PWDVA enacted in 2005 and PWDVR came into force on 26/10/2006**

The PWDVA 2005 was intended to provide for more effective protection of the rights of women guaranteed under the Constitution, to those who are victims of violence of any kind occurring within the family. It was conceptualized to restrain the abuser from committing violence, providing relief to the woman and punitive provisions that would ensure the enforcement of the orders of the courts.

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6 "Concern for the dead, condemnation of the living" by Indira Jaising, EPW Vol. 49, Issue No. 30, 26 Jul, 2014

PWDVA is an Act to uphold a woman's right to a violence-free home, right to reside in a shared household and seek urgent reliefs. It is a gender specific law and mainly intended to protect women and children. The proceedings under this Act can be initiated by an aggrieved person being women and children (boys till eighteen years of age, while girls have no age limit.) who have faced domestic violence. The complaint can be filed against any adult male person who is, or has been, in a *domestic relationship* with the aggrieved person and, also, relatives of the husband or male partner. However, in 2016, in the case *Hiral P Harsora vs Kusum Harsora & Ors.*,<sup>7</sup> the apex court has directed deletion of words "adult male," paving the way for prosecution of any person, irrespective of gender or age, for subjecting a husband's relative to violence and harassment. Hence, now a woman can be made a sole respondent. The definition of domestic violence included the physical, sexual, verbal, emotional and economic abuses in addition to harms and threats which endangers her health, safety, causing harm to her physical and mental well-being. The ambit of the PWDVA expanded to include domestic relationships which included all relationships based on consanguinity, marriage, adoption and even relationships which were "in the nature of marriage." Hence, the law is applicable to married women, daughters, widows, mothers, sisters, women in bigamous and fraudulent marriages, and live in relationships. Also, it protected all the women in domestic relationships and their right to reside in the "shared household," even in the absence of a formal title over it. This does not create a substantive right over the property but is a safeguard against dispossession.

This Act created the Office of Protection Officer ('PO') to facilitate a women's access to justice. Also, non-government organizations were given statutory recognition as Service Providers. Both Medical Facilities and Shelter Homes too were under legal obligation to provide medical aid and shelter to distressed women, respectively. Legal Services Authorities to provide free legal aid to aggrieved women seeking justice and police to take cognizance under section 498 A of IPC and make daily diary entry. Magistrates too, have a legal mandate to provide immediate reliefs to the woman, speedy disposal of the PWDVA

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7 CIVIL APPEAL NO.10084 of 2016 (ARISING OUT OF SLP (CIVIL) NO. 9132 OF 2015)

cases within two months of the filing of the case through its discretionary powers of adopting appropriate procedure.

PWDVA is a victim friendly law as an aggrieved woman, either on her own or through a Protection Officer, can approach the Court by filling FORM I (Domestic Incident Report), FORM II (Application U/sec 12), FORM III (Affidavit), and FORM V (Safety Plan). An aggrieved woman can seek civil remedies under this Act. Protection Order is an injunctive or “Stop Violence” order to prevent domestic violence of any form. Residence Order is granted when the aggrieved person apprehends dispossession, or she is already dispossessed and seeks to be restored to the shared household. Additionally, she may seek injunction restraining the respondent from entering in the shared household. No woman can be directed by the Court to remove herself from the shared household. Monetary Relief entails payment for losses and expenses incurred as a consequence of domestic violence and to meet daily needs and expenses. Temporary Custody Order deals only with temporary custody of children as an urgent measure to ensure their well-being and best interest. Compensation Order is passed to compensate for mental and emotional distress caused to the woman, and is in addition to monetary reliefs. The Magistrate may pass an ex-parte *ad interim* order on the basis of affidavit, on prima facie disclosure of commission of domestic violence or, if there is likelihood that the Respondent may commit domestic violence.

## Understanding PWDVA in the context of lockdown

The COVID-19 pandemic resulted in a health crisis and the economic crisis which threatened the livelihoods of millions of workers, and the government appealed to its citizens’ ‘Stay Home, Stay Safe.’ But, for many women, ‘safe’ and ‘home’ are not synonymous. Domestic Violence during lockdown emerges as a serious concern and, unfortunately, much less attention has been paid to this third pandemic that is still lurking in the shadows. The [United Nations](#) had observed that the combination of economic and social stresses because of the pandemic, along with other lockdown measures, has dramatically increased the number of women facing domestic abuse, as self-quarantine puts them in


perpetual proximity with their abusers.<sup>8</sup> In India too, norms of social distancing and stay-at-home orders have fueled incidents of domestic violence. It has also put disproportionate burden on women to take care of the house and children. Living with an abusive partner also puts women's sexual health agency at risk and makes it harder for her to access contraceptives, pregnancy kits and abortion services. Staying at home is also a public health crisis, as 42 % men justified beating their wives as per the NFHS study. Domestic violence complaints are at a 10 year high during COVID- 19 as reported on June 22, 2020, stating further that about 86 % women who experienced violence never sought help, and 77 % of the victims did not mention the incidents to anyone. PWDVA placed responsibility on all the stakeholders to assist aggrieved women and children to access justice.

In normal circumstances, it is difficult for any woman to report domestic violence cases, while COVID 19 has further made it difficult with courts not open and the police executing lockdown norms. With the surge in domestic violence cases, the online Counselling cells and Helplines came to the rescue of the women. Counselling helped the women in building their coping skills, but there were still a large number of women who needed immediate intervention by the Protection Officers, Police and Courts.

I personally came across cases of severe physical abuse, women being thrown out of their shared homes, child marriages, sexual violence against women and children, denied custody of small children, inaccessibility to services contraceptives, abortions, sanitary napkins, etc.; for them economic and emotional abuse was secondary. It is observed that the priorities of all the machineries have been shifted and unfortunately domestic violence took a back seat with Courts, with all NGOs rendering support services being closed down. Police being on the field to maintain social distancing in public places, Shelter Homes not taking admissions and medical facilities' priorities, too, shifted to attend to COVID 19 cases. Many Helplines have been made operational to meet the psychological needs of women and children.


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8 <https://scroll.in/latest/958335/coronavirus-un-chief-urges-governments-to-address-horrific-global-surge-in-domestic-violence>



It is around this time, as an UNFPA Consultant in a joint venture with Women and Child development, “i CALL Centre” (TISS project), WHO and UN Women, I conducted a series of trainings of the WCD officials, Protection Officers, OSC staff, Counsellors, etc., on PWDVA. These sessions revolved around implementation of PWDVA during COVID 19 times. Though PWDVA envisaged Multi Agency coordination of all the stakeholders under the Act, to make it work was a big challenge. In the given scenario, the PWDVA mandates the Protection Officer or the Service Provider to initiate necessary action with police assistance and present the report to the Magistrate seeking appropriate orders as per need. Moreover, the Ministry of Women and Child Development (MWCD) too issued advisory and submitted affidavit in the Delhi High Court stating steps taken to address the issue of domestic violence. The MWCD submitted that One Stop Centers and Women Helplines 181 will remain operational during the COVID-19 lockdown period, the Protection Officers would continue to provide their services, and shelter homes being exempt from COVID-19 lockdown will continue to take survivors, provide psychological support to survivors of violence and ensure proper implementation of PWDVA. The Bombay High Court, too, issued notification on 14th March 2020 to advocates, litigants and parties to appear in urgent matters only.

It is with this background, Counsellors attached to Service Providers were encouraged to inform the Protection Officers, especially in cases requiring immediate intervention. In Mumbai and district places of Maharashtra, the POs successfully handled DV cases in Courts by invoking Rule 9 of the PWDVA. Five DIRs along with an application (FORM II) and affidavit (FORM III) were filed. The POs were assisted by police and special cell workers. In one case, convergence of services of POs, medical facilities, shelter homes, police and service providers was observed. It is with the help of police the aggrieved woman was rescued from her matrimonial home, and she was examined by a medical officer of the government hospital and a fitness certificate was issued. This aggrieved woman was taken in a police van and admitted in Shelter Home. After fifteen days with an e-pass, her parents took her home. In the other three cases, custody of three minor children aged 2-1/2, 3 and 6 years old were handed over to their respective mothers. In district and taluka places, the anganwadi workers and panchayat members also assisted the POs and SPs in



rescuing the aggrieved women, returning her articles. Post the action taken, the POs filled the DIR and application and affidavit and submitted the same in the Courts, along with detailed application of the aggrieved person. The Courts, too, admitted these cases as urgent matters.

I strongly feel that PWDVA is a beneficial legislation and should be strictly implemented in the interest of women and children. The Protection Officers should be notified under essential services. Also, the National and State Commission for Women should be monitoring the effective implementation of the PWDVA.



# WHY WOMEN CAN'T 'STAY HOME, STAY SAFE': DOMESTIC VIOLENCE IN THE TIMES OF LOCKDOWN

– Ayushi Agarwal<sup>1</sup>

## Abstract

*This article questions the concept of the 'home' as a safe space and argues that the lockdown has especially exacerbated the risk to victims of domestic violence. It further indicates that the Government's approach has been one of disinterest with a gendered lens lacking in policy making. These factors have made victims of domestic violence even more vulnerable and have left them without any effective remedy during the lockdown.*

**Keywords:** *Lockdown, Policy Making, Domestic Violence*

The Covid-19 pandemic has led to unprecedented containment measures around the world. Many of us never imagined that we would be required to lock ourselves in our homes in order to stay safe from a threat we cannot even see. The importance of such restraint on mobility is being reinforced everyday throughout the media, and most thinking individuals have come to associate being locked down at home as an undesirable but necessary step to fight the pandemic. However, this discourse excludes the plight of certain individuals for whom the home is often the most dangerous place to be: victims of domestic violence.

In this essay, I question the idea of 'home' as the safest place to be in the pandemic for *everyone*. I then look at the recent data on domestic violence

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complaints and argue that the lockdown worsens the plight of women by both exacerbating the factors that cause domestic violence as well as by diminishing the possibility of an escape. Finally, I highlight the unwillingness of the government of our country to confront this problem.

## I. 'Home' – A Safe Haven or a Prison?

'Stay home stay safe' has become the enduring slogan of the lockdown the world over. In this new world, where each interaction with a stranger and each contact with an unfamiliar surface is to be avoided at all costs, the home has acquired the status of being the safest place to be. Our Prime Minister Narendra Modi has gone as far as likening the boundaries of one's home with the *lakshmanrekha*,<sup>2</sup> drawing a parallel with the safety that was promised to Sita if only she had not transgressed that line. Ironically, the assumption that the home is a safe haven for all does most disservice to women, as it ignores the reality of unequal gender relations within the home and its consequences.

Indeed, a research report published by the United Nations Office on Drugs and Crime states that home is the 'most dangerous place for women.'<sup>3</sup> The assumption that home is the safest place to be is not borne out by reality on the ground; it is of mere administrative convenience in the time of the lockdown. It is a result of the same outlook that has inspired an unwillingness on the part of both legislators and judges (who are disproportionately male) to regulate the affairs of the family, fearing that constitutional law inside a marital home will be like 'a bull in a china shop.'<sup>4</sup> MacKinnon puts the reality most succinctly into words when she says:

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2 Follow Lakshman Rekha to stay safe: PM Modi's Advice on Covid-19 in Mann Ki Baat, (Hindustan Times, March 29, 2020) <<https://www.hindustantimes.com/india-news/follow-lakshman-rekha-to-stay-safe-pm-modi-in-maan-ki-baat-address-on-covid-19/story-Q8RrzTC7E3KURodGlsGJoJ.html>>.

3 United Nations Office on Drugs and Crime, *Global Study on Homicide: Gender-related killing of Women and Girls* (2018) <[https://www.unodc.org/documents/data-and-analysis/GSH2018/GSH18\\_Gender-related\\_killing\\_of\\_women\\_and\\_girls.pdf](https://www.unodc.org/documents/data-and-analysis/GSH2018/GSH18_Gender-related_killing_of_women_and_girls.pdf)> also see Press Release of the Report, <<https://www.unodc.org/unodc/en/press/releases/2018/November/home--the-most-dangerous-place-for-women--with-majority-of-female-homicide-victims-worldwide-killed-by-partners-or-family--unodc-study-says.html>>

4 *Harvinder Kaur v. Harmander Singh Choudhry* AIR [1984] Delhi 66 (High Court of Delhi).

*“...the family is a crucible of women’s unequal status and subordinate treatment sexually, physically, economically, and civilly. In the family, women are required to take responsibility for children and are often given few resources to care for them and little voice in decisions that affect their joint lives. The family, across cultures, is a site of violence against women, a place where women are violated with a distinct and almost perfect impunity.”<sup>5</sup>*

While no one can deny that it is necessary to practice social distancing in times like this, the narrative that staying home *necessarily* means staying safe is simply false. Endorsing and amplifying this view again and again takes away from the experiences of victims, and reduces the chances of their plight being taken into account as an important policy consideration.

## II. In lockdown with the Threat

According to the official data for 2018 published by the National Crime Records Bureau, the majority of crimes against women were registered under ‘Cruelty by husband or his relatives’ (constituting 27.9% of all crimes against women).<sup>6</sup> The frequency of this crime was once every five minutes.<sup>7</sup> This data shows that even before the lockdown, women were at constant risk of abuse by their husbands or his relatives residing in the same house. In effect then, the lockdown has locked the victims in with their abusers.

## Exacerbating the Factors that Cause Domestic Violence

The first phase of the lockdown in India began on 24<sup>th</sup> March, lasting 21 days. Since then, it has been extended repeatedly, albeit with some region-specific relaxations. To say that there has been an increase in domestic violence since the lockdown began would be an understatement. In its latest available annual

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5 Catharine A. MacKinnon, *Sex Equality under the Constitution of India: Problems, prospects and “personal laws,”* 4(2), INTERNATIONAL JOURNAL OF CONSTITUTIONAL LAW, 181, 181-183 (2006). Also see Radhika Coomaraswamy, Report Submitted by the Special Rapporteur on Violence Against Women, Its Causes and Consequences, U.N. Commission on Human Rights, 50th Sess., Agenda Item 11(a), U.N. Doc. E/CN.4/1995/42 (1995).

6 National Crime Records Bureau, Ministry of Home Affairs, *Crime in India: 2018*, vol. I, xviii (December, 2019) <<https://ncrb.gov.in/sites/default/files/Crime%20in%20India%202018%20-%20Volume%201.pdf>> (Crime in India Report).

7 Crime in India Report, 197.

report (2017–18), the National Commission for Women (NCW) had stated that it received a total of 1787 complaints relating to *various* forms of violence against women,<sup>8</sup> which averages out to less than 35 complaints in a week. Compared to this, for the week of 24<sup>th</sup> March to 1<sup>st</sup> April 2020, the NCW reported receiving nearly double (69) complaints of domestic violence alone.<sup>9</sup> For the period between 25<sup>th</sup> March and 31<sup>st</sup> May, the NCW received 1,477 complaints of domestic violence,<sup>10</sup> which averages out to 147 complaints of domestic violence per week. Even though this data is likely under-representative of the extent of the problem, it demonstrates why the UN Women's Executive Director has called the lockdown the perfect opportunity for controlling and abusive behaviour behind closed doors.<sup>11</sup>

However, this staggering increase in domestic violence isn't owed simply to the fact that victims are now in the constant company of their abusers. It is important to also note the ways in which the lockdown has exacerbated other factors which cause domestic violence. First, it is well-known that intimate partner violence against women is rooted in stereotypical norms about men's authority.<sup>12</sup> Research has also shown that isolation and financial strain can aggravate the tendency to use such violence as a means of release.<sup>13</sup> The lockdown has resulted in loss of jobs and reduction in salaries, especially among the already socio-economically deprived sections of society. The anger and frustration caused by losing their jobs in an already uncertain economic

8 National Commission for Women, *Annual Report*, 10(2018) available at [http://ncw.nic.in/sites/default/files/ANNUALREPORT2017\\_18.pdf](http://ncw.nic.in/sites/default/files/ANNUALREPORT2017_18.pdf).

9 Esha Roy, Domestic violence, abuse complaints rise in coronavirus lockdown: NCW(Indian Express, April 3, 2020) available at <https://indianexpress.com/article/india/domestic-violence-abuse-complaints-rise-in-coronavirus-lockdown-ncw-6344641/>.

10 Jagriti Chandra, NCW records sharp spike in domestic violence amid lockdown(The Hindu, June 15, 2020) <<https://www.thehindu.com/news/national/ncw-records-sharp-spike-in-domestic-violence-amid-lockdown/article31835105.ece>>

11 UN Women, Violence against women and girls: the shadow pandemic (April 6, 2020) <<https://www.unwomen.org/en/news/stories/2020/4/statement-ed-phumzile-violence-against-women-during-pandemic>>

12 United Nations Office on Drugs and Crime, *Global Study on Homicide: Gender-related killing of Women and Girls*, 30 (2018) <[https://www.unodc.org/documents/data-and-analysis/GSH2018/GSH18\\_Gender-related\\_killing\\_of\\_women\\_and\\_girls.pdf](https://www.unodc.org/documents/data-and-analysis/GSH2018/GSH18_Gender-related_killing_of_women_and_girls.pdf)> Rachel Jewkes, *Intimate partner violence: causes and prevention*, 359 THE LANCET, 1423–1429 (2002).

13 N. van Gelder *et al*, *Covid-19: Reducing the risk of infection might increase the risk of intimate partner violence*, 21 ECLINICALMEDICINE (2020) <[https://www.thelancet.com/journals/eclinm/article/PIIS2589-5370\(20\)30092-4/fulltext#%20](https://www.thelancet.com/journals/eclinm/article/PIIS2589-5370(20)30092-4/fulltext#%20)>

climate is now being released by men through verbal, physical and sexual assault of their partners at home.

Second, for many women, the only protection from abuse by their husbands was the income they brought home. However, the lockdown has resulted in the loss of employment for countless women too, since they are often employed in the lowest-paying and most disposable jobs.<sup>14</sup> Consider Parvathi's story: the abuse she faced from her alcoholic husband had diminished in recent years due to the money she gave him from her income. Now that she has lost that income due to the lockdown and her husband was deprived of alcohol, relentless beatings have started again.<sup>15</sup> This is no doubt true for many other women too, who were the sole bread-earners of their family with a substance-dependant husband. Crucially, the women who are most likely to be the victims of such circumstances are the ones who are already in a severely disadvantaged position.

Finally, for many women, even if there is no physical abuse, there is piling mental, emotional and verbal abuse. It is important to remember that under the Protection of Women from Domestic Violence Act, 2005, 'domestic violence' refers not only to physical violence resulting in injuries, but also mental, sexual, verbal, emotional and economic abuse.<sup>16</sup> With all members of the family now constantly staying at home, the responsibility for their care falls disproportionately on the shoulders of women.<sup>17</sup> This additional unpaid domestic work and increased demands for child and elder care is likely accompanied by greater prospects for blame and trauma. However, it is likely that the victims of such abuse are not even raising an alarm, let alone trying to register a complaint.

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14 Ashwini Deshpande, The gender gap in job losses caused by the lockdown, (Indian Express, June 6, 2020) <<https://indianexpress.com/article/explained/the-gender-gap-in-job-losses-coronavirus-6444720/>>.

15 Rukmini S, Locked down with abusers: India sees surge in domestic violence (Al Jazeera, April 18, 2020) <<https://www.aljazeera.com/news/2020/04/locked-abusers-india-domestic-violence-surge-200415092014621.html>>.

16 Section 3, The Protection of Women from Domestic Violence Act, 2005, No. 43 OF 2005.

17 Rukmini S, How Covid-19 locked out women from jobs, (LiveMint, June 11, 2020) <<https://www.livemint.com/news/india/how-covid-19-locked-out-women-from-jobs-11591772350206.html>>

## Diminishing the Possibility of Escape

The second blow that the lockdown has dealt to the victims of domestic violence is that it has made it much harder for them to escape their abusers. First, it is usual for victims to seek help from their community and friends who can provide relief or shelter, since they fear that they may get caught in the process of seeking help from authorities and the violence may escalate.<sup>18</sup> The lockdown makes it impossible to access these options. Consider Parvathi's plight yet again: she used to run into the lanes of her slum to call for her neighbours' help whenever her husband beat her up. However, now it is not possible to do so as the entrance of her street is blocked off by a barricade.<sup>19</sup>

Second, as we descend the socio-economic ladder, we find that the resources needed to report become fewer. The gender gap with respect to access to the internet and mobile phones is amongst the highest in the world in India, and is most skewed for the socio-economically deprived sections.<sup>20</sup> Even where a woman may have access to a mobile, the lockdown means that she is subject to her abuser's constant surveillance at home, and may not be able to make a rescue call at all.

Finally, police apathy and unwillingness to intervene in cases concerning violence against women is already well-known.<sup>21</sup> Given the current pressure on the police to ensure that individuals do not leave their house, their inattentiveness to the plight of women generally, and socio-economically disadvantaged women particularly, is bound to increase. Due to all these factors, the victims of domestic violence are suffering more than ever, without having a means to escape their abuser.

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18 A Se'ev'er, *Recent or imminent separation and intimate violence against women: A conceptual overview and some Canadian examples*, 3(6) VIOLENCE AGAINST WOMEN, 566-589 (1997) <<https://pubmed.ncbi.nlm.nih.gov/12295554/>>

19 Rukmini S, Locked down with abusers: India sees surge in domestic violence (Al Jazeera, April 18, 2020) <<https://www.aljazeera.com/news/2020/04/locked-abusers-india-domestic-violence-surge-200415092014621.html>>

20 Karishma Mehrotra, Internet in India: Gaping gender gap (Indian Express, August 8, 2018) <<https://indianexpress.com/article/technology/tech-news-technology/internet-in-india-gaping-gender-gap-5296818/>>

21 Chethan Kumar, In India, 1 woman complains of police apathy every 2 hours, (Times of India, November 2, 2018), <<https://timesofindia.indiatimes.com/india/in-india-1-woman-complains-of-police-apathy-every-2-hours/articleshow/66471290.cms>>

### III. Disinterested and in Denial: The Approach of the Government

India is not the only country that is witnessing a surge in domestic violence cases. This trend has been observed all over the world, including Brazil, Spain, Italy, Cyprus, UK and China. The governments of these countries have responded to this crisis in novel ways, such as declaring domestic violence response to be an 'essential service',<sup>22</sup> evolving secretive modes of communication through pharmacies and grocery stores,<sup>23</sup> and making hotel rooms available to seek shelter.<sup>24</sup>

However, the Indian government appears to not only be disinterested in solving this problem, but also in denial of its existence. Smriti Irani, one of the only three female ministers serving in the current Union Cabinet and holding additional charge as Minister of Women and Child Development, gave a statement debunking the claims that there has been an increase in domestic violence cases in the lockdown.<sup>25</sup> This is despite the wide availability of data from credible sources that shows the contrary position. There has been no statement regarding domestic violence from the Prime Minister, who addresses the nation in live sessions from time to time. Further, even though the link between alcohol consumption and domestic abuse is well known,<sup>26</sup> the decision to make liquor more freely available during the lockdown was taken without consultation with the stakeholders involved.

High Courts have come to the rescue of victims by demanding action from State authorities and issuing orders to deal with the spike in domestic violence. The Madras High Court had earlier exempted the requirement for

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22 Natalie Higgins, Coronavirus: When home gets violent under lockdown in Europe (BBC News, April 13, 2020) <<https://www.bbc.com/news/world-europe-52216966>>

23 Id.

24 Ivana Kottasová, Women are using code words at pharmacies to escape domestic violence during lockdown.(CNN World, April 6, 2020) <<https://edition.cnn.com/2020/04/02/europe/domestic-violence-coronavirus-lockdown-intl/index.html>>

25 PTI, Union Minister Smriti Irani debunks claims of lockdown leading to increase in domestic violence (The Times of India, June 8, 2020) <<https://timesofindia.indiatimes.com/india/union-minister-smriti-irani-debunks-claims-of-lockdown-leading-to-increase-in-domestic-violence/articleshow/76256622.cms>>

26 World Health Organisation, Intimate partner violence and alcohol, 2, <[https://www.who.int/violence\\_injury\\_prevention/violence/world\\_report/factsheets/fs\\_intimate.pdf](https://www.who.int/violence_injury_prevention/violence/world_report/factsheets/fs_intimate.pdf)>

the Domestic Incidence Report under the Protection of Women from Domestic Violence Act, 2005, so that there is no delay in taking cognizance of the crime.<sup>27</sup> It also called upon the Health Department, which then told the court that an effective response system has been put in place, consisting of Anganwadi workers acting as co-ordinators to escalate calls about domestic violence and counsellors who have been designated as protection officers.<sup>28</sup> The Delhi High Court has directed the Delhi government to curb cases of domestic violence.<sup>29</sup> The Jammu & Kashmir High Court has also passed an order suggesting several measures to contain domestic violence, such as the creation of a dedicated fund, designation of grocery shops as reporting places, and declaration of hostels as shelter homes.<sup>30</sup> It is heartening to see that the courts have stepped in to discharge their part of the duty. However, the onus of implementation still rests on the executive. Unfortunately, where there is no will, there is no way.

The effects or the success of the lockdown cannot be determined without adopting an intersectional gender lens. Even if it serves to drastically contain the spread of Covid-19, it is only a half measure in so far as it has amplified one problem at the cost of solving another. As is often the case, the problem lies not with the policy (of lockdown), but with the policymaker – and a policymaker who cannot account for the realities of gender relations at home will no doubt fail to ensure measures that can make the policy a real success.

27 HC comes to rescue of domestic violence victims (The Hindu, January 24, 2020) <<https://www.thehindu.com/news/national/tamil-nadu/hc-comes-to-rescue-of-domestic-violence-victims/article30637796.ece>>

28 Effective steps taken to curb domestic violence during lockdown, TN tells Madras HC (The New Indian Express, April 25, 2020) <<https://www.newindianexpress.com/states/tamil-nadu/2020/apr/25/effective-steps-taken-to-curb-domestic-violence-during-lockdown-tn-tells-madras-hc-2135296.html>>

29 HC tells Delhi government to curb cases of domestic violence amid Covid-19 lockdown (The New Indian Express, April 21, 2020) <<https://www.newindianexpress.com/cities/delhi/2020/apr/21/hc-tells-delhi-government-to-curb-cases-of-domestic-violence-amid-covid-19-lockdown-2133126.html>>

30 Aishwarya Iyer, Jammu & Kashmir HC seeks report on steps to prevent domestic violence amid Covid-19 lockdown, (Bar and Bench, April 18, 2020) <<https://www.barandbench.com/news/litigation/jk-hc-issues-notice-to-dept-of-social-welfare-and-jkslsa-seeks-report-on-steps-taken-to-prevent-domestic-violence-during-covid-19-lockdown>>



# “STAY HOME, STAY SAFE?” IN LOCKDOWN WITH THE ABUSER

– Pinki Mathur Anuragi

## Abstract

*“Being confined in the same space as their abuser during lockdown has exacerbated the psychological toll on women experiencing domestic violence. Access to external sources of support – family, friends, accommodation, and income – are crucial in determining women’s ability to leave an abusive home or relationship. This article discusses how the lockdown and the pandemic have impeded women’s ability to access these sources of support, with special attention to the right of residence and shelter homes. Progressive measures, such as the guidelines on shelter homes by the High Court of Jammu and Kashmir, and the reservation of hotel rooms for domestic violence survivors in European countries, can go a long way in securing an external support system. Finally, the disproportionate access of women and girls to resources must be accounted for in designing support systems for emergency situations such as natural disasters and pandemics.”*

**Keywords:** *Physical Confinement, Right to Residence, When I Hit You, Shelter Homes*

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Domestic Violence, as the term indicates, is violence that takes place within the privacy of the home by an intimate partner or family members. Worldwide, almost 30% of all women who have been in a relationship report that they have experienced some form of physical and/or sexual violence by their intimate partner in their lifetime.<sup>2</sup> Women killed by intimate partners or family members accounted for 58% of all female homicides reported globally last year.<sup>3</sup> The most dangerous place for a woman, clearly, is her own home.<sup>4</sup> From early days of pandemic related lockdowns, a significant increase in the incidence of domestic violence has been recorded worldwide.<sup>5</sup> That women must now quite literally suffer in ‘private’ is discernible from complaints of domestic violence and cybercrime against women rising globally, while violence against women in public spaces such as harassment, sexual assault, and rape slumped.<sup>6</sup> A direct correlation between decreased mobility in public spaces, including workplaces,<sup>7</sup> and the resulting confinement of women with other members of family in their homes and the subsequent rise in domestic violence can be conclusively deduced.

The paper explores the complex idea of ‘home’ as a violent space, against the concept of “Right to Residence”<sup>8</sup> under the civil law in domestic violence law in India. In recognising that the ‘right to reside’ assumes greater significance during lockdown,<sup>9</sup> a nuanced understanding and approach in the enforcement of the right to a violence free space is being suggested. Novel strategies in

2 <http://www.who.int/news-room/fact-sheets/detail/violence-against-women>

3 Ibid, Preface, 30,000 women are killed by their intimate partners (not including those killed by family members)

4 United Nations Report (2018) on Gender Related Killings of Women and Children.

5 On 6 April, 2020, the United Nations Secretary-General, Antonio Guterres, called for a “ceasefire” to address the “horrifying global surge in domestic violence.”

6 In India, the National Commission for Women’s Complaint and Investigation Cell registered 392 complaints of domestic violence in May 2020 compared to 266 in May 2019. There were 73 cyber-crime complaints involving women in May 2020, compared to 49 in May 2019. Rape and sexual assault complaints decreased 66% - from 163 in May 2019 to 54 in May 2020. In 2019, they had decreased 17% from 198 in May 2018.

7 The term workspace and not ‘office’ has been used since a much larger section of the female workforce in the country belongs to the unorganized sector.

8 Protection of Women against Domestic Violence Act, 2005, Section 2(s)

9 Similar restrictions in public spaces have also been referred to as a circuit breaker, or a curfew; for our purpose, any state imposed restrictions related to people’s movement in public spaces is implied by the term lockdown.

dealing with the surge in domestic violence adopted by some nations, with the focus on the right to safe housing have been referred to. This is a preliminary attempt at introducing the dynamic nature of the household during the pandemic and what that entails for women survivors seeking assistance for domestic violence in India during lockdown. Rights and reliefs must be interpreted to incorporate these unprecedented changes in the lives of women at this time.

## I.

In “When I Hit You,”<sup>10</sup> Meena Kandasamy chronicles the saga of an abusive marriage and escape out of the marriage alive in the voice of the female protagonist. As the husband’s job takes them to a new city, and she is distanced from the safety net of family, friends and colleagues, domestic violence thrives. On occasions when he not quite literally beats her into submission, he uses her mode of staying in touch with the outside world as a weapon to control her life in every imaginable way. She is blackmailed into sharing all her passwords with him by inflicting self-injury, after which, he reads and deletes her mail and goes so far as to reply to her messages. He destroys her laptop charger and forces her to de-activate her Facebook account, taking away her one avenue of connecting with friends and family. As a freelance writer, she is no longer able to get work through her contacts via social media. She was not allowed to leave the house unless accompanied by him. He even monitored her phone calls with her parents. With his actions and words, he traps her in a cycle of emotional and psychological abuse. Over months, her sense of self-worth is completely erased, and she lives in constant fear.

The feeling of isolation and helplessness in being trapped at home with an abusive partner, captured by Meena Kandasamy, is a case in point for confinement enforced by the abuser, a commonly practiced form of domestic violence. This is no different from the physical and emotional trauma suffered by women in abusive homes during the long months of state enforced lockdown. Women have no avenue of escape or, even, temporary relief from domestic violence due to restrictions on mobility. The services and the assistance that

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10 Kandasamy, M., “When I Hit You – Or A Portrait of the Writer as a Young Wife” Juggernaut Books, New Delhi, 2017

women would normally seek through friends, family, neighbors or employers<sup>11</sup> in pre-pandemic days are no longer easy options. Whatever limited contact women had with the world outside their home has been snatched away by the state, leaving them with no relief from the abuse and the abuser.

The reprieve that women experienced in leaving home for a few hours for work, meeting family and friends or simply stepping out for household chores is no longer available. Temporary or permanent loss of employment, or in other cases, 'work from home,' has increased the burden of women's unpaid care work at home. Closure of schools, care of elderly family members and constant presence of male members at home has added to the volume of household work for women. Confined in a defined space with limited resources, stress of job-loss, uncertainties related to children's education and overall apprehensions about the future have impacted everyone. While the stress is felt by both men and women, in most cases women bear the brunt of everyone's frustrations and fears and, mostly, suffer in silence.

There is a danger, however, in attributing escalating domestic violence to pandemic related stress. There can never be just cause for increase in domestic violence, and this must not become yet another 'excuse' to condone violence against women. The significant increase in domestic violence during the pandemic has simply brought to the fore underlying gender inequalities and existing unaddressed abuse of women at home. Access to friends, family, public spaces, legal institutions and the police stand suspended, ensuring women's inability to seek help privately. In the best of times, women face serious impediments in accessing services, both legal and otherwise, to counter domestic violence. Disconnected from social support systems and limited access to online platforms, or use of mobile phones<sup>12</sup> without fear of being 'found out' has added to the risks associated with both physical and verbal abuse. The pandemic is simply exaggerating the family's prior history of abuse.

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11 Women in informal sectors, such as part-time domestic workers often approach their employees in times of need and receive assistance in filing complaints with the police, social work organisations. With lockdown, most homes and housing societies do not permit part-time workers entry; as a result, this very vital support is now lost to women employed in this sector.

12 With almost 57% of the women in India not having access to phones, their options for registering complaints under the lockdown are now limited.

## II.

The tragic cliché that women's narrative of domestic abuse is always dogged by the question, "Why didn't she just leave?" demonstrates ignorance and a lack of understanding of the complexities involved in intimate partner violence. Leaving an abusive partner requires meticulous planning and a reliable support system. Struggles related to alternate arrangement for residence, educational and emotional needs of the children and dependence; both economic and emotional on the abuser, take years to navigate. While leaving a violent home is, in most cases, advisable and sometimes the only tangible permanent survival mechanism; the question, "Why didn't she leave"? carelessly asked, is seriously presumptuous. It assumes the existence of real 'choice.' In most cases, it is the very absence of viable choice of alternate residence that prevents women from leaving the abusive household. In the absence of women's legal rights by way of ownership or tenancy in the house where she resides with the abuser, there is a de facto finality to the act of 'leaving' and this can, in some cases, be seen as desertion.

Domestic violence does not happen in a vacuum; it does not happen because someone is in the wrong place at the wrong time. This exalted place called home that is supposed to protect and nurture every member under its roof becomes a scene of crime; this is what makes domestic violence a crime like no other. It is abuse from someone close to you, someone who you believe loves you. Almost always, it remains hidden from even one's closest confidantes, and in some cases, physical violence is far less damaging than the emotional and verbal abuse. This 'violet space' or 'home,' where the survivor resides with the abuser, is thus primary to any debate on domestic violence. In the absence of women's legal rights in the house, the fear of being 'thrown out' by the abuser is very real. Domestic violence frequently takes the form of disposing of the woman from the shared household.<sup>13</sup> The fear of homelessness and destitution

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13 Protection of Women against Domestic Violence Act, 2005, Section 2(s) Definition of Shared Household: 'shared household' means a household where the person aggrieved lives or at any stage has lived in a domestic relationship, either singly or along with the respondent, and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them, in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest, or equity, and includes such a household which may belong to the joint family of which the

is a fundamental facet of domestic violence. Vulnerability to domestic violence has been linked to unequal tenancy and proprietary rights for women and, significantly, lower women's ability to negotiate for a violence free home.<sup>14</sup>

Laws addressing intimate partner violence in most cases, thus, address the survivor's right to 'reside' in the home<sup>15</sup> regardless of ownership. The objective is to ensure right to live in the house simply by the fact of occupation. A tenant cannot be evicted without due process of law even by the owner. The Protection of Women from Domestic Violence Act, 2005 (PWDVA)<sup>16</sup> has been crafted to ensure that the right of occupancy of the women in the shared household at the very least be equal to that of a tenant. Women's 'right to reside' in the shared household operates, in some cases, to the exclusion of the abuser. Residence Orders<sup>17</sup> can be passed to protect the survivor from being 'thrown out' as a result of domestic violence. What is critical in the way 'Right to Residence' is intended to operate is that it protects all female members from homelessness, while allowing the removal of the abuser. Protection of the Right to Reside enhances and positively impacts women's negotiating capacity in dealing with domestic violence. Violence renders the home uninhabitable, thus violating a multitude of rights and primary amongst these is the right to housing.<sup>18</sup> It includes within its scope, the right to live in a space free of

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respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title, or interest in the shared household.

14 Mathur Anurag, P., 'But where will I live? Domestic Violence and the Right to reside,' in Conflict in the Shared Household, Domestic Violence and the Law in India, Eds. Jaising, I, Mathur Anurag, P., (Oxford University Press), New Delhi, India, 2019, Page 74

15 referred to as the shared household in India

16 civil law addressing domestic violence in India

17 Protection of Women against Domestic Violence Act, 2005, Section 19(1) Residence Orders: While disposing of an application ... the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order (a) restraining the respondent from disposing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household; (b) directing the respondent to remove himself from the shared household; (c) restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides; (d) restraining the respondent from alienating or disposing off the shared household or encumbering the same; (e) restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate; or (f) directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require.

18 'Security, peace and dignity' are internationally accepted pillars of the right to adequate housing General Comment No. 4 on the Right to Adequate Housing, adopted by the U.N. Committee on

violence, and this can also be enforced by providing for practical and viable alternate living arrangements.

Orders that direct the removal of the abuser from the household lose all meaning during a lockdown, when all members of the household must necessarily stay indoors, and such an order cannot be enforced. The need for protection of the right to reside, thus, goes up exponentially during the pandemic. Provision for Shelter Homes<sup>19</sup> is thus fundamental in addressing domestic violence during lockdown. Provision for accessible and habitable shelter homes or strict enforcement of Protection Orders<sup>20</sup> in the form of 'stop violence' orders appear to be the most effective strategy in ensuring the survivors' right to reside in a violence free home. Protection Orders are passed as emergency measures and act as 'Stop Violence Orders.' While courts regularly pass protection orders on prima facie evidence of domestic violence, orders are violated with alarming regularity and do not always end in arrest of the abuser as stipulated by the law.<sup>21</sup> Under the existing civil and criminal law<sup>22</sup> regime, the police are empowered to make arrests for violation of protection orders under the former, and on evidence of severe domestic violence, under the latter.

Furthermore, Right to Residence in the Shared household under PWDVA acknowledges the complex nature of households in India. On marriage, it is not uncommon for the woman to move in with her husband in a residence owned exclusively by the father-in-law or one that is a joint family property. It is in this household, where the woman lives with her husband or has at any point lived, that the law will protect her right to reside. Absence of the husband's

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Economic, Social, Cultural Rights, U.N. Doc. E/C.12/1991/4 (1991) at para 7.

Note also the working definition of the right to adequate housing developed by the Special Rapporteur on Adequate Housing Miloon Kothari: "as a right of every woman, man, youth and child to gain and sustain a secure home and community in which to live in peace and dignity. For a detailed discussion on the components of the right to adequate housing under international law, and domestic violence as being in breach of the right, please see: Mathur Anurag, P., 'But where will I live? Domestic Violence and the Right to reside,' in *Conflict in the Shared Household, Domestic Violence and the Law in India* (Ed. Jaising, I, Mathur Anurag, P.) Oxford University Press, New Delhi, India, 2019, Page 68-71

19 Protection of Women against Domestic Violence Act, 2005, Section 2(t)

20 Protection of Women against Domestic Violence Act, 2005, Section 18

21 Protection of Women against Domestic Violence Act, 2005, Section 31

22 Indian Penal Code, 1860, Section 498-A; Dowry Prohibition Act, 1961

legal right in the property is regularly used as an excuse to oust the wife out of the household. The right to residence does not confer any ownership rights, nor does it confer any legal title to the house; it simply protects women from destitution. The spirit of the law is to ensure that the perpetrator of violence should be ousted, and not the victim.

### III.

The High Court of Jammu and Kashmir at Jammu took up *suo moto* cognizance of the increase in domestic violence during the pandemic, issuing, thus far, the most comprehensive set of guidelines, through its order dated 16<sup>th</sup> April 2020.<sup>23</sup> Noting that the PWDVA casts a duty upon the government under Section 11(a) to take all measures to give wide publicity to the provisions of the law through public media including electronic and print media, the court said that these efforts must be intensified during the pandemic. The observations with respect to housing needs for women survivors emphasise that “in the absence of an alternate place to live, all efforts in addressing domestic violence will fall short.” Immediate designation of safe spaces, for example empty hotels or education institutions, as shelters for women who are compelled to leave their domestic situation was directed by the court. The Order further notes that shelters designated as such must be treated as accessible shelters.<sup>24</sup>

The question is simply this: if hotel rooms can be reserved as quarantine facilities, why should reserving rooms as shelters for domestic violence survivors, as an emergency measure, be an issue? The French Government has done exactly this, in light of the increase in domestic violence cases, by announcing that it has reserved 20,000 hotel rooms for victims of domestic violence. The UN has directed governments to dedicate funding within *COVID-19* response plans for domestic violence shelters and said that shelters should be designated as essential services and kept open, and this must include providing childcare for staff at the shelters so they can continue to work.<sup>25</sup>

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23 In Re: Court on Its Own Motion v. Union Territories of Jammu & Kashmir and Ladakh through Secretaries, Social Welfare Department, WP(C) PIL no. \_\_\_\_/2020, High Court of Jammu and Kashmir at Jammu.

24 Ibid, Para 16

25 Supra (n 23) para 16.



The significance of creating mechanisms for discreetly reporting incidents of domestic violence complaints, emphasized globally by social service organisations, cannot be overemphasised. Mechanisms for checks and balances within communities, for example, residence societies, local self-governments, informal leaders within slums must be sensitized and trained to operate as points of contact between women and services and the mechanisms for reporting and redressal.

With respect to duty to protect women, the Jammu and Kashmir High Court order notes that the lack of enforcement, as well as an alternative source of residence, also impedes women in filing complaints with officials or the police.<sup>26</sup> Heightened need for emergency services for domestic violence must be incorporated within every pandemic related response planning. Spain has made an exception for women who step out from home to report abuse, so they can seek help without fear of being fined. The Canadian Prime Minister has set aside tens of millions of dollars to support women's NGOs, shelters and sexual assault centres.


Differential impact on existing inequalities in society continues to impact on women and girls, like every natural or man-made disaster, disproportionately.<sup>27</sup> The nature of economic impact of the pandemic being felt by women is way more complex than that felt by men. Women simply do not have the choices, or the freedom to access the choices that they do have, the way men do. In domestic violence situations, all of this gets aggregated, and already existing inequalities impede women's access to survival mechanisms at home and outside. The limited availability of even basic resources can well be gathered from the following observation made by Jaya Valenkar of Jagori<sup>28</sup>: "If a woman has to complain or seek help from a helpline about her family being abusive, she needs to have a landline or mobile phone while being 100% sure that she is not being overheard - whether it is her marital home or natal home."

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26 Supra (n 23), Para 12

27 In a statement made by Mr. Antonio Guterres, the Secretary General of the United Nations, nearly 60% of women around the world working in the informal economy, earning less, saving less are at greater risk of falling into poverty because of the COVID-19 pandemic. As markets fall and businesses close, millions of women's jobs have disappeared.

28 A women's rights organisation based out of Delhi, India



After her escape, when Meena Kandasamy's protagonist reconnected with family and friends, she laments that "for four months and eight days, I had been off every radar. No phone, no email, not even curated happiness of Facebook." "Did anyone ask for me?"

As a society, especially during lockdown, we cannot assume "no news is good news." It is important to stay on each other's radar and to not mistake silence for wellbeing. That the home is not the safest place for women and that, often, shame about what she is forced to put up with stops women from seeking help is a message that must reach everybody loud and clear.

# INTERPLAY BETWEEN DOMESTIC VIOLENCE LAW AND LAWS PROTECTING SENIOR CITIZENS

– Malavika Rajkumar<sup>1</sup>

## Abstract

*The article deals with question of conflicts between the competing interests of daughter's-in-law and senior citizens under the Protection of Women from Domestic Violence Act, 2005 and the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, respectively. It argues for the need of comprehensive guidelines/principles which can guide Courts in reaching decisions while balancing the interests of all parties.*

***Keywords: Domestic Violence Act, Senior Citizens Act, Right of Residence***

The world has been seeing a sharp rise in the incidence of domestic violence since lockdowns due to the COVID-19 outbreak. In April, the National Commission for Women (NCW) reported more than a twofold increase<sup>2</sup> in complaints of domestic violence. Keeping in mind the increased litigation that will flood Courts once they properly function again, one of the main conundrums that need to be discussed by Courts across India exists in the question of balancing two legislations, i.e., The Protection of Women from

<sup>1</sup> Malavika is a Research Fellow at the Vidhi Centre for Legal Policy and the Content Lead at Nyaaya.

<sup>2</sup> Lachmi Deb Roy, 'Domestic Violence Cases Across India Swell Since Coronavirus Lockdown' Outlook India <<https://www.outlookindia.com/website/story/india-news-rise-in-domestic-violence-across-all-strata-of-society-in-the-coronavirus-lockdown-period/350249>> accessed 20 August 2020

Domestic Violence Act, 2005 (“Domestic Violence Act”) and The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (“Senior Citizens Act”).

Daughter-in-laws are protected by the Domestic Violence Act while the parents/in-laws get protection under the Senior Citizens Act. The main question which comes into play is the question of whether the daughters-in-law get to reside in the “shared household,” or commonly the matrimonial household, during and after the domestic violence proceedings. Many women don’t have the opportunity to move out of the house they are married into, for reasons such as withdrawal of finances by their husbands, and patriarchal attitudes giving a woman limited independence and lack of work opportunities. At the same time, the conundrum gets more complex with the enactment of the Senior Citizens Act which permits senior citizens and parents to take proceedings for the removal of their children from the house which exclusively belongs to them under the definition of ‘maintenance.’<sup>3</sup>

## Conflict in Domestic Violence Law

Daughters-in law have the right to residence under Domestic Violence Act<sup>4</sup> whether or not she has any right, title or beneficial interest in it. However, there have been conflicting judgments of the Supreme Court on the definition of a “shared household” under domestic violence law. The Supreme Court in *S.R Batra and Anr. v. Taruna Batra* (2007)<sup>5</sup> held that the wife is only entitled to claim a right to residence in a shared household, which includes the house belonging to or taken on rent by the husband or a house which belongs to a joint family of which the husband is a member. Many decisions post *Taruna Batra* have held that the daughter-in-law has the right to continue to live in their shared household irrespective of whether the property belongs to the in-laws or not – with the caveat that the daughter-in-law has no alternate accommodation or any such accommodation made available by the husband.

While the Supreme Court in *Taruna Batra* has given an expansive interpretation to the term “shared household,” on the other hand, another bench of the

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3 Section 2(b), The Maintenance and Welfare of Parents and Senior Citizens Act, 2007

4 Section 17, Protection of Women from Domestic Violence Act, 2005

5 *S.R Batra and Anr. v. Taruna Batra* [2007] 3 SCC 169

Supreme Court in *Vimalben Ajitbhai Patel and Ors. vs. Vatslabeen Ashokbhai Patel and Ors.* (2008)<sup>6</sup> has narrowly interpreted the same. The Court has held in the latter judgment that if the house of the in-laws is owned exclusively by them, the house would not constitute a ‘shared household’ under Section 2(s) of the Domestic Violence Act. Not only has this judgment resulted in denial of a woman’s right of residence in her in-laws’ house, but has also impacted several High Courts’ judgments on the interpretation of the term. While some High Courts have followed the *Taruna Batra* judgment upholding the restriction on the right to residence,<sup>7</sup> other High Courts have distinguished the facts of the judgment to grant residence rights in favour of the aggrieved woman.<sup>8</sup>

In domestic violence cases, there are often situations encountered such as the Delhi High Court enumerated in the case of *Smt. Preeti Satija vs. Smt. Rajkumari* (2014) where the husband moves out, transfers properties or ownership rights or shares in immovable properties at the first hint of trouble or discord with his wife, in favour of his relatives. Situations may also arise where the parents of the husband often, in such cases, “disown” them after the son moves out from the common or “joint” premises owned by either or both his parents, just to create circumstances to evict the daughter-in-law. The Court hinted at taking a careful approach in such situations and noted that, by not granting the right to residence to a daughter-in-law in such cases, the object of the domestic violence law would be defeated.<sup>9</sup>

Keeping in mind the factual matrix of each domestic violence case, the need of the hour is to come up with a comprehensive set of guidelines, so as to balance the rights of the daughters-in-law by keeping in mind the rights of parents under the Senior Citizens Act, without taking away the rights guaranteed to victims of domestic violence under the Domestic Violence Act.

## Law Protecting Senior Citizens

The scope of the proceedings under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and Rules is to grant protection to the parents,

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6 *Vimalben Ajitbhai Patel and Ors. v. Vatslabeen Ashokbhai Patel and Ors.* [2008] 4 SCC 649

7 *Sardar Malkiat Singh v. Kanwaljit Kaur & Ors.* II [2010] DMC 848; *Shumita Didi Sandhu v. Sanjay Singh Sandhu & Ors.* [2013] ILR I Delhi 56

8 *Smt Preeti Satija v. Smt. Raj Kumari & Anr.* AIR [2014] Delhi 46

9 *Ibid.*

including with respect to their property. Senior Citizens are entitled to institute an application seeking eviction of their son, daughter or other legal heir from their property. This also includes the families of the daughter/son of a senior citizen. For example, a daughter-in-law is also an heir if she is a widow of a deceased son.<sup>10</sup>

There have been Delhi High Court judgments such as *Smt. Darshna v. Government of NCT of Delhi & Ors.* (2018)<sup>11</sup> which have held that a senior citizen is also entitled to evict his son, daughter or legal heir from his property irrespective of whether it is an ancestral or self-acquired property. A senior citizen merely needs to show that his property needs protection and does not necessarily have to show that he/she needs maintenance or has been ill-treated by the son or other legal heir. It was also held that if it can be proven that the children have no right over the property of the parents, the fact that the parents do not wish to have their children staying with them is enough for invoking the Act and the Rules.<sup>12</sup>

Incidentally, keeping this in mind, the Delhi High Court, in *Sunny Paul & Anr. v. State NCT of Delhi & Ors.*,<sup>13</sup> held that State Government has to prepare a comprehensive action plan for providing protection of life and property of senior citizens. The court further held that in absence of a comprehensive plan, the Court could intervene judicially to pass necessary orders for protection of life and property of senior citizens.

## Limited Solution to the Problem

The Delhi High Court in *Vinay Varma v. Kanisha Parishcha* (2019)<sup>14</sup> addressed the issue of striking an equitable balance between the legal relationships governed by the above two acts by issuing six broad guidelines to be followed by Courts. The Courts have to ascertain the nature of the relationship between the daughter-in-law and the parents as well as to determine whether she was

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10 *Sandeep Gulati v. Divisional Commissioner* W.P. (C) 2761/2020 (High Court of Delhi); *Sunny Paul v. State of NCT of Delhi and Ors* 253 (2018) DLT 410

11 *Smt. Darshna v. Government of NCT of Delhi & Ors.* 252 (2018) DLT 618

12 *Sandeep Gulati v. Divisional Commissioner* W.P. (C) 2761/2020 (High Court of Delhi)

13 *Ibid*

14 *Vinay Varma v. Kanisha Parishcha* CM (M) 1582/2018 (High Court of Delhi)

living in a joint family. As per the guidelines, if the parents decide to evict the daughter, the husband has the duty to take care of the wife by paying maintenance under the domestic violence law. In scenarios, where parents are seen colluding with their son, then the obligation to take care and provide shelter to the daughter-in-law would fall on the husband as well as the parents. The parents may claim exclusive possession of the property in situations where their son is ill-treating them or if he has abandoned both the parents and his wife or children. The parents would, however, have to provide shelter to the daughter-in-law for a reasonable period if they had lived together in a joint family.

The problem with such guidelines given in the Vinay Sharma case is that it is difficult to put such a restrictive formula on adjudicating the right of residence of a woman/daughter-in-law in domestic violence cases. The guidelines only serve as an indicative list for the purpose of enforcement, as they don't account for or encompass all types of situations and, hence, cannot be definitive.

In *Shumita Didi Sandhu v. Sanjay Singh Sandhu & Ors.* (2013),<sup>15</sup> the Delhi High Court held that the right of residence under the Domestic Violence Act does not mean the right to reside in a particular property but the right to reside in a “commensurate property”. Many other cases, such as the Delhi High Court in *Evenet Singh and Ors. vs. Prashant Chaudhri and Ors.* (2011),<sup>16</sup> have also upheld this same principle while applying it to the facts of the case.


It becomes evident on analyzing judgments like *Taruna Batra*, that the principles formulated by the Supreme Court limited itself to the Domestic Violence Act and did not consider the issue of any conflict with the Senior Citizens Act.

## Solving the Conundrum

Unless there are Supreme Court interventions in providing broad guidelines, clearing the issue of right of residence between the two laws – Domestic Violence Act and Senior Citizens Act – there will be a series of uneven decisions from

15 *Shumita Didi Sandhu v. Sanjay Singh Sandhu & Ors.* [2013] ILR 1 Delhi 56

16 *Evenet Singh and Ors. v. Prashant Chaudhri and Ors* 177 [2011] DLT 1 24



lower courts which would burden litigants to file appeals. Situations to decide on right to residence have to be examined in detail. Some examples of such situations may include the death of husband, collusion between relatives, etc.

Another solution would be for individual State Governments to list down guidelines to solve this conundrum into the comprehensive action plan under the Senior Citizen Act<sup>17</sup> for providing protection of life and property of senior citizens. A model guideline can also be drafted by the Ministry of Law and Justice as it is the nodal ministry which provides effective laws for the maintenance and welfare of senior citizens. The guidelines should clarify situations where the daughter-in-law would have the exclusive right to the residence over the parents, and *vice versa*. This would help reduce the burden on Courts, reduce the pendency of litigation and weigh competing interests in a way to meet a resolution.

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<sup>17</sup> Section 22, The Maintenance and Welfare of Parents and Senior Citizens Act, 2007



# MOVING MOUNTAINS, MOVING MACHINERY: DOCUMENTING EXPERIENCES OF AALI DURING PANDEMIC – AN INTERVIEW WITH RENU MISHRA AND SHUBHANGI<sup>1</sup>

– Surbhi Karwa<sup>2</sup>

## Abstract

*Association for Advocacy and Legal Initiatives (AALI) is a feminist legal advocacy and resource organization working with an aim of creating an egalitarian social system that recognizes women as equal agents in society. Established in 1998, the organization works with strong focus on promoting feminist-legal strategies for ending gender-based violence and discrimination against women. It works for providing women with required legal and non-legal assistance in securing access to justice. The organization currently has presence in 45 districts across Uttar Pradesh, Uttarakhand and Jharkhand through a network of trained case workers, community leaders and lawyers. The aim of the current interview is to document the experiences of an organization working with women facing discrimination on various accounts in small towns of Northern India.*

**Keywords:** Domestic Violence Act, Lockdown, Advocacy

<sup>1</sup> Ms. Renu Mishra is Executive Director, AALI and Ms. Shubhangi is Programme Coordinator, Resource Centre and Advocacy, AALI. The interview was conducted over three rounds of structured and non-structured interview schedules.

<sup>2</sup> Surbhi Karwa is an alumnus of NLU-Lucknow and NLU-Delhi.

## ***On Numbers of Complaints Received and Modes of Receiving Complaints:***

- 1. There have been multiple reports of largescale increase in vulnerability of women to violence during the lockdown period. What was the impact of the lockdown measures on the number of complaints of domestic violence which reached you? What were the average cases daily before lockdown, as compared to after lockdown?***

Between 1<sup>st</sup> January 2020 to 20<sup>th</sup> March 2020, we received 23 new cases of violence against women in our Lucknow office and 8 new cases at Ranchi office. Post lockdown, between 21<sup>st</sup> March 2020 to 15<sup>th</sup> June 2020, we received 55 cases at Lucknow office and around 22 cases at Ranchi office. This is data from our main offices; there were cases with our case workers in various districts. We are currently collecting and analyzing those data.

So, we saw an increase in number of cases received during lockdown; but, in our sincere opinion, there is still large scale under reporting of cases of violence against women. Violence against women has always been under reported, but during the lockdown with curtailment of physical mobility, there was further under reporting because opportunities to step away from violent spaces or the ability to reach out to support persons was further reduced. Surveillance within homes by perpetrators, and reinforcement of gender stereotypical roles during lockdown, restricted women's opportunities to step out of the house to report violence. Even for essential commodities, it was primarily the male members of the household who had been stepping out.

- 2. What are the modes through which you received these cases?***

On regular days, most of our cases came from women who physically visit our office. We received fewer cases on phone or via email, since we did not run a SOS helpline number for women. Our Case workers have official mobile numbers for coordinating with survivor women, but they are intended to be used for only emergency purposes. Cases either came on references from sister organizations across the country, state actors, community members, or through previous women survivors. During lockdown, our office was completely shut off and, thus, during the entire period of lockdown, we

received no cases through physical visits to our office. Most of the cases came through phone calls.

**3. *Various organizations discovered the option of receiving complaints through Whatsapp, emails, etc. National Commission of Women also launched a Whatsapp number. What has been your experience regarding use of technology for intervention in cases of violence against women?***

There is a gender divide in access to technology. Many women do not have financial resources to buy phones. We had cases where, due to financial constraints created by pandemic, mobile phones of women were no longer being charged, leaving them with no means of seeking support. Further, access to mobiles for women, especially young women, is highly stigmatized owing to harmful patriarchal notions.

In our experience, a significant portion of women are not well-versed with technology and virtual platforms. Many of them do not have access to internet or emails. English language is a barrier, too. We are currently analyzing a survey conducted with 250 lower court lawyers, wherein we are looking at various hurdles and vulnerabilities to the justice systems and legal professionals owing to covid-19 related measures, including accessing and use of internet and technology across UP, Jharkhand and Uttarakhand. Thus, in any strategy for ending violence against women, gender divide in access to the technology and language barriers have to be taken into account.

Another challenge with technology is that women find it difficult to share their experience of violence, especially sexual violence, on phone. There is anyway acceptability of sexual violence by husbands in our society. During regular days, when we receive any case of violence in our office, our first aim is to give a safe space to woman to be able to share her experience of violence. But, with use of technology, there is lack of human touch, and women often hesitate in discussing the extent and nature of the violence faced by them. Further, the high possibility of surveillance by the perpetrator makes their situation even more difficult.

And, lastly, we also need to consider whether we have enough infrastructural and human resource support for handling complaints received telephonically or online. Two Whatsapp numbers and one Facebook/email id managed by two-three persons will not be sufficient for women across the demography of our 3 intervention states.

## **On Strategies of Reaching Out to Survivors:**

4. *As you discussed, you faced difficulties in reaching out to survivors and receiving complaints physically. What were the strategies you adopted to reach out to women, since physical access to the office was completely shut?*

Yes. Covid 19 and the subsequent lockdown was an unprecedented situation for us, as well. But, we adopted the following strategies in reaching out to survivors and providing support:

Publicizing our phone numbers – As we have discussed, our phone numbers were not 24x7 available numbers. So, our first aim was to convert our numbers into help lines and publicize them as much as possible. Through social media, Whatsapp groups and community networks, we attempted to ensure that our number reached as many women as possible.

Secondly, our strategy was to pro-actively reach out to as many women as possible through a variety of networks and support groups which we have been able to develop over the years as an organization. Three of such networks are as follows:

Use of Survivor Networks – Two years ago, we had established a network of survivor women whose cases AALI was directly handling in Lucknow and Ranchi. The aim was to create an independent network of survivor women who can support each other while navigating through the legal system in their journey to independence and self-building. Over the past two years, we facilitated consciousness building through monthly dialogues, film screenings and other team building activities for the survivor women. During the lockdown period, we pro-actively engaged with the survivor networks to ensure support and build confidence so that they can reach to us, and are not alone. We also

used these networks for spreading correct information about the pandemic and state action, encouraging safe practices.

*Pro-active Engagement and Training of Network of Case Workers* – AALI works with the strategy of replicating its skills and strategies at community level through our network of case workers. Every year AALI runs a one-year training programme for case workers from Community Based Organisations in different districts. AALI provides them with technical support through a sustained period of time, once their training is complete. During lockdown, we pro-actively engaged with the trained case workers and trained them to handle the gendered impact of lockdown. Initially, they were also in a state of confusion as to whether cases of domestic violence are any more a priority for the system. Further, many of the case workers did not have laptops and other technological tools; we struggled with that as well. But, through their network, we reached out to as many women as possible.

*SAJAG Defenders Network* – AALI anchors a network of communitybased organizations and lawyers through our initiative named SAJAG (Strengthening Access to Justice at Grassroots). Through this network, we stayed in contact with various organizations and coordinated our efforts in reaching out to women. We also worked with some national networks to coordinate and plan our responses during COVID-19. Aman: Global Voices for Peace in the Home, is a network of over 185 women's organizations and individuals across 18 states in India. We worked with them on the issue of violence against women during the pandemic.

**5. *You also conducted a rapid online survey of as many as 890 women during the initial phase of lockdown; what was the aim of the survey, and what have been the results?***

Yes. We conducted an online survey of 890 women through our network of case workers, lawyers and community groups. This was done during initial phase of lockdown between 27<sup>th</sup> March 2020 and 10<sup>th</sup> April 2020. The aim was to map the vulnerabilities of women and record their narratives during COVID-19.

Out of 890 women, around 134 reported domestic violence. Many women were not willing to describe their experiences as 'domestic violence,' even though

strictly speaking what they went through would have amounted to domestic violence. They rather called it 'discord,' 'problems arising out of Covid,' instead of gender-based violence. Some women felt hesitant in recognizing violence faced by them amidst a larger problem of pandemic. "*COVID ke chalet sab ghar wale itni pareshani mein hai, itna toh chalta hai,*" some of them told us. (Because of COVID everyone is under stress, so some amount of 'ups and downs' are fine; it is not violence). Only 134 were willing to name their experiences as 'domestic violence.' We have processed this data collected through the survey and presented these insights by way of 4 factsheets. We are in the process of working with more data and learning from the experiences of our other interventions.

**6. *Uttar Pradesh Police started special helpline numbers-112 for survivors during the lockdown. It also has a 1090 facility, Dial 100, Dial 181 facilities. Were these services functioning properly during the lockdown time? Were survivors able to reach them?***

Dial 112 is an all-inclusive general number for all kinds of crime. 1090 on the other hand deals with cyber sexual harassment of women. On regular days, 181 facility was active for all cases of gender-based violence. However, during the pandemic, they were lacking in their response. Tele-callers for 181 could not reach office or use the requisite software from their homes, since no guidelines or provisions were made to that effect; hence, they failed to respond to women in need. The staff of 181 is also struggling with non-payment of salaries, and the government has been lacking in its response to keep the facility alive. Similarly, National Commission of Women has an online portal which provides automatic response, but follow-up response was found to be lacking in our experience. In our own survey, around 88% of the women who called different help lines did not receive any response.

Lucknow has Asha Jyoti Kendra, the state sponsored one stop crisis centre for women facing violence. They were very active in their response, although they required constant handholding from us with respect to strategies. But, they too had to shut down their office due to reports of COVID positive case in their short term shelter home.

## On Nature of violence:

7. *The Protection of Women from Domestic Violence Act, 2005, recognizes various kinds of violence – physical, emotional, economical, sexual, etc. What were the kinds of cases of violence you received?*

In the narrow patriarchal understanding of domestic violence, only physical violence is considered ‘actual violence.’ But, the 2005 act rightly recognized a wider definition of violence; economic and emotional abuse were also recognized as forms of violence.

During the pandemic, while we received various cases of physical violence, including rape, we also received a large number of cases of economic abuse. Women, sisters, daughters are last priority in households, and the same got amplified in the pandemic. We received cases where women were not being given food; they struggled with their share in the rations. Thus, for the first time in our history, we worked for direct distribution of ration as emergency relief.

Similarly, women who are dependent on maintenance from their husbands faced major challenges in access to their maintenance. Since district courts and treasury were closed except for remand work, the maintenance orders given before the pandemic could not be implemented, no orders were passed in ongoing cases of violence against women, and no new application for maintenance or under PWDVA, 2005, could be filed. For women whose maintenance stopped, pandemic resulted in revival of the trauma they had previously suffered.

We also received cases of emotional abuse based on COVID-19. Women were being called names and character assassinated with taunts like, *“Oh! Now what will you do? How will you go out and meet your many lovers? You must be missing your lovers!”*

Mental violence was also amplified due to pressure of being locked in the house and gender roles getting amplified.

Apart from domestic violence, we received various cases of online sexual harassment of teachers. Students or fathers of students made videos of teachers who were teaching online and circulated them.

8. *In the mainstream narratives, domestic violence is presumed to be between partners. However, the 2005 act recognizes various kinds of domestic violence by men of the household on women. For example, violence by fathers towards their daughters, etc. Can you share examples of such cases where violence was seen during lockdown in relationships other than marriage or one like a marriage?*

You are absolutely right! Domestic violence includes both marital and natal violence. On average, 90% of the cases we received during the lockdown were related to marital violence, and the rest 7-10% were related to natal violence. We had cases where daughters were being harassed by their fathers, brothers and other members of the natal family. In one case, one MBBS doctor was not allowed to go out of the house for her job, and her phone was broken. Similarly, we also received various cases of increased surveillance of daughters in their house.

### **On Role of Police:**

9. *What has been your experience in approaching police for cases of domestic violence? Were cases of domestic violence given requisite priority by the police forces or not? How did you handle the challenges (if any) which you may have faced due to approaching the police?*

The police was not forthcoming in registration of FIRs, conducting investigations or arresting offenders. For example, in one of our cases, medical examination was not conducted by the police of a rape survivor and, consequently, she faced multiple problems in terminating her pregnancy that resulted from the crime. Registration of FIR is mandatory, investigation is mandatory. And, yet, neither was being done. If investigation is not conducted on time and requisite arrests are not made, lives and safety of women can be under threat.

It looked as if the pandemic had superseded law. We had to argue, negotiate and convince police that even during the pandemic, an FIR for rape or domestic violence is mandatory. Sometimes we had to write and reach up to higher police officers, and then only FIRs were registered. In some matters of



violence against women, time is crucial. A delay on the part of the police can prove fatal for the very life of women.

Further, police lacked training in handling challenges thrown by the pandemic. Lack of priority planning amongst police personnel was clearly visible.

## **On Shelter Homes:**

***10. Under the 2005 Act, the state government notifies shelter homes where survivors can live in case of threat to their safety. However, due to Coronavirus, shelter homes might be reluctant to admit survivor women. And, further, women might be exposed to risks in shelter homes. What has been your experience with shelter homes? Were the shelter homes allowing women to enter? Were the shelter homes found sufficient and safe, given rules of social distancing?***

During regular days, sending a woman to a shelter home is our last option. We look for the family home or a friend's home where women can take safe retreat. Shelter homes lack safe spaces and restrict mobility. In our experience, shelter homes operate within systemic patriarchal setups. But, the gaping need for shelter homes became even more significant during lockdown, due to breaking down of support systems of family and friends.

Even before the pandemic, shelter homes have struggled with overcrowding. In our experience we have seen 2 room shelter homes with 40 women locked in, and with a single washroom with no doors and deplorable hygiene conditions. Following any kind of social distancing rules is almost impossible in shelter homes. A Kanpur shelter home case proves the same.<sup>3</sup> Despite the Supreme Court taking suo-moto cognizance of the condition of child shelter homes during the pandemic, the implementation was lacking.<sup>4</sup> In a case where directions were sought for safety of women in Nari Niketans, the Supreme Court did not pass any effective order or place any obligations on the State.<sup>5</sup>

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3 'India Coronavirus: 57 Minor Girls Test Positive in Kanpur Shelter Home' (BBC, 22 June 2020) <<https://www.bbc.com/news/world-asia-india-53133473>> accessed 29 June 2020

4 *In Re Contagion of Covid Virus in Children Home* Suo Moto Writ Petition No. 4/2020, Order Dated 11<sup>th</sup> June 2020

5 *Rishad Murtaza v UOI* Writ Petition (Civil) Diary No. 10925/2020 Order Dated 21-04-2020

In one of our cases, we took a survivor to a shelter home which admitted her without testing, and later she was found positive. On the other hand, many shelter homes were closed, and were not even picking up phone calls.

The major problem is that these issues of gender-based violence and protection of women's rights were not considered urgent or high priority in the planning of COVID-19 response. There are monitoring committees at each district level in Uttar Pradesh for monitoring the condition of shelter homes. The District Magistrate, Secretary District Legal Services Authority and government are directly responsible for maintenance of shelter homes. Better planning of gendered impact of lockdown was required.

**11. *Did the Uttar Pradesh government adopt any measures to make shelter homes an essential service, so that women can be safely taken to such homes? Or did government adopt any other strategies for alternate safe homes for survivors?***

No. No such initiative was taken by the state government. In fact, AALI sent recommendations to Department of Women and Child and State Women's Commission and State Legal Services Authority through emails. We received no response.

**12. *Transportation to such shelter homes was also a challenge given restricted public transport facilities. How did you handle these logistics? Did government provide any transport facilities for survivor women?***

Transportation was usually managed through government vehicles like police van, or One Stop Crisis Centre rescue vehicle. But, this required a lot of negotiation and push, as it was not laid down as part of any guideline or procedure.

**13. *Under the Act, magistrate also has power to direct the respondent to remove himself from the shared household. Can you share examples, if any, where men were removed from the shared household and not the women?***

We were very hopeful when the 2005 Act was passed. Under the Act, for the first time, right of shared household for women was recognized; a provision

for residence order was made. Lack of residence/safe shelter was a major challenge for survivor women in reporting cases of violence, because they had nowhere to go. The 2005 Act was recognition of contribution of women's care labor in a shared household. But, the situation has not changed much even after passing of the act. Due to a patriarchal understanding of household for a married woman, judicial officers are hesitant in passing residence orders. Even before lockdown, in barely 2% of our cases, residence order was given. We did not have any such case during lockdown where men were asked to vacate.

### **On Protection Officers:**

- 14. *The act recognizes a wide role for protection officers, from medical aid to assistance in shelter homes. Most importantly, protection officer forwards the copy of Domestic Inquiry Report to police officer, and magistrate has to take into consideration the DIR filed by protection officer before passing any order. Were the protection officers effectively functioning in the cases you handled?***

We had similar struggles with protection officers as with police. We had to convince protection officers that pandemic is no ground for stopping work and abdicating responsibility. In one of the districts where we function, office of protection officer was closed.

### **On Courts:**

- 15. *During the lockdown, courts were not functioning to their full capacity and were taking only urgent matters. While some High Courts declared cases of domestic violence to be urgent matters, some did not. What has been your experience with courts? Were there any delays in getting relief from courts?***

We did not get many chances of engagement with courts during the lockdown. Lower courts were mostly closed, and there was no direction from High Court for hearing domestic violence matters as urgent matters, unlike some other High Courts. No such direction came even from the Supreme Court. Courts were simply not an option. Urgent protection order was rarely a remedy.

## ***On Challenges and Strategies:***


- 16. In our discussion, a suggestion emerged that one stop crisis centres, counseling centres for survivors facing domestic violence should be declared essential services. Do you believe such an approach would have helped? What has been your experience with such centres?***

Yes. A lot of the challenges would have been solved if these services were declared essential services. We also recommended giving e-passes to all the agencies involved in addressing violence against women. Women also would have felt more confident that there are mechanisms existing and functional for support.

Around 70% women in our survey did not believe that they have an option of reporting and seeking help amidst a pandemic. We were continuously asked, 'it is lockdown, where will be go, will police take action?' They saw pandemic and lockdown as an overriding event where the violence against them and protection of their rights was not a priority. We had to counsel them that they are not alone and that even in a pandemic, there is support for them. If these services were declared essential services and the same was publicized through radios, local newspapers, television, then things would have been different.

- 17. You have rightly pointed out the lack of political messaging against violence against women. The issue of domestic violence has largely remained ignored and condoned by policy makers. In fact Mr. Antonio Guterres, the Secretary General of the United Nations named it 'shadow pandemic.' Do you believe that there could have been better political messaging for tackling domestic violence during pandemic? Do you believe that governments failed in making the gender implications of the lockdown part of their agenda?***

Yes, absolutely. There was complete lack of political messaging during the lockdown. Reporting violence is, anyway, riddled with socio-economic hurdles and stigma. It is surrounded with taboos and judgments by labeling women who seek recourse and justice as vengeful and manipulative. A clear political messaging that lives of women matter and domestic violence will not be tolerated, would have gone a long way in inspiring confidence in women.



There was lack of planning and training on part of governments on gender implications of lockdown. Policy makers lacked feminist/inclusive policy making. A total state of confusion prevailed. It looked as if pandemic is superseding the law. We had to remind the authorities, the police, the protection officers, etc., that lockdown or pandemic cannot be a reason for flouting the rule of law by refusing to register an FIR or undertake investigation. For a woman both COVID-19 and domestic violence are questions of life and death. For a woman stuck in the home with her abuser, inside the home is as unsafe as outside.

AALI as an organization works for feminist-legal interventions towards gender equality and strengthening and informing justice mechanisms. We do not aim to become a parallel system for handling cases of gender-based violence. Various laws have already created a whole range of machinery for responding to gender-based violence. But, during COVID-19 the machinery needed to be continuously moved, it had to be continuously negotiated with and argued with to make it operate. Moving the machinery almost looked like moving the mountain.

**18. *Any other suggestions, information you would like to share.***

Pandemics are known to amplify existing social inequalities and impact the lives of marginalized sections of society more severely. Challenges for women in the post-pandemic world will be compounded on account of their gender, caste, and their social and economic position. A large portion of women work in the informal sector, and they will face cash crunch and lack of access to resources. The girl child will be more likely to be dropped from school as compared to boys in the post-lockdown world. Chances of child and forced marriages will increase. These factors impact the ability of women to not only realize their complete potential, but also to seek immediate support in case of violence against them. Thus, what is warranted is political and policy level recognition that pandemics are not gender neutral in their impact. Governments and policy makers urgently need to make gender challenges and feminist approaches part of their agenda.

# IN CONVERSATION WITH PROF. (DR.) ASHA BAJPAI: CHILD RIGHTS IN ABUSIVE HOUSEHOLDS DURING COVID 19: A BLINDSPOT

- Vani Sharma, Prannv Dhawan & Manisha Arya<sup>1</sup>

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***Keywords: child sexual abuse; Juvenile Justice Act; children in conflict with the law; child rights; Protection of Children against Sexual Offences Act; COVID-19; pandemic; migrant children***

<sup>1</sup> Prof Bajpai had responded to the email questionnaire on 19<sup>th</sup> August, 2020.

## 1. How does the regime under the PWDV Act interact with the Juvenile Justice Act and POCSO to protect the rights of children facing domestic violence and child sexual abuse?

The Protection of Women against Domestic Violence Act 2005 (DV) is enacted specifically to prevent violence against women in families; however, it also provides some protection to children. Under Section 2(b) of the DV Act, '*child*' means any person below the age of 18 years. The term "domestic violence" includes all forms of actual abuse or threat of abuse of physical, sexual, verbal, emotional and economic nature that can harm, cause injury to, endanger the health, safety, life, limb or well-being, either mental or physical of the aggrieved person. The definition is wide enough to cover child sexual abuse, harassment caused to a woman or her relatives by unlawful dowry demands, and marital rape. The Act covers children who are below the age of 18 years and includes adopted, step or foster children who are the subjects of physical, mental, or economic torture. A child is therefore entitled to relief under the Domestic Violence Act. The respondent has to follow the arrangements made by the court regarding the custody and maintenance of the child or children of the aggrieved person.


As the natural and legal guardian of her children or of the children under her care, the mother of a child facing violence has every right to take action and file complaint as specified in the court order. She can make an application on behalf of her minor child (whether male or female). In cases where the mother makes an application to the court for herself as victim, the children can also be added as co-applicants.

Recognizing the vulnerability of children and the need for special and different treatment, the juvenile justice system was established. The Juvenile Justice (Care & Protection of Children) Act, 2015 (the JJ Act) is a socio legal legislation. It provides for an exclusive system for the rehabilitation and reformation of 'children in conflict with law' (CCL) and 'children in need of care and protection' (CNCP). The Juvenile Justice system is based on the principle of promoting, protecting and safeguarding the rights of children, by catering to their basic needs, through proper care, protection, development, treatment, and social re-integration, by adopting a child-friendly approach in adjudication and

disposal of matters, in the best interest of children. The bodies established are Juvenile Justice Boards (JJB) that deal with children in conflict with law and Child Welfare Committees (CWC) that are set up for exercising the powers and to discharge the duties in relation to children in need of care and protection. There are also Children's Courts to conduct trial of CCL as an adult as per provision of CrPC, 1973, considering special needs and rights of the child and maintaining a child-friendly atmosphere. Special Juvenile Police Units (SJPU) are set up in each district. SJPU are trained units of police officers who are expected to exclusively deal with cases of 'children in conflict with law' and 'children in need of care and protection'. Another structure under the Act, called the "District Child Protection Unit" (DCPU), established by the State Government, is the focal point to ensure the implementation of this Act and other child protection measures in the district. On the other hand, the Protection of Children against Sexual Offences Act, 2012 (POCSO) is a comprehensive law that provides protection to children from the offences of sexual assault, sexual harassment and pornography. Special Courts are set up under POCSO to hear cases under POCSO which include presiding officers (judges) support persons, public prosecutors, court staff, and infrastructure, in a child friendly environment.

Now, responding to your question regarding interaction between these three laws: if the accused under POCSO is a child below 18 years, then he or she must be treated as a child in conflict with law under the JJ Act and produced before the JJB. The JJB must follow the child friendly procedures prescribed under POCSO. A victim of domestic violence under PWDV is a child in need of care and protection under the JJ Act. Similarly, a victim of child sexual abuse, under POCSO, is a child in need of care and protection under Juvenile Justice Act. The local police or the special juvenile unit police under JJ Act have to report the commission of a sexual offence against a child to CWC and produce the child before the Special Court within 24 hours. The CWC has to assign a support person The Child Welfare Committee under the JJ Act has to take action for rehabilitation of sexually abused children under section 19(6) of POCSO. The JJ Act prescribes procedures for age determination if required by Special Court under POCSO. The DCPCU set up under the JJ Act has to maintain contacts of special educators and other special services required by POCSO special courts.






However, the implementation of these laws remains a major challenge, and multiple barriers exist that impede the implementation of these laws. Poor implementation combined with lack of necessary convergence and coordination among the functionaries and stakeholders make things worse for children. The linkages between JJ Act and POCSO Act are missing on ground. For example, children are restored without the court's knowledge. There is no linkage between Special Courts and the JJ system. Special Courts need to recognize and use services of support persons and their roles must be understood. Such support persons cannot only help with case work management, but also help the courts with needs assessments, including witness protection needs. There is the challenge of underreporting of domestic violence cases against women survivors. Such systemic deficiencies and challenges impede the effective implementation of these laws. The effective provision of legal services for children must be ensured. There is also a need to break away from negative attitudes and revisit the awareness generating mechanism put in place by the states.

## **2. What is the impact of domestic violence on children?**

Children are the forgotten, hidden or, maybe, unintended victims of domestic violence. Domestic violence against children below 18 years includes all forms of violence, whether perpetrated by parents or other caregivers, peers, romantic partners, or strangers. Experiencing violence in homes in childhood, between parents or other family members, impacts the lifelong health and well-being of the children. There is significant risk to the child's physical, emotional and social development. Exposure to domestic violence threatens the very right to development of the child, and many of them exhibit personality and behavioural problems. Children who witness domestic violence or are victims of abuse themselves are at serious risk for long-term physical and mental health problems. These can include physical problems like cardio vascular diseases or stress related conditions like diabetes and hypertension. The mental health conditions may include depression and anxiety. Experts believe that the psychological aftermath of exposure to DV can include fear of harm or abandonment, excessive worry or sadness, guilt, inability to experience empathy or guilt, habitual lying, low frustration tolerance, emotional distancing, poor judgment, shame, and fear about the



future. There is a common link between domestic violence and child abuse. This link has been confirmed by studies around the world. Studies have shown that among victims of child abuse, majority of them have experienced domestic violence in the home. Some studies suggest that children lose the ability to feel empathy for others. Children who witness violence between parents may also be at greater risk of being violent in their future relationships. They themselves become abusers. Many studies have noted that children from violent homes exhibit signs of more aggressive behaviour, such as bullying and fighting. They may also be at greater risk of being violent in their future relationships. At such times, the child victim needs support from a caring adult whom the child trusts – someone from the extended family, like grandparents, uncles, aunts, cousins. It could also be a trusting caregiver, a teacher or mentor or, maybe, a caring neighbour.

### **3. What is the effect of COVID 19 pandemic on domestic violence?**

Gender based violence has almost doubled in some states. ‘Lockdowns’ due to COVID across the world have ‘locked up’ victims of domestic violence with their abusers. Domestic violence during COVID 19 is on the rise – and is at its peak. The calls to helpline number for domestic violence have increased. The lockdown reports and calls to helpline numbers for domestic violence have increased manifold. It has been reported that the number of complaints of domestic abuse rose by 53% in the first week of the lockdown (March 23- April 1, 2020) in India. The violence and exclusion faced by women have become compounded many times over in the last few months, with their repercussions expected to impact for several months to come. This also shows the gravity and prevalence of the issue. The National Commission for Women has launched a WhatsApp helpline. Several states have launched their own helplines. So, there are several central, state and NGO helplines. It is clear that addressing domestic violence has become an urgent issue not only for the government, as it is not only a public health crisis and a criminal act, but also has a negative influence on society as a whole.

#### **4. What is the impact of the COVID-19 pandemic, especially on Children?**

The COVID-19 pandemic began as an unprecedented health crisis across the world, but it has, also, turned into a child rights crisis. Children, due to their young age and developmental status are, typically, more vulnerable than adults. Physical distancing and lockdown measures are certainly needed to save lives and suppress the transmission of the virus. However, this has affected children in a variety of ways. All the rights of children are implicated, ranging from basic survival and development, protection from abuse and exploitation, and access to health care and education. COVID-19 has challenged all of us to ensure the survival and well-being of children under the most difficult circumstances. There are certain children who are more vulnerable. These include: children in street situations, orphans, children in alternate care, children of migrant labour, migrant children, children who work as labour and children in dysfunctional families. The major impact includes significant reduction of economic activity across all major economies and the resultant job losses, global recession and poverty. The stress and strain, in addition to closed confinement, is leading to increased domestic violence and sexual abuse of children. Childline, a helpline for children, received around 92,105 calls for protection against abuse during the first week of the lockdown. Domestic violence complaints were at a 10-year high during the first four phases of COVID-19 lockdown.


The COVID-19 pandemic has led to disruptions in the normal life of the children, including their education. It has impacted over 240 million children of the country who are enrolled in schools. Extended school closures may cause loss of learning, increase in child labour as well as forced or child marriages. The longer the crisis goes on, the less chance of children returning to school – depriving them of opportunities for a better future. Online teaching is continued, but this is limited to certain sections of children. Digital technologies are increasingly being used, especially in the current COVID context, to educate, inform and provide support. However, if internet usage of children is unsupervised, it may lead to an increase in cyberbullying, risky online behaviour and sexual exploitation.

There is disruption in nutrition programmes, immunization services, and reproductive health services. Because health systems are strained, these services seem to have taken a backseat in order to tend to the growing pandemic. The impact of the pandemic extends far beyond the sphere of physical health of children. The pandemic is having profound effects on children's mental well-being, their social development, their safety, and their privacy. Children in institutions and alternative care facilities, community-based child protection services, including those living with disabilities, and abuse victims have been especially adversely affected. There is an increase in numbers of missing children and children separated from families.

## **5. What do you think should be the response to protect children from the effects of COVID-19?**

The harmful effects of this pandemic will not be distributed equally. They are expected to be most damaging for children in the poorest neighbourhoods and for those in already disadvantaged or vulnerable situations, so the response has to be accordingly. Some responses could include poverty alleviation packages for vulnerable families and families in quarantine with children. This must include cash transfers and financial and material support. This will prevent child labour and child trafficking. Emergency child protection services for children must commence. Child protection workers must be allowed to function. Online children's courts could function to deal with urgent cases, like compensation for child abuse victims. Online service providers also must be made accountable for children's safety. The IT Act and IPC must be reformed accordingly. Parents, guardians and caregivers will have to be made aware of the dangers of online and abuse and violence, so that children's activity can be monitored.

To mitigate the impact of the pandemic, schools will not only have to remodel and re-imagine the way teaching and learning have happened so far, but will also need to introduce a suitable method of delivering quality education through a healthy mix of hybrid learning of both schooling at home and schooling at school. Recently, parents from eight states approached the Supreme Court on June 30, 2020, seeking directions to bring in regulatory mechanisms for fees in private schools during the coronavirus-induced lockdown. However, the apex



court had advised the parents to approach respective state governments, as the problems are different in each state.

With respect to emergency situations, service providers and caregivers such as child helplines, legal services helplines, school counsellors, teachers, principals, institution superintendents, child welfare officers, JJB board members and child welfare committee members must use whatever means they have (such as telephone or WhatsApp) to keep in touch with children. Children must be able to access these lines of communication 24x7, so that they have means to communicate, if required. A database of safe spaces for children should also be maintained, so that children can be moved in an emergency.

Above all, investments in public health, education and child protection needs to be enhanced. If child protection services are made essential services under the Disaster Management Act and the Essential Services Maintenance Act, the child protection agenda, which is presently missing, could be included within relief and rehabilitation as a part of the disaster relief/response plan. SOPs can be developed during COVID for access to services (food, immunization), protection from violence (sexual abuse, corporal punishment, online safety), prevention of child labour, child marriage, children's rights to education and learning, including for children in the juvenile justice system, which are all critical.


## **6. How has the lockdown impacted shelter homes and other alternative care arrangements for children?**

There are about 3.7 lakh children in more than 9,500 CCIs in India. After the announcement of lockdown, many parents in panic rushed to the institutions wanting to take their children home. Many children from these alternate care arrangements and child care institutions have returned to their families. But home may not always be a safe space, and reports of spikes in calls to the Childline helpline and domestic violence helplines confirm this. On 3 April, 2020, in view of the pandemic, the Supreme Court of India had taken *suo moto* cognizance of the conditions of children in the protection homes across the country. The court issued directions to the state governments and other authorities to protect the lives of children in the juvenile, protection, foster

and kinship homes across the country. It directed that information should be circulated to child welfare committees and JJBs on how to curb the spread of the virus and to raise awareness accordingly. The JJC of each High Court is required to monitor the implementation of these guidelines. On 11 June, this petition was revived, and another order passed by the Supreme Court has asked all States and Union Territories to report on the functionality of Child Protection Structures (JJBs, CWCs, DCPUs, Childline, ICPS), for children in conflict with law and children in need of care and protection (in and out of CCIs), with specific mention of youth in after care, migrant population and children accompanying them, and children in family based settings. These Supreme Court guidelines reportedly are being monitored by the High Court Committees and the Supreme Court, but they cannot be monitored by civil society as they have no access to them. Additional financial resources must be provided to **Child Care Institutions (CCIs) or alternate care institutions** for the provision of additional items such as sanitization supplies, protective gear, medication, additional nutrition to boost immunity, additional clothing and bedding – capital costs to add infrastructure and equipment to ensure health and safety of children.

## **7. What are the challenges being faced in reaching out to and providing support to children affected by the migrant crisis?**

While the virus does not discriminate, its social and economic impact is definitely not equal. The most vulnerable who are in unorganized work force earning daily wages and do not have any social protection coverage, nor ready access to health and essential services disproportionately bear more severe consequences. We saw images of thousands of migrant workers and many with their children, walking on the streets, returning home from the cities. These migrant labourers had lost their jobs as well as housing due to the lockdown. Migrant and displaced children are among the most vulnerable populations. As this happened, the well-being of families and children have come under threat, leading more children to drop out of school, seek work, migrate, or be subjected to child marriage or trafficking. Deprived of access to health care, food and nutrition, their rights to survival, development and protection are violated. Relief camps, labour colonies and transit camps at state borders, as well as quarantine facilities arranged at the block or panchayat level, must



arrange safe and child-friendly shelters that provide nutritious food, water and sanitation facilities for families. These spaces must respond to the psychosocial needs of children and adolescents, specifically those who are alone, as they run the risk of abuse and exploitation. Many children have returned home. School closures have gravely aggravated migrant children's vulnerabilities, for schools provide not only an education, but also a haven, a source of food, an opportunity to identify abuse and an important platform through which to receive information. This safety mechanism is now lost, further compounding the disruption of child protection services to which migrant children already have limited access. They may also face significant barriers in accessing online learning opportunities.


Apart from the economic distress faced by the families, there are risks that will have long-lasting impacts on the health and overall well-being of children. The HRD Ministry have asked all the states not to strike off the names of these children from school rolls. The Panchayats and State Governments must facilitate the enrolment of children of migrant families who have returned to their home states in the local schools, irrespective of these children not having official school records. Educational materials should be provided along with relief and food packages. Day care and crèches must be arranged, so that the migrant workers can go back to work. *Anganwadi* and ASHA workers in villages must extend their services to all households, even those who have not been registered in their centres because they migrated. Similarly, states must ensure the continuance of other health services such as immunisation and maternal healthcare needs to all households. Access to public health services for migrant and displaced children and their families may be limited. Migrant and displaced children face additional psychological harms, such as pre-existing psychological trauma; marginalization and stigma; less recreational material activities, and poor access to psychosocial support. The local and state governments should develop measures to ensure access to essential services. Whether they are registered or not at Anganwadi centers or other services, sufficient quantities of dry rations must be made available to children of migrant families. We must fulfil our Constitutional mandate and our international commitments under the Convention on the Rights of the

Child, the relevant international labour standards, and the Convention on the Elimination of All Forms of Discrimination against Women. No one should be left behind – no matter who or where they are, or what legal status they hold.

**8. Several welfare programmes for children, e.g., the ICDS programme, depend on frontline workers for their implementation. There have been emerging reports of discrimination against ASHA and Anganwadi workers during the pandemic. How has this impacted the workers and the children the programmes are intended to reach?**

ICDS is one of the largest child care programmes in the world, aiming at child health, hunger, malnutrition, pre-primary schooling and its related issues. Children in the age group 0–6 years constitute around 158 million of the population of India around 11.5% (2011 census). These Children are the future human resource of the country. These frontline ASHA and Anganwadi workers deal with early childhood care and development of children. The first eight years of a child's life are critical as they set the stage for all future growth. Research in neuroscience confirms the importance of the early years in a child's life, particularly since 85% of brain development has already taken place by the time a child is six years of age. Early experiences in the life of children can have a lasting impact on later learning, behavior and health. It serves as an excellent platform for several development initiatives in India. It serves the extremely underprivileged communities of backward and remote areas of the country. It delivers services right at the doorstep of the beneficiaries to ensure their maximum participation. In India many children who attend Anganwadi centres, can gain a quality pre-primary education – where they can play, imagine, create, socialise and gain the foundations of learning – they are more likely to develop skills that can help them succeed in school, complete primary education and transition to higher levels, transform into productive citizens and, thus, ensure they are better able to contribute to peaceful and prosperous societies and economies when they reach adulthood. These frontline workers play a crucial role in the child's development. Many a time, these services are not of good quality. Since they have good rapport and access to the families and communities, they can play a very important role during pandemics. During the pandemic, it was these frontline workers in some states, who have





been delivering groceries, medicines and food from community kitchens to homes. They were deployed early on to conduct door-to-door visits and report back on symptomatic as well as asymptomatic cases. To prevent any discrimination against them, they need to be further empowered and trained to do vulnerability assessments to detect families wherein there could be cases of child abuse or domestic violence, to spread awareness of government schemes for the poor, marginalized and prevent child marriages. Safety and wellbeing of frontline workers/caregivers responsible for children's care and protection against COVID risks must be ensured. They must be provided with PPE kits, timely payments, additional hazard pay, insurance, adequate and ongoing training, supervision and psychosocial support. Budget provisions need to be made for protection of frontline workers. The government must recognise ICDS services as essential services under the Disaster Management Act and Essential Services Maintenance Act and recognize Anganwadi and ASHA workers as essential workers.

## ANNEXURE

English Translation of the text of the Hindustani poem ‘*Pinjra*’ (Cage) by Md. Sadriwala. The poem was first recited by him as part of a video to raise awareness about domestic violence during the lockdown.<sup>1</sup>

ہر جنپ

ہے ہر امیجلا علا کیا ہے ہانم اناجر ہاڈے یلیسا ہے ہاؤ ہچکنیے تہک بسنا یمہلا  
وہے تنسید لجا عدیکنو چیمتہک ہے ہانسے سب سے ننیم ہے ڈاز سہی کیسار وا  
نیم ت لااد مدوجوم وہے تر کلوبقے سایہے لبپے سے نار پلا  
ی مناج ہے ہر ہگیار یمکیا ں یہے تاتہت قوہتاسے کے رسود کیا بسا پس آے کر ہگے ریم  
من اخے طے پلے کیما یر یمکیلے ہر ہگو کے نہک ں یہے تاتسے کتابانہو کیما یر یمو با ے  
ں بین یہے نگناشنے کرامے ں تید ی ہیا ے باناد ں یم ی ٹوسر ہن ے ہمی پر ں یم کلگین ے  
اگی ہیک وت ں یہے تجنہکر کڑ کپلا بیہک ں یہے تٹیپے سیمحرے بنیہاے سد ہر ابود روا  
گو بی لیگے سزاو ایکنویکس سنیر اویدیکر ہگ ں یہے نچونر کے د ں ایل

ے ر اشد اکیا ف ر ص و تے کپا گوہکناہکے ناجہن نامیسیر ایپیر یمنیمینیشحوسا  
ے باتار کھٹنہن ں یہیکڈ و کا عدی کموصعم، ی کمولظم ہے ڈاتاج وہ کیہٹھ چک بسر پ  
ہرے ہاجتلا ی گے ناچر مے کٹھگنام یر یم انیدلوہکڈ و کے ز اور دے کایند  
انید لوہکٹو کے ر جنپسا

لااو یر دسدمحم

<sup>1</sup> It can be accessed at <<https://www.youtube.com/watch?v=cbDlW01EPg>>. Translation from Hindustani to English has been done by Aditya Krishna (III Year, BA,LL.B. Hons, NLSIU).

## The Cage

My Lord, everyone says something has happened,  
And going out is restricted.  
(It is) An incurable disease,  
And, it's the punishment for the same.

By everyone, I have been told,  
to the prayers of the children, You listen.  
Fulfil them, before they even reach our lips.

In these times,  
Everyone around my house spends time together,  
In my home, my dad needlessly troubles my mom.

It's like a dark cellar for my mom,  
Neither is there a penny, nor an ounce of grain. Scars from the previous  
beatings are still there,  
And, (dad) still hits her mercilessly.  
Drags (her) by the hair,  
(He) Abuses and scratches too.

The walls are damp with her sobbing,  
It seems, I have lost my mother somewhere, amidst this barbarism.

You can heal everything by a whiff of your breath,  
And, you never turn the prayers, of the innocent and pure, down

Please open the doors of the world,  
Lest my mother shall die.  
I request you for this,  
Please open this cage.

*- Mohammad Hatim Sadriwala*

## पिंजरा

अल्लाह मिया सब कहते है कुछ हुआ है  
इसीलिए बहार जाना मना है  
एक लाइलाज बीमारी है  
और उसी की ये सज़ा है  
मैंने सब से सुना है  
तुम बच्चो की दुआ जल्दी सुनते हो  
लब पर आने से पहले ही उसे क़बूल करते हो  
मौजूदा हालत में  
मेरे घर के आस पास सब एक दूसरे के साथ वक़्त बिताते है  
एक मेरा ही घर है जहा मेरे अब्बू मेरी अम्मी को बिना बात के सताते है  
कहने को घर है लेकिन मेरी अम्मी के लिए तैखना है  
न गुलक में रुपया है न रसोई में दाना है  
अभी बीती मार के निशान गए भी नहीं  
और दोबारा से उन्हें बेरहमी से पीटते है  
कभी बाल पकड़कर खींचते है  
तो कभी गालियाँ दे देकर नोचते हैं  
घर की दीवारें सिसकियों की आवाज़ से गीली हो गयी  
इस वहशीपन में मेरी प्यारी से माँ नजाने कहा खोगई  
आप के तो सिर्फ एक इशारे पर सब कुछ ठीक हो जाता है  
मज़लूम की, मासूम की दुआ को तू कभी नहीं टूखरता है  
दुनिया के दरवाज़े को तू खोल देना  
मेरी माँ घुट के मर जायेगी  
इल्तिजा है रब  
इस पिंजरे को तू खोल देना

- मोहम्मद हातिम सादरीवाला

# CASTE, DOMESTIC VIOLENCE AND THE PANDEMIC- INTERVIEW WITH KIRUBA MUNUSAMY

– Manisha Arya & Vani Sharma<sup>1</sup>

Kiruba Munusamy is a practicing advocate at the Supreme Court of India. She is working against various human rights violations in India that includes caste and gender based discriminations, caste based atrocities against Dalits, violence against women, discrimination in the academic spaces, death penalty, state repression and prohibition of the inhuman practice of manual scavenging. She started Legal Initiative For Equality to equip lawyers from marginalized communities with professional skills and a working space to act independently.

**1. Domestic or intimate partner violence remains pervasive in India. Do you think caste identities often get left out of such conversations? How does caste discrimination affect women's experiences of domestic violence generally and/or affect their ability to access support and justice?**

I don't think that Dalits have been left out of the conversation around domestic violence or intimate partner violence. In conversations about domestic violence, I see that people focus only on Dalit women. Even when upper-caste women talk about domestic violence, they only talk about Dalit women. They never talk about their households and their experiences of domestic violence.

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<sup>1</sup> Manisha and Vani are B.A.L.L.B, graduates from National Law School of India University. They spoke to Ms Kiruba about the experiences of working- and middle-class Dalit women who face domestic violence and the effectiveness of the remedies that are available to these women.

## **2. What are the dynamics of violence in inter-caste relationships? Do caste differences contribute to intimate partner violence?**

The difference is that the domestic violence in Dalit households comes from caste and class experiences. It does not necessarily come from the partner relationship or other domestic relationships they're engaged in, for instance, I read a wonderful piece in RoundTable India. I know her stance on Brahminism is problematic. But, we cannot ignore her argument about a Dalit couple who were migrant construction workers in Bangalore. The woman had to sexually compromise herself to get her husband a job of a security guard. After hearing rumors that the job had been bought, the husband subjected the woman to domestic violence. So, in this case, domestic violence is based on the caste and class experience of this particular family. There are so many social factors that result in domestic violence that happens in Dalit households. But, it is usually discussed in the context of Dalit patriarchy and Dalit masculinity while ignoring other contributing factors.

Secondly, domestic violence can occur if a Dalit woman is in a committed relationship with an upper-caste male. This would be an inter-caste relationship and can also be inter-religious. In these cases, domestic violence is not necessarily related to the masculine behaviour of the spouse, but it is also due to caste hegemony.

## **3. How should we think about such violence? Could specific remedies like the SC/ST (Prevention of Atrocities) Act (PoA) be relevant in this context? Could there be a nexus between PoA and PWDVA?**

This is not just a husband-wife relationship, but is governed by caste hegemony. However, I have never seen the application of the SC/ST (Prevention of Atrocities) Act, 1989, to cases of domestic violence in inter-caste households. There have been instances where domestic violence in inter-caste households has driven the wife to commit suicide. But, cases are not even lodged where the woman is Dalit, and the husband is from the upper castes. The police think that these cases only need private negotiations outside the purview of law. So,




this is how the experiences of Dalit women concerning domestic violence are handled by the police.

Additionally, the courts deal with cases of domestic violence in an extremely sexist manner. For instance, I remember the case of a Dalit woman who was married to an upper caste husband. This case was back in 2008 when I was a lawyer in family court. She appeared before the court, but the husband was not present. The woman was asking for an ex parte order, because the husband was not attending the proceedings for the last three times. Instead of trying to understand the difficulties she was facing, the Judge said, “If you were a good wife, why would you be fighting this case, or why would you be in a situation to even come to the courtroom?”

The woman’s lawyer has to fight with the Judge. So, women who come from lower class or caste are judged based on their appearance. Most of the people who face domestic violence do not come to court dressed as the elite. They dress as they normally do in day to day life. So, the judges undermine their experience and the violence that they have faced because appearances play an important role in court. The caste and class of the person determines the degree of violence the person has experienced. Also, the courts, the police, and even the protection officers who are supposed to help victims of domestic violence in terms of finding shelter homes, monetary relief, etc., are lethargic and negligent when the woman is a Dalit.

These fights never go to the extent of domestic violence in cases where both spouses are from the same caste in non-Dalit households. When domestic violence does occur, legal action is not pursued. The woman would be independent, she would surely be working. She would not mind fighting or leaving the husband even if she were a daily wage labourer. She would fight and then go to work by herself. Legal course of action is taken in cases of the middle and upper class only.

Generally, we believe that domestic violence and dowry harassment is committed by the family to harass the woman. The way in which the family treats the wife will differ in the case of an inter-caste marriage where the husband brings a Dalit wife into the household. So, this important question has



to be addressed when it comes to domestic violence. In such cases, the hostile environment and the amount of stress for the Dalit woman is very high. There have been many cases in which women have been brutally attacked, some to the extent that they could die. Yet, the woman will not come out and complain because it is an inter-caste marriage and the parents of the woman are not supportive. The blame is put on the woman because she exercises her freedom of choice to marry and that, too, outside of her caste. Thus, the woman has to succumb to the environment and no action is taken.

I recently received a phone call from a friend who is a Brahmin man. He married a Dalit woman. He was living in Canada. In March, he came to India to attend the delivery of his wife; a girl child was born. He was healthy and showed no signs of COVID-19. But, last week he passed away due to COVID-19. The entire family had been against the marriage. And, now the mother-in-law is blaming the widow for the death of her son. She is saying things like, “only because my son married you, he passed away.” “If you would not have gotten pregnant, he would have been in Canada, and not returned to India.” The man’s family is trying to harass the wife in different ways. The family tried to get a negative COVID certificate to perform the last rites, but the doctors refused. The family is blaming the widow for this, too. Now, she has been kicked out of the house along with her newborn girl child. Isn’t this domestic violence?

We usually talk about domestic violence in the context of the husband or partner. We do not talk about the violence that happens after the husband dies. Further, the conversation is not centered around the domestic violence inflicted by the families of the husband on the Dalit woman in an inter-caste marriage.

I think that if the death of the Dalit woman occurs within 7 years of the inter-caste marriage, the IPC section 304-B on dowry death should apply, whether or not there were suspicious circumstances. If a Dalit woman is facing domestic violence or dowry harassment, the issue should be addressed in combination with SC/ST (PoA) Act, 1989. It cannot be dealt with in isolation of gender or caste.



#### **4. Could you talk about the specific impact of the pandemic on Dalit women, particularly on Dalit women facing domestic violence? How has the lockdown coupled with the shutdown of courts affected them?**

I was in contact with many Dalit families for helping them in relief work. I have not seen any case of domestic violence in the Dalit families I was involved with. The families are living in slums and engage in manual scavenging or daily labor work. I witnessed their livelihood struggles, but I did not hear about any case of domestic violence from the working-class Dalit families. However, there were some queries from women in middle-class Dalit families who were looking for legal assistance.

I was looking for data on domestic violence complaints made to the National Commission of Women. Almost all of the complaints were made online. A large number of domestic violence complaints from working- or middle-class Dalit households would not have reached the National Commission during COVID-19. This is because these families neither have access to the internet, nor people who could help them out. They have no choice but to connect to the protection officer of the Centre to file a domestic violence complaint. And, everything concerning the process of obtaining relief orders or shelter homes is connected to the internet. It might not be possible for a woman in a small household to have an isolated place to talk to someone. For example, the lockdown in Chennai was very strict. Only one person could go out of the house to buy groceries, and that person would, in most instances, be a male. The women do not have a chance to come out of the house and ask for help.


In an incident in Tamil Nadu, an OBC woman was married to an upper-caste man, and they had a two-year-old child. He had an affair with another woman. He told the woman that his marital relationship was not good. One day, the wife received the call from the woman on the husband's phone. The woman told the wife about the husband's affair which had been three years long. The call was being recorded. The woman was very disturbed. She had faced dowry harassment at the hands of the family, and she died by suicide. She had recorded a video in which she expressed her grief. This was telecast live on a Tamil news channel, along with the phone record.

These are the kind of incidents that happen. In this particular case, we had a video record; in others, we do not have evidence.

In another case of inter-caste marriage between a Dalit woman and an OBC man, domestic violence was inflicted in the US where the couple lived. The man had forced the woman to get married and move to the US after marriage. The man was diagnosed with cancer. The woman's mother insisted that she should not break the marriage, because their relatives would not respect them if she did, especially since it was an inter-caste marriage. After the diagnosis, the man brutally beat up the woman because of frustration that she would remarry after his death. The violence became frequent and, during this time, she got pregnant. They had thrown hot water on her when she was six months pregnant. The neighbours had called 911 upon hearing her scream. The police arrested the husband. The family pressurized the girl to take back the complaint, threatening her by not letting her enter into the house. Having no other option or help, she was forced to take the complaint back. She was thrown out of the house when she came back from the police station. She, finally, came back to India with the help of her acquaintance. But, the husband has filed a petition in the US, accusing her of stealing important documents.

In a similar incident, the husband filed a petition against the wife for kidnapping a US citizen and taking them to India. In this case, the child had been born in the US before the woman came back to India.

Inter-caste marriages are being arranged through matrimonial websites. Due to the age of the groom being around 30-40, they relax the caste requirement and marry Dalit women. They take these Dalit women to foreign countries. After that, they start feeling like they made a mistake marrying outside their caste, and they start subjecting the wife to domestic violence. These cases go unreported in India. The women have to withdraw cases that are registered suo motu in other countries. If they do not withdraw these cases, they cannot come back to India. Women are troubled by being impleaded in more false cases and litigation. So, a lot of cross-cultural and international legal issues are important in the context of domestic violence on Dalit women in foreign countries. The parents of the bride who are married through matrimonial websites do not consult a lawyer about the legal issues which can arise



abroad. But, the entire blame cannot be shifted to the Dalit parents. These parents are working class and often are not aware of the option of consulting a lawyer. Further, in inter-caste marriages, parents are very protective of their daughters. This romanticisation of marriage and putting social value on the relationship of marriage hinders the parents from getting legal support.

**5. Does the Protection of Women from Domestic Violence Act, 2005, sufficiently account for the impacts of caste described above? What other aspects is the DV Act missing out on? Do you believe the state's response to domestic violence during the pandemic has been sufficient?**

There are many obstacles that Dalit women face when seeking relief, even in normal situations. The kinds of relief provided by the DV Act are upper-caste centric and do not help working-class Dalit households. Some examples of such reliefs are the provision for a new house with rent paid by the husband, a separate portion in a shared household, and sending the husband out of the shared household. This legal support system is irrelevant for Dalit women.

Further, in many cases, the Court orders for monetary relief and compensation. But, how will the woman recover expenses from a Dalit husband who is a daily wage labourer? Isn't it the duty of the government to provide some relief to the woman in such situations?

# COVID-19 CRISIS - NO LOCKDOWN FOR DOMESTIC VIOLENCE: ANALYZING THE AICHLS V. UOI JUDGEMENT.

*#stayhome.staysafe but are women really safe?*

*- Ruchika Baweja & Aditya Jain*

## Abstract

*The ongoing COVID-19 epidemic has exposed mankind to several unprecedented problems and circumstances, which are envisaged to have far reaching consequences on the society. A rapid rise in domestic violence is one such problem that has remained unnoticed hitherto. No policy measures had been taken by the Government of India, before and after imposition of nation-wide lockdown since 24<sup>th</sup> March 2020, in order to curb this problem. In light of the same, the Delhi High Court, while hearing a Public Interest Litigation in All India Council of Human Rights, Liberties and Social Justice v. Union of India, had formulated policy changes within the governance structure of the country to counter this “shadow pandemic.”*

*The present article critically examines the solutions and guidelines so proposed, in light of their feasibility and other practical concerns that might arise while implementing them. The authors have further delved into several thematic bearings which, in their opinion, have been overlooked by the Court while formulating the guidelines on issues like ensuring effective awareness drives and important changes required in Protection of Women from Domestic Violence Act, 2005. In addition to the same, the authors have perused similar measures introduced in*

*other countries to counter domestic violence, in order to analyse if they can be implemented in India. Keeping these issues in mind, the authors have concluded by suggesting some reforms which will provide for the much-needed expeditious relief to the victims of domestic violence during present lockdown.*

***Keywords: AICHLS v. Union of India; Section 9 of PWDVA; Residence Orders; Protection Officers; government responses.***

## Introduction

Nearly all governments across the globe have imposed nationwide lockdown in order to contain the spread of COVID-19 virus. Unfortunately, as effective it has been in “flattening the curve,” it can be accounted as the primary stimulus for the surge in domestic violence,<sup>1</sup> as getting away from the abuser physically has become virtually impossible. Imposition of lockdowns has a direct nexus to rise in domestic violence cases across the world, and several sociological factors have an interplay in this regard. As the economic shutdown progresses and businesses remain stagnant, families are facing loss of income, which has triggered emotions of fear, resentment, stress and anxiety. This, when coupled with the lack of usual routine, creates a volatile home environment. Aggressors are taking disadvantage of this dysfunctional environment and are using it as an opportunity to reiterate power manifestation and violence under the garb of patriarchy. Indian society has always fostered gender-based inequality in all relationships, including marriage, and this structural gap is showing its effects more prominently now than ever.<sup>2</sup>

In the backdrop of this, the authors have noted that, although the Central Government had initiated a nationwide lockdown from 24 March 2020, no strict policy measure had been formulated to curb the menace of Domestic Violence.<sup>3</sup> The authors have sought to analyse a recent judgement by Honourable

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1 UN Women, Facts and Figures: Ending violence against Women, (available at: <https://www.unwomen.org/en/what-we-do/ending-violence-against-women/facts-and-figures>) [Last accessed on May 14, 2020]

2 Poorvi Gupta, *NCW Chief Rekha Sharma On Its Initiatives To Address Domestic Violence*, Shethepeople.tv, April 23, 2020 (Interview except available at: <https://www.shethepeople.tv/news/ncw-chief-rekha-sharma-domestic-violence>) [Last accessed May 14, 2020]

3 Writ Petition, *All India Council of Human Rights Liberties v. Union of India*, W.P.(C) 2973/2020,

Delhi High Court, wherein the court has formulated a comprehensive set of guidelines, in relation to the Public Interest Litigation by All India Council of Human Rights Liberties<sup>4</sup> (“**PIL Order**”).

## **Analysing Delhi High Court’s order in *AICHLs v. UOI***

The PIL Order passed on 24<sup>th</sup> April, 2020, raises important questions regarding the State’s obligation to ensure containment of rising cases of domestic violence and to ensure that Right to Life<sup>5</sup> is faithfully implemented, even in extra-ordinary circumstances like the present pandemic. The Court was considering a PIL writ for urgent guidelines to be issued to government to curb the recent upsurge in domestic violence cases. It has issued a comprehensive list of solutions (“**Proposed Solutions**”) that both the State Government of Delhi and Central Government are bound to follow.

The authors are of the view that although the aforementioned judgement is a step in the right direction, it suffers from several pertinent issues which have been presented via a three-pronged critical analysis of the judgement.

## **Raising awareness on Domestic Violence, effectively**

The Ministry of Health and Family Welfare, Government of India has noted that the problem of domestic violence is more prominent in rural India as compared to its urban counterparts, as evidenced by the findings of National Family Health Survey.<sup>6</sup> Hence, it is fair to assume that the rising number of domestic violence cases would originate proportionately as much, if not more from rural households, than from households in urban centres. In light of this assumption, the authors are of the view that the Honourable High Court has failed to formulate an appropriate strategy in the PIL Order which can be implemented in both the cases, as mentioned above.

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(available at: <https://theleaflet.in/delhi-high-court-issues-directions-to-check-domestic-violence-during-covid-19-lockdown/>) [Last accessed May 4, 2020]

4 *All India Council of Human Rights Liberties v. Union of India*, 2020 SCC Online Del 537

5 Article 21, The Constitution of India, 1950.

6 International Institute for Population Sciences (IIPS), National Family Health Survey (NFHS-4), 2015-16; 2017, pp. 563, (Available from: <http://rchiips.org/nfhs/NFHS-4Reports/India.pdf>) [Last accessed May 12, 2020].

The PIL Order has proposed to use social media, television ads and radio jingles for awareness drives. While the idea of using social media and other popular means of communication for raising awareness among the masses is commendable, the authors are apprehensive if the aforementioned medium can be effective in the rural backdrop. Studies suggest that a large portion of rural population remains devoid of internet and technology connectivity, and this number further worsens if, solely, the women population is observed.<sup>7</sup> In this regard, we suggest that the respective governments must utilise the existing network of Aanganwadis, ASHA Workers<sup>8</sup> and Village Panchayats, in addition to the proposed mediums, to raise door to door awareness about remedies against domestic violence. Protection of these functionaries from infection is a major administrative challenge for the government. The Ministry of Health and Family Welfare has ironically classified ASHA Workers as “low-risk,”<sup>9</sup> while deploying them for contact tracing under “Micro-Plan for Containing Local Transmission of Corona Disease (COVID-19).”<sup>10</sup> It is therefore suggested that the government must change its stance and ensure continuous supply and availability of PPE kits, hand sanitisers, gloves and masks for these workers. At the same time, the proposed solution for announcements to be made by police personnel throughout localities must be implemented expeditiously.

More recently, the Department of Telecommunications, Government of India had ordered all telecom companies to incorporate a 30 second informative audio clip on Coronavirus before caller tune of all subscribers, in order to disseminate awareness about the pandemic among masses. Considering the extent of spread of mobile networks across the nation, the authors are of the opinion that a similar exercise could have been carried out for spreading awareness on measures introduced by the Government to curb domestic violence.

7 *Digital and Social Media Landscape in India, 2019*, SannamS4, (available at: <https://sannams4.com/digital-and-social-media-landscape-in-india/>.) [Last accessed May 12, 2020].

8 Accredited Social Health Activist (ASHA), National Rural Health Mission, Ministry of Health and Family Welfare, Government of India.

9 Guidelines on Rational Use of Personal Protective Equipment, Ministry of Health and Family Welfare, Government of India, (available at: <https://www.mohfw.gov.in/pdf/GuidelinesonrationaluseofPersonalProtectiveEquipment.pdf>) [Last accessed August 6, 2020].

10 Micro Plan for Containing Local Transmission of Coronavirus Disease (COVID-19), Ministry of Health and Family Welfare, Government of India, (available at: <https://www.mohfw.gov.in/pdf/ModelMicroplanforcontainmentoflocaltransmissionofCOVID19.pdf>) [Last accessed August 6, 2020]

## Strengthening Domestic Violence Act framework

Furthermore, the authors consider that the PIL Order has failed to acknowledge and expound upon the necessary changes required in the Domestic Violence Act to suit the needs of the present pandemic. Section 9 of Domestic Violence Act envisages the role of “Protection Officers” (“POs”) to provide safety and assistance to the aggrieved woman with respect to medical examination, legal aid, safe shelter, etc.<sup>11</sup> Since POs are an integral link between the victim and judicial mechanism, it is imperative that adequate funds are allocated for their proper functioning. However, it has been observed that there is a critical lack of funding, training and appointments of POs across several states.<sup>12</sup>

In this regard, the Delhi High Court had observed in the PIL Order that only 17 POs had been appointed for entire NCR region,<sup>13</sup> yet no orders have been passed to tackle this problem.

It is clear that POs play a more important role now, more than ever, as although the legal support structures still remain operational during lockdowns, accessibility to the same has become a challenge for general public. As an immediate measure to resolve this issue, we suggest ad-hoc appointments from the existing bureaucracy and other administrative personnel as POs in remote areas, for ensuring maximum territorial coverage. Furthermore, all institutions and personnel under Domestic Violence Act framework, must be notified as “essential services” under section 2(i)(ix) of the Essential Service Maintenance Act, 1968.<sup>14</sup>

## The Dilemma of Residence Orders

The present legal framework of residence orders under the Domestic Violence Act will pose a big problem, when it will be implemented during the ongoing lockdowns. According to Section 19<sup>15</sup> of the PDV Act, a Magistrate can pass

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<sup>11</sup> Section 9, The Protection of Women from Domestic Violence Act, 2005.

<sup>12</sup> Bhoomika Jhamb, *The Missing Link in Domestic Violence Act*, Economic and Political Weekly, Volume 46 Number 33, August 13, 2011, pp. 45

<sup>13</sup> *Supra* note 8, ¶ 4.

<sup>14</sup> Section 2(i)(ix), The Essential Service Maintenance Act, 1968.

<sup>15</sup> Section 19, Protection of Women from Domestic Violence Act, 2005



order to restrain the aggressor from accessing the “shared household” where the victim resides, once a case of domestic violence is confirmed. In this regard, the Honourable Bombay High Court has relied on the “battered wife’s right of protection against violence”<sup>16</sup> concept and stated in *Sabita Mark Burges vs Mark Lionel Burges* that:

*“It may be mentioned that even in the absence of such an alternate accommodation, a violent husband cannot be allowed to enter upon the matrimonial home to cause more apprehension pending the petition. The Court must restrain any illegal activities including domestic violence.”*<sup>17</sup>

According to the authors, the abovementioned ratio presents a judicial dilemma in front of lawmakers and law enforcers. A residence order passed during ongoing pandemic and lockdown will put the aggressor in a disadvantageous position, as he/she will have to vacate their home, even when they do not have arrangements for alternate accommodation. While, this arrangement has been implemented in countries like Italy,<sup>18</sup> it is suggested that the Courts in India must ensure that sufficient alternative arrangements are provided to aggressors to protect them from infection, while passing orders under Section 19.

At the same time, it has been noted that several countries have provided exemptions to the victims of domestic violence, from restrictive measures to stay at home in isolation, if they face domestic violence. For example, the Scottish government had passed the Guidance on domestic abuse to support the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020, which clearly specifies that one can leave home to avoid or escape risk of injury or harm (this includes any form of domestic abuse).<sup>19</sup> In Spain, during

16 Elizabeth M. Schnieder, *Battered Women and Feminist Lawmaking*, Yale University Press, 2000, pp. 60

17 *Sabita Mark Burges v. Mark Lionel Burges*, 2013 SCCOnline Bom 631.

18 UN Women, ‘COVID 19 and Ending Violence Against Women and Girls’, pg. 6 (available at: <https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2020/issue-brief-covid-19-and-ending-violence-against-women-and-girls-en.pdf?la=en&vs=5006>) [Last accessed July 31, 2020]

19 ‘Coronavirus (COVID-19): Guidance on Domestic Abuse,’ Scotland Government, United Kingdom (available at: <https://www.gov.scot/publications/coronavirus-covid-19-guidance-on->

the strict lockdown phase, the government announced that women will not be fined if they leave home to report abuse.<sup>20</sup> In stark contrast to this, no such exemption had been made by the Government. It is clear that any measures noted by the Honourable High Court in the PIL Order would be rendered meaningless, if they cannot be easily accessed by the victims of domestic violence. We therefore suggest that, slight relaxations in lockdown guidelines must be implemented at the earliest.

## **suggested solutions**

In addition to the abovementioned solutions given in the PIL, we also propose the following recommendations that could have been implemented in the PIL order:

1. One-Stop Centre Scheme must be revamped and reintroduced with necessary budget. While originally, these centres were envisaged to provide immediate, emergency and non-emergency access to a range of services including medical, legal and psychological support under one roof to fight against any form of violence against women. Presently, they can serve as safe harbours for victims of domestic violence as well as a medium for interaction between the victim and the judicial system.<sup>21</sup>
2. An Online system for registering complaints of domestic violence should be developed on similar lines like SHE-Box.<sup>22</sup> While this may not be as fruitful in rural areas, it will provide a required impetus to curb cases of domestic violence in urban areas.
3. Presently, complaints filed under Section 12, i.e., for obtaining “Protection Order” are to be filed in specific format under Form II, Rule 6 of Protection

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[domestic-abuse/](#) [Last accessed July 31, 2020]

20 Submission to United Nations Special Rapporteur on Violence against Women, Oxford Human Rights Hub, Faculty of Law, University of Oxford, pg. 11 (available at: <http://ohrh.law.ox.ac.uk/wordpress/wp-content/uploads/2020/06/OxHRH-Submission-to-UNSR-on-Violence.pdf>) [Last accessed July 31, 2020]

21 One Stop Centre Scheme-SAKHI, Ministry of Women and Child Development, Government of India (available at: <https://wcd.nic.in/schemes/one-stop-centre-scheme-1>) [Last accessed May 12, 2020]

22 Sexual Harassment E-box (SHE-BOX), Ministry of Women and Child Development, Government of India, (available at <http://www.shebox.nic.in/>) [last accessed May 12, 2020]

of Women from Domestic Violence Rules, 2006.<sup>23</sup> It is suggested that the process should be made more victim friendly and less rigid.

## Conclusion

The Coronavirus pandemic has presented several novel obstacles and issues in judicial decision-making process for prevention of domestic violence. In the attempt to flatten the COVID-19 curve, women's equality and physical and mental health seems to have suffered a collateral damage. From the discussion above, it is clear that the government had overlooked the need to formally integrate domestic violence and mental health repercussions into the public health preparedness and emergency response plans against coronavirus.

In this regard, the PIL Order is a beacon of hope for victims of domestic violence during these testing times, and the authors celebrate the guidelines so formulated here.

At the same time, we also note that when compared to the measures undertaken across other jurisdictions, the PIL order has failed to take several important factors into regard, as discussed above, thereby failing to provide for a comprehensive relief to the victims of domestic violence during the pandemic. Through this article, the authors have shared their recommendations for socio-legal measures, which will make the guidelines issued under PIL Order and the provisions of PDV Act more effective. The wounds of the heart and the scars on the mind from domestic abuse last for a lifetime, and the conditions created by the ongoing pandemic cannot be allowed to function as a breeding ground for it.

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23 Form II, Rule 6, Protection of Women from Domestic Violence Rules, 2006, Gazette Notification G.S.R. No. 644 (E), Ministry of Women and Child Development, Government of India, 17 October 2016.

# THE ‘STAY HOME, STAY SAFE’ PARADOX

- Angel Habamon Syiem

*Amongst multiple implications of COVID-19, gender based domestic violence has been one of those which has seen an alarming surge. While the pandemic in itself had come with many unanswered questions and unprecedented effects, the disproportionate impact due to the already existing deep-rooted discrimination and gender inequalities has been constant. One need not be reminded of the history of how women, children and sexual minorities have always experienced the worst impact during trying times. As a response, the Government and NGOs have made use of existing laws and mechanisms and have also formulated new models to tackle domestic violence issues during the pandemic. However, the effectiveness of it requires analysis. The country must also be prepared with post crisis recovery plans to avoid the long term negative implications.*

**Keywords:** *North East India, Assam, Meghalaya, Nagaland, legal apparatus, policy suggestions*

## The Pandemic with No Year Attached

Long before COVID-19, domestic violence was termed by the UN WHO head as a “global health problem of epidemic proportions” in the year 2013.<sup>2</sup> In the year 2018, the UN Secretary General termed it as a “global pandemic,”<sup>3</sup> and in

<sup>1</sup> Assistant Professor, Department of Law, Tezpur University

<sup>2</sup> “Violence against women: a ‘global health problem of epidemic proportions,’” available at: [https://www.who.int/mediacentre/news/releases/2013/violence\\_against\\_women\\_20130620/en/](https://www.who.int/mediacentre/news/releases/2013/violence_against_women_20130620/en/) (Last visited on 10/07/2020)

<sup>3</sup> “Secretary-General’s remarks on International Day for the Elimination of Violence against Women,” available at: <https://www.un.org/sg/en/content/sg/statement/2018-11-19/secretary-generals-remarks-international-day-elimination-violence> (Last visited on 2/07/2020)

April this year, the UN Women called the rise of gender based violence as a “shadow pandemic.”<sup>4</sup> The impact of armed conflict, disasters and epidemics and pandemics has been confirmed to have had the worst impact on women, children and sexual minorities. Similarly, the brunt of COVID-19 is seen to have spread disproportionately due to the already existing deep-rooted discrimination and gender inequalities. Similar trends were seen during the Ebola outbreak. To add to the problem, in India, the complete lockdown announcement with just about 4 hours’ notice has reflected the lack of emergency preparedness plan in the country immediately after a few weeks of the lockdown. Amongst many others, the country witnessed surges in the number of complaints of domestic violence against women, as reported in the media and from statistics by National Commission for Women. The statistics are equally alarming across the world. Taking stock of the responses by our country and relooking at the existing laws and redressal mechanisms has been of vital importance. It is also important to note that any form of violence against women can have long-term implications on mental, physical, sexual and reproductive health. In the present scenario, economic disparity exists, and the worst is on its way with many women losing their jobs. Therefore, the government must also prepare for post crisis recovery plans, in which equal participation of women in the formulation of such plans is imperative.

Although lockdown is not a new experience for many stay-at-home women, it has certainly over-burdened them in many ways. For working women, again, balancing work and home has always been a problem. Today, balancing work at home and work for home without the help of other members of the family has added to the stress and anxiety of many women. These are some of the subtle forms of family violence faced by women in the present situation. Horrifying cases involving physical and sexual violence at home are also alarmingly prevalent. While the former is generally swept under the rug, the latter are the ones that are being reported. The current scenario has, however, ‘ceased’ the agencies through which victims of domestic violence could have got justice, due to lack of transportation, accessibility to mobile phones and the internet.

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4 “Violence against women and girls: the shadow pandemic” available at: <https://www.unwomen.org/en/news/stories/2020/4/statement-ed-phumzile-violence-against-women-during-pandemic> (Last visited on 10/07/2020)

Therefore, the numbers available, which already sounds alarming, could only be the “tip of the ice-berg,” as suggested by many women activists. Consider also the plight of those women who had to walk miles with their family, some of whom were forced to give birth on the roadside.

## Response from Authorities

Many High Courts have issued orders seeking for response from the government on steps taken to curb the menace of domestic violence during COVID-19 such as the Delhi High Court, the Madras High Court and the Jammu and Kashmir High Court. In response to the April 18 Order of the Delhi High Court, the Delhi Commission for Women and the Delhi Government, have both assured of the mechanisms in place as sufficient in handling the issue during COVID-19. The National Commission for Women has also launched WhatsApp Helpline numbers, but certainly the mediums through which complaints can be made have been curtailed. The efforts made by the State Commission for Women are, however, grim, with many of the official websites not updated. What is worth mentioning is the role played by the NGOs in this regard, some of which have successfully developed a model suitable to the region they are working in.

## Stories from some of the States of Northeast India

One such success story<sup>5</sup> is shared by the North-East Network<sup>6</sup> on May 14<sup>th</sup> 2020, where justice was served to a woman from Golaghat, Assam with the help of community mobiliser and ASHA worker. With many of the State Women’s Commission virtually inactive, evident from the information available/not available in their official websites, organizations such as these have helped a great deal in responding to problems faced by the vulnerable groups during the pandemic. The organizations have also mobilized the rural women<sup>7</sup> in tackling the violence and the pandemic in general.

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5 “Responding to Violence against Women - Moon’s Story,” available at: <https://northeastnetwork.org/responding-to-violence-against-women-moons-story/#> (Last visited on 05/07/2020)

6 A women’s rights organization dealing with issues in the Northeast. It is based in Assam and has its unit and branch offices in other parts of the region.

7 “Mobilising Rural Women to Tackle Violence and Disease,” available at: <https://northeastnetwork.org/mobilising-rural-women-to-tackle-violence-and-disease/> (Last visited on 30/07/2020)

A rapid survey<sup>8</sup> was also conducted by member organisations of Lam-lynti Chittara Neralu (LCN) that works on shelters for victims of violence during the pandemic. These rapid surveys are drafted based on the findings from District Legal Services Authorities, Shelters, NGOs, Survivors and Protection Officers. The survey is being conducted in 7 states.<sup>9</sup> An analysis of the survey shows that a special measure undertaken by the DLSA in Assam is sharing a helpline number through e-posters. An employee of Swadhar Greh, Assam, mentions that although they have not received many cases on domestic violence, the employee opines this to have been because of the total restriction on movement.<sup>10</sup> The survey shows that out of the 25 shelter homes that responded, 21 Shelter homes have expressed their limited fund problems, out of which 15 are government shelter homes. For Example, 2, 1 and 3 Government run shelter homes in Meghalaya, Nagaland and Assam, respectively, have expressed short/delayed funding. Also, shelter homes that responded to the 6 states (other than Assam) mentioned that they have, neither any knowledge of, nor received, the pandemic-related Standard Operating Procedures in relation to domestic violence.

With regard to the Protection Officers (PO), only 5 POs including Meghalaya and Assam of Northeast have responded. PO of Meghalaya stated that “before the lockdown, we received one to two cases in two months, but after the lockdown, we received four to five cases in two months.”<sup>11</sup> The PO of Assam is of the opinion that it is only in extreme cases of physical and dowry related issues that survivors generally report to the police.

Reports from 17 NGOs<sup>12</sup> (including 1 from Assam and 2 from Meghalaya) show that a total of 321 cases of domestic violence have been reported during the lockdown.

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8 Available at: <http://www.jagori.org/covid-19> (Last visited on 02/07/2020)

9 Assam, Delhi, Jharkhand, Meghalaya, Nagaland, Karnataka and Tamil Nadu.

10 “Synthesis Part 1 Insights from Shelter Homes,” available at: <http://www.jagori.org/sites/default/files/publication/AT%20HOME%20AT%20RISK%20Rapid%20Survey%20Findings-SHELTERS%20June%202020.pdf>, P. 2, (Last visited on 29/07/2020)

11 “Synthesis of Findings: Protection Officers\* (POs)”, available at: [http://www.jagori.org/sites/default/files/publication/AT%20HOME%20AT%20RISK\\_Rapid%20Survey%20Findings-PROTECTION%20OFFICERS\\_July%202020.pdf](http://www.jagori.org/sites/default/files/publication/AT%20HOME%20AT%20RISK_Rapid%20Survey%20Findings-PROTECTION%20OFFICERS_July%202020.pdf) (Last visited on 1/07/2020)

12 “Synthesis of Findings: NGOs,” available at: <http://www.jagori.org/sites/default/files/publication/athomeriski.pdf> P. 2. (Last visited on 02/07/2020)

Some sad stories of affairs in relation to response by systems such as 100, 1091 and 181 were also narrated by a few victims in the survey.<sup>13</sup>

## The Legal Apparatus

While there are laws in place to protect women against domestic violence, such as The Protection of Women from Domestic Violence Act, 2005 (PWDVA) and Section 498-A<sup>14</sup> of the Indian Penal Code (IPC), the former in particular has always been critically analyzed even before COVID-19. Once again, the Act has found its place in the limelight for the wrong reasons.

The definition of “aggrieved person”<sup>15</sup> under the PWDVA is limited only to women, which leaves the third gender out of the box. Similar is the case with Section 498-A of the Indian Penal Code which uses terms such as ‘woman’ and ‘husband’, thereby limiting the idea of a victim of domestic violence to only a woman, and not the third gender. Not to forget the fact that this particular section of the IPC also invisibilizes violence connected to other forms of domestic relationship other than ‘marriage.’ This problem is seen also in the recently adopted legislation, i.e., The Transgender Persons (Protection of Rights) Act, 2019, which leaves aside the issue of domestic violence. A glimpse at the PWDVA also highlights that the idea of ‘domestic relationship’ and ‘shared household’ does not accommodate the situation of a sex worker living in a brothel. In the present context, for members of the transgender community who have probably been staying in a hostel or independently, familial environment can be stressful.

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13 “Synthesis of Findings: Survivors,” available at: <http://www.jagori.org/sites/default/files/publication/AT%20HOME%20AT%20RISK%20Rapid%20Survey%20Findings-SURVIVORS%20June%202020.pdf> P. 5. (Last visited on 2/07/2020)

14 Section 498-A of IPC states that: “Husband or relative of husband of a woman subjecting her to cruelty — Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Explanation — For the purposes of this section, cruelty means— (a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.”

15 According to Section 2 (a) of the Act, “aggrieved person” means “any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent.”



And, one can only imagine the plight of sex workers living in the brothels with lack of income.

The PWDVA includes sexual abuse<sup>16</sup> within the ambit of Domestic Violence; however, the Act is only civil in nature and also the term ‘Sexual Abuse’ and ‘rape’ cannot be used synonymously. The demand on criminalizing marital rape seems all the more important today. The post of ‘Protection Officer’ established under the Act<sup>17</sup> is a unique system that has the capacity for effective implementation of the Act. From several reports, however, it can be understood that the system is a missed opportunity. Protection Officers in many states are not easily accessible.

On April 27, 2019, an article<sup>18</sup> was published in Economic and Political Weekly by Flavia Agnes, a women’s rights advocate. One case study shared by her in the article captures the reality of implementation of the Act. “...Anita George (name changed), a frail woman of around 40 was severely beaten by her husband ever since they got married. Finally, when she could not endure it any more, with the support of a well-wisher, she approached the State Women’s Commission, a statutory body mandated to help women. She pleaded that her husband was threatening to kill her. When the husband did not respond to the letter sent by them to come for counseling, she was referred to the local police station. Instead of registering a complaint, the police called her husband for counseling, and then sent her back to her matrimonial home. Both the agencies neither did any follow-up, nor were any steps taken to ensure she was safe. The case would be documented as a success story in their records. Three months later, the husband assaulted her brutally and broke three of her ribs. In utter despair, she drank poison and would have died, but for the timely intervention of her sister, who admitted her to a nearby hospital...” She further discusses the difficulty in registering a complaint under Section 498-A of IPC and when finally registered under PWDVA, the case is still languishing in the court. “Anita is losing faith in the judicial system...” she adds.

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16 The definition of domestic violence under Section 3 of the Act includes sexual abuse.

17 Chapter III of the Act deals with the power and functions of Protection Officers.

18 “What Survivors of Domestic Violence Need from Their New Government,” available at: <https://www.epw.in/engage/article/what-survivors-domestic-violence-need-their-new> (Last visited on 10/07/2020)

## Way Forward


COVID-19 has brought with it unprecedented issues with many areas being under lockdown for the past 4 months. Gender based violence is a menace with global impact, which has existed from time immemorial, but the recent scenario has led to many being caged at home with abusers. After analyzing case studies and existing laws and mechanisms to curb the issue, the following recommendations may be considered:

- Existing laws on Domestic Violence must be amended so as to accommodate additional protection during times of emergencies, pandemic and disasters.
- With the help of the District Legal Services Authority, young advocates who are finding it difficult to make ends meet, as normal functioning in the courts has been shut down, can be mobilized for legal aid. A well-coordinated one stop center can be established by the state government with a blend of lawyers and counselors.
- Mobilizing rural women's associations in reaching out to aggrieved women in the villages will also help as a strong support.
- Until normalcy prevails, the state must ensure continuity of fast track procedures for disposing applications under Section 12 of the Act through online mode.
- In line with the UN Security Council Resolution 1325 and CEDAW General Recommendation 19, the government should involve women in decision making and formulation of plans for their benefit.
- Capitalizing on the existing network of frontline health workers, such as ASHA, has been one of the most welcome steps, but ASHA workers are over-burdened in the present situation and are, also, underpaid, given the number of hours they have to devote. Hence, increase in funding has to be considered.
- Vigilance by the neighbor next door and complaint mechanisms can be planned at medical stores or grocery stores for emergency calls to one-stop centers and helpline numbers.

- Some of the State Women Commission's official websites need to be updated with quick links to online complaint systems.

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# ANALYZING THE UTILITY OF DOMESTIC VIOLENCE LAWS IN LIGHT OF THE PANDEMIC

– Reeta Minz<sup>1</sup>

*The COVID-19 Pandemic has exposed the brutal reality of the extent to which Domestic Violence still exists in India with clear violations of human rights. Owing to the situation of Covid-19, total lockdown was imposed, leading to an increase in the domestic violence cases. Specifically, it is well known that women lack autonomy in the patriarchal society and are abused and humiliated by their own family and partners. There were several laws and organizations dealing with this, but amidst the lockdown, it was very difficult to deal with the problem of domestic violence. There is an urgent need to give attention to the serious problem of domestic violence. This study focuses on the lacuna of the domestic violence laws and the different ways government and local organizations can actively participate in providing women safety and security in the situation of COVID-19.*

***Keywords: Protection of Women against Domestic Violence Act; Odisha; grassroots response; government response; challenges to implementation***

## Introduction

Domestic violence is a global issue irrespective of cultural, geographical, social, economical or religious differences. The World Health Organization

<sup>1</sup> Assistant Public Prosecutor, Jharsuguda, Odisha.

(WHO) reports that globally 29% to 62% of women have experienced physical or sexual violence by an intimate partner in their life time.<sup>2</sup> In the patriarchal society, women are always subject to gender-based violence, leading to human rights violations and affecting the health of the victim both physically as well as mentally. There are several forms of domestic violence, but the prevalent one against women is the violence or abuse done by the intimate partners and family. This is not only restricted to the lower section of society, but also the upper section; where women are educated and financially independent, they are still victims of domestic violence. Issues of domestic violence against women, such as cruelty, marital violence, conjugal violence and dowry harassment/deaths, etc., are clear violations of human rights.

Currently, India has been facing serious consequences owing to the COVID-19 pandemic, and the government of India has taken necessary steps to impose lockdown amongst other control measures against the same. Domestic violence issues have been increasing in the society amidst the COVID-19 lockdown. Between March 25, 2020, and May 31, 2020, 1,477 complaints of domestic violence were made by women.<sup>3</sup> This period recorded more complaints than those received between March and May in the previous 10 years.<sup>4</sup> The National Commission for Women has also reported a rise of 94% in domestic violence complaint cases during lockdown.<sup>5</sup> This is a major concern when women are closeted with their abusers and have no option to come out of the four walls to complain about violence done to them. The reason for such a spike in complaints is because half of the victims of domestic violence don't ask for help and reach out to immediate family or friends. The small percentage of victims who seek help are only 7% of the total who reached out to relevant

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2 Rajesh Kumar. MD, 'Domestic Violence against Women in Indian Context: Causes and Impact of Family' (2017) Vol 5/Issue 8, Impact Journal < <http://oaji.net/articles/2017/491-1505470248.pdf>> accessed on 12 July, 2020.

3 Vighnesh Radhakrishnan, 'Data/Domestic violence complaints at a 10- year high during COVID-19 lockdown' (June 24, 2020) < <https://www.thehindu.com/data/data-domestic-violence-complaints-at-a-10-year-high-during-covid-19-lockdown/article31885001.ece> > accessed 13 July, 2020.

4 Ibid.

5 Shalu Nigam, 'Covid-19: India's Response to Domestic Violence needs Rethinking' (May 14, 2020) < [http://southasiajournal.net/covid-19-indias-response-to-domestic-violence-needs-rethinking/#\\_cdn16](http://southasiajournal.net/covid-19-indias-response-to-domestic-violence-needs-rethinking/#_cdn16)> accessed 13 July, 2020.

authorities<sup>6</sup> — the police, doctors, lawyers or social service organizations.

The Constitution of India ensures justice, equality and liberty to women under different provisions. Women have been placed at par with men in every aspect. Domestic violence is a clear violation of the fundamental right to live with dignity and the right to equality and equal protection of the law guaranteed under the Indian Constitution.<sup>7</sup> The Government of India had enacted women centric legislations to protect the rights and interests of women, besides protecting them against social discrimination, violence and, also, to prevent social evils like dowry, rape, sexual abuse, etc. Despite various laws dealing with forms of domestic violence, no statute dealt with it specifically. Owing to the increase in domestic violence cases, the Indian Government enacted a specific law, namely the Protection of Women from Domestic Violence Act, 2005 (PWDVA). 'Domestic Violence' is defined under section 3 of the Protection of Women from Domestic Violence Act, 2005, and it includes physical abuse, sexual abuse, verbal & emotional abuse and economic abuse. The very objective of the domestic violence laws is to protect the victim, but the current situation brings different challenges to the implementation and effectiveness of the law.

## Implementation of Domestic Violence Law in Pandemic

There is no doubt that people are mostly safe within the four walls of their house; however, this is not the case with the victims of domestic violence. The policies addressing the protection of women which have been already implemented had only little impact; still, it is not the panacea for current problems. The Constitution of India provides fundamental rights that every individual has a right to life with dignity and good health, but the marital exemption destroys the psychology of a woman and pushes her into a deep emotional crisis.<sup>8</sup> The right to privacy over one's own body is not lost by marital association.<sup>9</sup> It is

6 Vighnesh Radhakrishnan, 'Data/Domestic violence complaints at a 10- year high during COVID-19 lockdown' (June 24, 2020) < <https://www.thehindu.com/data/data-domestic-violence-complaints-at-a-10-year-high-during-covid-19-lockdown/article31885001.ece> > accessed on 13 July, 2020.

7 Shalu Nigam, 'Covid-19: India's Response to Domestic Violence needs Rethinking' (May 14, 2020) < [http://southasiajournal.net/covid-19-indias-response-to-domestic-violence-needs-rethinking/#\\_edn16](http://southasiajournal.net/covid-19-indias-response-to-domestic-violence-needs-rethinking/#_edn16) > accessed on 13 July, 2020.

8 *CESC Ltd. v. Subhash Chandra*, (1992) 1 SCC 441

9 *Saretha vs. T. Venkata Subbaih* AIR 1983 AP 356

deplorable that rapes by strangers have been criminalized, but with the exception of 'wives.' All women have been given the right of privacy over their bodies, thereby holding the right to withhold consent and refuse sexual intercourse, except for 'wives.'<sup>10</sup> This is more humiliating than the actual cruelty and harassment by a partner. Marital rape is one form of violence that millions of women face worldwide, but unfortunately it is not recognized in India. However, non-consensual sexual intercourse by a man with his wife may be an offence if she is living separately under a decree of separation or any custom.<sup>11</sup> Rape is less of a sexual offence than an act of aggression aimed at degrading and humiliating the women.<sup>12</sup> This is also a violence that women suffer in their domestic relationships but is hardly mentioned in any legislation. There are several other provisions which directly or indirectly deal with the issue of domestic violence against women.

PWDVA did not limit protection against domestic violence to marital relationships unlike prior domestic violence legislation. It includes all women in violent relationships, whether the perpetrator is a husband or someone in a live-in relationship. However, there are lacunae in the existing laws related to domestic violence, not only in the statutes, but also with the investigation system. The most important limitation of the PWDVA is that it does not provide any permanent relief to the victims of domestic violence, though it provides the right to reside in a shared household. PWDVA, instead of placing emphasis on penal remedies, has emphasized more on civil remedies. The interim nature and the lack of comprehensive criminal statutes punishing domestic violence ensures that the abusers have no real spur to limit their violent behavior even when a woman asks for protection under the Act. PWDVA has reached out to a few women but has largely been defective with no uniform procedure for service providers<sup>13</sup> that the victims have to go through. The Act authorizes magistrates to grant monetary relief

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10 *State of Maharashtra vs. Madhukar Narayan Mandikar* AIR 1991 SC 207.

11 Dr. Bhavish Gupta & Dr. Meenu Gupta, Marital Rape: Current Legal Framework in India and the Need for Change (2013) Vol 1/Issue 1, Galgotias Journal of Legal Studies < <https://www.galgotiasuniversity.edu.in/pdfs/issue2.pdf> > accessed on 14 July 2020

12 *Bodhisattwa Gautam v. Subhra Chakraborty* AIR 1996 SC 922

13 See, Section 10 (1) of Protection of Women against Domestic Violence Act, 2005



in favor of the aggrieved woman<sup>14</sup> and, also, to issue prohibitory orders on the prima facie facts, if satisfactory.<sup>15</sup>

It was never easy to implement provisions of PWDVA, but now it is more difficult to reach the aggrieved person who seeks help, because entities like the government, courts, and local law enforcement agencies are already overwhelmed with the ongoing increase in COVID-19 cases and all the negative impacts that come with it. There is a lack of manpower in the social welfare institutions, health care organisations and legal aid. The prisons are a hotspot for the spread of COVID-19 cases, and so the criminal justice system is halting arrests and releasing the inmates so as to avoid the spread. The health care system is also affected by the pandemic; there is less manpower and resources to deal with domestic violence cases as well as the pandemic following the introduction of social distancing. There is a lack of adequate shelter houses, supervision and training of the local authorities, due to which many victims will have no option but to remain with their abusers.

## How to Combat Domestic Violence in Pandemic

The World Health Organization (WHO) has also issued press releases relating to COVID-19 and violence against women, where government, health providers and NGOs have been given guidelines to deal with domestic violence issues during pandemic. Women who are experiencing violence may find it helpful to reach out to immediate family and friends, seek support from a hotline, or seek out local services for survivors.<sup>16</sup> They have listed down certain guidelines for the sectors that can help the women suffering from domestic violence by setting up of hotlines, shelters, rape crisis centres and counseling.

The Government of India has different authorities assigned to deal with the issue of domestic violence, but with the lacunae in the domestic violence law, it is difficult to handle the burning issue of domestic violence. It has set up an online portal for receiving complaints, but we must ask if it is enough to provide counseling and online support to the victims.

14 Section 20(i) of the Protection of Women against Domestic Violence Act, 2005

15 Section 18 of the Protection of Women against Domestic Violence Act, 2005

16 World Health Organization (WHO), COVID-19 and violence against women What the health sector/system can do (24 March, 2020) <<https://www.who.int/reproductivehealth/publications/emergencies/COVID-19-VAW-full-text.pdf?ua=1> > accessed on 15, July, 2020

There are NGOs which provide 24 hours' support online and also provide legal assistants, who visit the victims of domestic violence, but they are facing difficulty in providing assistance, as they cannot move beyond telephonic or web counseling. There are very few shelter homes (safe homes) all over the country for the victims, and it's difficult to bring people from a distant place in the present situation of COVID-19. Owing to the situation, women don't have the freedom to speak; they call at intervals and ask for help, and if it's urgent, the concerned service provider can only contact the police and try to keep victims in a safe place.

Health facilities should identify and provide information about services available locally (for example, shelters, rape crisis centers, counselling) for survivors, including opening hours, contact details, and whether services can be offered remotely, and establish referral linkages.<sup>17</sup> They should also ensure women's timely access to necessary and comprehensive sexual and reproductive health services during the crisis, such as maternal health services, safe abortion, etc.

## **Domestic Violence and Pandemic in Odisha**

Amid lockdown in the country for the pandemic, the situation in Odisha is no different when it comes to the domestic violence issue. Odisha is a state where more than 60% of population lives in villages having lack of technology and resources, and they move to cities for their livelihood. Lockdown in the country brings them back to their native place with the economic crisis, the health care crisis and many more problems. Financial crisis, non-access to alcohol, frustration of not doing anything becomes a very tool for the abusers to abuse women. Women are compelled to suffer silently due to social stigma and financial stability. Very few among them gather courage to complain against domestic violence.

PWDVA created two new institutions to implement its provisions, the posts of Protection Officer (PO) and Service Provider (SP).<sup>18</sup> The objective behind the

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<sup>17</sup> Narinder Singh Rawat, Making Homes safer for Women during Covid-19 (4 May, 2020) NITI Ayog <<https://niti.gov.in/making-homes-safer-women-during-covid-19>> assessed on 15 July, 2020.

<sup>18</sup> Rehan Abeyratne & Dipika Jain, Domestic Violence Legislation in India: The Pitfalls of a Human

inclusion of protection officers and registered service providers is to provide domestic violence complaints with importance in the eyes of the law and to provide women with an alternate option to ask for help. The Act provides several remedies to the victims of domestic violence such as protection order, residence order, monetary relief, custody order, interim and ex-parte order, appeal, etc., but it has failed to stop the wave of violence. This is particularly so in rural areas, because even after village women gather the courage to approach the police, the only institutional redress available, their complaint is dismissed as a result of compromise, saying it's a "family issue".


The Odisha government has taken several steps at different levels to deal with the aspect of domestic violence in the pandemic. The Odisha government has started giving services to domestic violence victims at their doorstep. Reaching women in distress needs to be classified as an essential service and one such example is Odisha which has come out with the initiative that the police will reach out to women who had earlier reported domestic violence.<sup>19</sup> The state women and child development department also launched a WhatsApp number to report domestic violence cases. A special drive called "phone-up drive" was announced where the women who had made complaints of domestic violence earlier in the last three years were to be contacted across the state in this pandemic to help the victims. If violence would be reported, then the physical verification will be made and cases will be registered under Disaster Management Act.

At the grassroots level, the SHG (Self Help Group) women not only work for women's safety, but also try to erase the main reason for the violence. In several districts of Odisha, women SHG workers have protested against the sale of alcohol which is one of the main factors of domestic violence. Women at the lower level who can give help and justice to women have taken steps towards the establishment of dignity and the destruction of patriarchal violence. They

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Rights Approach to gender Equality (2012) Vol 21/Issue 2, Journal of Gender, Social Policy & the Law < <https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1596&context=jgspl>> accessed on 14 July 2020.

19 Debendra Mahapatra, Odisha CM for stringent action against Domestic Violence (15 April, 2020) < <https://timesofindia.indiatimes.com/city/bhubaneswar/odisha-cm-for-stringent-action-against-domestic-violence/articleshow/75152438.cms>> accessed on 15 July 2020.



create awareness among people by marching and informing the concerned authority if they see any violence in their area. However, the government has taken a lot of steps to help the victim, but still, we have a long way to go – women are still not safe with their abusers, as even if the victim complains of the violence, they are doubtful about their safety.

## **Conclusion**

The need of the hour is to rethink and restructure the way the government is dealing with the issue of domestic violence. This situation provides a platform to alter the pre-existing ideas of dealing with domestic violence. In India, the government seems to have overlooked the need to formally incorporate domestic violence and mental health repercussions into the public health preparedness and emergency response plans against the pandemic. Women not only need counseling, but also need a safe space away from the abuser. We need to not only reach the women who complain or have access to complaints, but also need to reach the ones who don't have access to the authorities. In rural and urban areas, there should be a separate group of frontline health workers and other persons who work jointly to protect and provide safety to the victims of domestic violence. We have to not only fight the coronavirus, but also to emerge as a country efficient in dealing with domestic violence cases.

# DOMESTIC VIOLENCE WITHIN TRIBAL COMMUNITY: CHALLENGES AND POSSIBLE REMEDIES IN THE WAKE OF COVID 19

– Monalisa Minz<sup>1</sup>

## Abstract

*Violence against women is one of the topics which are most commonly debated on the floor of the parliament. In 2020, between March 25 and May 31, 1477 complaints of domestic violence were made by women. The 68-day period recorded more complaints than those received between March and May in the previous 10 years.<sup>2</sup> Domestic Violence has a wide range of divisions. However, for the purpose of this paper, we shall stick to one form which has been specifically addressed through a separate legislation along with provisions in the Indian Penal Code; yet it is one of the legislations which faces the maximum challenges in terms of reach among the masses which in the present paper is limited to the Tribal Community. This paper aims at analysing the current legal mechanism of the Domestic Violence Act during the lockdown in the wake of COVID 19 and the challenges faced while making remedies in respect of tribal women. The paper aims at finding solutions that can be in consonance with the social norms of the community in a manner which is beneficial to both the parties.*

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<sup>2</sup> Vignesh Radhakrishnan, Sumant Sen, Naresh Singaravelu, DOMESTIC VIOLENCE COMPLAINTS AT A 10-YEAR HIGH DURING COVID 19 LOCKDOWN, available in <https://www.thehindu.com/data/data-domestic-violence-complaints-at-a-10-year-high-during-covid-19-lockdown/article31885001.ece>.

**Keywords:** *Tribals, Adviasis, Samaj Baithaks, Migrant Laborers*

## Introduction

The official record of crimes against women remains in approximate figures even today. Crimes against women in several cases remain unreported owing to the overarching weight of patriarchy, the burden of which is still borne by women in different forms. Domestic Violence is one of the crimes against women which has a strong link with their disadvantageous position in the society,<sup>3</sup> in particular their matrimonial homes. In the current scenario in the wake of lockdown imposed due to COVID 19, the matter has been raging at a 10-year high record.<sup>4</sup>

Till a very long time when education remained denied for women, violence was in the forms of physical, sexual, verbal and emotional. The definiteness did not prevent the perpetrators from escaping. Hence, later amendments within the legislations came into the picture in the form of section 498(a) IPC, which brought forth a new form of violence, i.e., Mental Cruelty.<sup>5</sup> As gradually women entered into mainstream society, both in terms of education and employment, another form of violence crept into the society, i.e., Economic abuse.<sup>6</sup> It has to be understood that the very concept of abuse is a learned behavior. The abuser knows the consequences of his action, while the victim is just the recipient of the consequences of the action. He knows that threatening his wife would make her docile. Thus, the perpetrator of domestic violence simply over rides his objectives over other person's objectives and perspectives in a very detrimental manner. The fact of which can be seen at its all-time highest figures during the COVID 19 imposed lockdown.

## Background

The tribal community also known as Adivasis are the indigenous people or the original inhabitants of a particular region. They have been confined to


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3 V.A. Haseena, INDIAN JOURNAL OF RESEARCH, PARIPEX, *Tribal women as the victims of the interrelation between the empowerment and domestic violence in Kerala*. P.1.

4 Supra (n2)

5 Inserted by Criminal Law Amendment Act of 1983, W.E.F 25/12/1983

6 Section 3(d)(iv) of The Protection of Women from Domestic Violence Act, 2005.



low status and are often physically and socially isolated from the main stream society. This happened mainly because initially the indigenous communities themselves refused to enter the mainstream society, and gradually as the main stream society developed, they pushed the indigenous communities deeper into the forests. What began as a conscious choice, later turned into a forced retreat for the tribal community? Historically the women were always the subjugated section in the mainstream society, and the condition is worse when compared in the tribal women.

In the wake of global pandemic due to COVID 19, nationwide lockdown has been imposed since 23<sup>rd</sup> March, 2020. Even though the lockdown has been lifted in some places, the large-scale return of migrant labourers, under various state government schemes, brought small villages into lime light. The reason is that the migrant labourers are often carriers of these deadly diseases. As a result, villages became targets of surveillance by the district administration for ensuring strict observance of lock down. Now, this may appear to be model projects of district administration, but it has badly affected the villagers, particularly the Tribals who live far away from the main headquarters.

Since the Tribals are mostly unaware of the recent day to day changes in lock down measures imposed by district administration, they often bear the brunt of being unaware of the local situation. Threat of district administration and deployment of police in the vicinity prevents them from going out, thereby increasing frustration with no one or nowhere to vent it out. As a result it is mostly the women folk in the household or the children who face the wrath of this frustration.

Unemployment among the labour class is another reason which has been causing stress to the tribal population due to this government-imposed lockdown. Financial issues are another cause of violence within the household. Since majority of the houses have men working as labourers, this sudden unemployment imposed due to COVID 19 has left the women to face the violence of the men due to dissatisfaction amongst the men.

Liquor is one substance that was always prevalent within the tribal community. Now suddenly this cheaply available substance has become a rare commodity due to imposition of lockdown and closure of liquor shops. This has also, in a manner, contributed to increase in domestic violence within this period.

These are some of the reasons which have a direct impact due to imposition of lockdown due to COVID 19. But, apart from these, there are several customary practices which, in today's context, appear meaningless and give unwarranted importance to men, thereby totally ignoring the rights, needs and comforts of a woman in the matrimonial home.

## Customary Law and Gender Relations

The gender relation of indigenous communities itself construct inequality. Customary law is a part of tribal traditional customs and practices where tribes consider it “intrinsic to their identity and culture.”<sup>7</sup> The operation of this customary law acts as a powerful tool to define the roles of men and women and dictate acceptable standards of behaviour within a marriage.

Among many tribal communities, women are treated as a mere commodity, which is evident through the customary practice of bride price. Though bride price was initially paid to compensate the bride's family for loss of an economically active member, it provided the man with a justification to treat the wife as a disposable commodity.<sup>8</sup>

Most tribal communities do not take the main stream legal recourse in case of a dispute. Even today a dispute is first tried to be settled through a “*samaj baithak*.” This has proved to be the biggest bane for a tribal woman. This is so because the so called *samaj baithaks* hardly have a force of law. Neither does its violation lead to any form of sanction on the wrongdoer. In a case of domestic violence, a mainstream Hindu woman can simply file an FIR against the husband and the in-laws, and legal machinery comes into play. The PWDV Act, along with the Indian Penal Code, has specific provisions for custody,<sup>9</sup> compensation,<sup>10</sup> monetary relief<sup>11</sup> and protection order.<sup>12</sup> On the other hand,

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7 Fernandez, Walter and Gita Bharali, 2009. ‘Customary Law– Formal Law Interface: Impact on Tribal Culture,’ in T.B. Subba et.al (eds.) Christianity and Change in Northeast India (93–108).

8 Nongbri, Tilput, 1998. ‘Gender Issues and Tribal Development’ in Dr. B. Janardhan Rao, Tilput Nongbri and Livinus Tirkey: *Problems in Tribal Society: Some Aspects*. RGCIC, Paper no. 47: 17–36

9 Section 21 of the Protection of Women from Domestic Violence Act, 2005.

10 Section 22 of the Protection of Women from Domestic Violence Act, 2005.

11 Section 20 of the Protection of Women from Domestic Violence Act, 2005.

12 Section 18 of the Protection of Women From Domestic Violence Act, 2005.



a tribal woman was excluded from availing these benefits because of the very “*samaj baithaks*” which were mostly favourable to men and were not efficient in their addressal of grievances.

Now, even if we over look at the lacunae of the *samaj baithaks*, the biggest problem today remains of holding a meeting. During this time, holding a *samaj baithak* is totally futile. Threat of police and local administration during this period is preventing the taking of any kind of action. In several instances, the even if a meeting is called forth on this matter, the perpetrator simply has to inform the police that a meeting is being conducted in violation of social distancing norms. As a result the victim and the perpetrator keep on living under the same roof, and the violence in each case may either increase, or in some cases, cool off only to appear at a later stage.

The secular nature of the PWDV Act is a welcome change in the legal forefront relating to laws for empowerment of tribal women. The fact that it is not restricted to women of a particular religion or within a particular community helps not only tribal women, but also women in live-in relationships. Though considered a taboo, the practice does prevail and is not uncommon among the tribal section of the society.<sup>13</sup> Prior to the PWDV Act, such relationships which are almost in the nature of marriage, suffered the sorriest state owing to lack of sanctions on the perpetrators. They were not only victims of domestic violence, but suffered emotional isolation as the relationship was not sanctioned by marriage, and they had no means of escape because there was no financial support.

The PWDV Act has acknowledged the factum of live-in relationships, and the fact that it is not restricted to a particular religion or a community is a welcome change against the archaic traditions where a woman has to be the silent sufferer of all kinds of violence in the name of marriage. Section 2(f) of the Domestic Violence Act 2005 defines a domestic relationship as a, “*relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage or through*

13 Shah Nawaz Akhtar, “*Marriage an alien notion for Indian Tribe.*” 17 June, 2014 in <https://www.aljazeera.com/indepth/features/2014/06/marriage-an-alien-notion-indian-tribe-2014617134343167160.html> See also Prashasti Awasthi, “*Exclusive: The other side of Bastar! Tribes that practice live in relationship and Animism*” 25 September 2019 in <https://thelogicalindian.com/exclusive/bastar-other-side-beyond-red-terror/>

*a relationship in the nature of marriage, adoption or are family members living together as a joint family.”<sup>14</sup>*

When the Malimath Committee of November 2000 on Reforms of Criminal Justice System, submitted its report in 2003, it made several recommendations under the head “offences against women.” One of the recommendations that it gave was to amend section 125 CrPC whereby a lady in a live-in relationship can get the status of wife.<sup>15</sup> Thereby, they can now invoke the PWDV Act in cases of domestic violence.

## **Legislative Measure: A boon or a bane**

The main problem with respect to creating legislation regarding domestic violence is its mass outreach. In a country like India, where healthcare is decentralized in the form of Asha workers and Anganwadi workers, protection of women against domestic violence appears to be a luxury which only a few can afford. However, as Lon Fuller stated, “*moral values are written into the very idea of law.*”<sup>16</sup> The legislation is basically a sanction against deviation from morals. Violence is an act which is frowned upon in all religions and communities. Thus, whatever justifications are given on expressing violence – let alone domestic violence – do not actually hold true.

Manusmriti speak on abstention from injuring except in order to earn one’s livelihood is the sum and substance of duty of all the four castes.<sup>17</sup> The Bible has a specific commandment for the husband within a marriage. It states as follows, “*For husbands, this means love your wives, just as Christ loved the church. He gave up his life for her.*”<sup>18</sup> Islam has used two words for a relation between a husband and a wife. It is love and mercy. Love, in the initial stages and mercy when the couple grow old and weak and do not have the ability to serve each other.

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14 S. 2(f) of the Protection of Women from Domestic Violence Act, 2005.

15 Astha Saxena, “Live in Relationship and Indian Judiciary,” 23 January, 2019 Available in <https://www.scconline.com/blog/post/2019/01/23/live-in-relationship-and-indian-judiciary/>

16 Lon L. Fuller, *The Morality of Law*, 192 (1969).

17 Manusmriti Chapter 10 verse 63.

18 Ephesians 5:25.



Thus, it can be assumed that morality is the core of the present legislation irrespective of belief, faith or worship. The very morality reflects through the secular character of the PWDV Act, and it is the best feature of the legislation. Its outreach on the other hand is a major hurdle. Factors like societal pressure, involvement of children, dependency of the woman upon the perpetrator, no support from the maternal home of the woman after marriage or in a live-in relationship are some of the major factors that prevent the woman from taking recourse to this measure. However, in spite of all these hurdles, if a woman wants to take an action, there is the lack of awareness about the various features of the legislation. Thus, one can safely say that the legislative measure is a boon.

### **Conciliation: a reasonable possibility?**

Nobel Laureate and Holocaust survivor Elie Wiesel once said, *“Always take sides. Neutrality helps the oppressor, never the victim. Silence encourages the tormentor, never the tormented.”*

To take action against domestic violence or not, is the ultimate choice of the victim. In all cases, life of the woman should not be risked at any point of time and on any condition. Since within the tribal community, it is the community elders who first sit upon a dispute, the community elders have to take a more assertive role and not just act as peace makers. Among the tribal community, the *“samaj Baithaks”* have no force of law. It is simply an understanding in the presence of the community elders that such and such act of violence shall not be repeated. In rarest of rare cases, a sanction is imposed upon the perpetrator. However, with passage of time, that sanction loses relevance and the situation is back to square one with the woman deeper in the mud than before.

A possible solution in the present scenario can be mandatory filing of an FIR under the PWDV Act in the event of a *“samaj baithak”* called on account of domestic violence. This would prevent women from making baseless allegations, and the nature and the involvement of legal machinery would keep a check on the perpetrators from acting violently beyond control in the first place.


Since separation is not an answer in all cases, especially when it concerns children, and if the woman is ready to go back to the husband, it has to be ensured that the event does not repeat itself again. That can be ensured if the community elders who preside over the “*Samaj Baithaks*” can be personally held liable. Absence of sanctions encourages people to deviate from morals of society. If the community elders can be held liable, there will be strict vigilance on such kinds of deviations.

In several instances, the perpetrator of violence is able to act in such a manner because the act is supported by the family members. The family thinks it is justified to beat the wife. This is a classic case of neuro- linguistic program; whereby, the thought, mindset and ability to grasp a situation is not something that is developed out of reasoning, but by propaganda. This propaganda may happen even subconsciously, like observing behavioral pattern of fathers, uncles grandfathers, etc., that beating their spouses is as normal as eating food.

In such a scenario, counselling as a suggestion would perhaps be futile. Therefore, action can be taken in terms of strict liability. But then, such a solution too has its drawbacks as to what would happen to the woman once the perpetrator is back, or even if he is gone, how would the rest of the family treat the woman. In such a scenario, it should become the responsibility of the community elders to make the woman aware of her rights under the PWDV Act and make sure that the legal machinery works in full swing in terms of custody, compensation, monetary relief and protection order.

## Conclusion

On a closer analysis of the PWDV act vis a vis domestic violence among tribal communities in the wake of COVID 19, it can be seen that, most women are not educated, which leads to lesser autonomy within the family, thereby leading to a lower standard of living as compared to the spouse. Lack of exposure to mass media means lesser awareness on rights of women under the PWDV Act and other legal provisions on protection of women. The background features, no matter in what manner they are arranged forms a vicious circle in the absence of an independent and impartial decision maker.



As the principles of natural justice demand that no one can be a judge in his own cause, it is pertinent that the community elders are not related to the parties in dispute and are further placed under legal obligation to file an FIR. The community elders need to play a more assertive role in settlement of disputes, and a check has to be kept on the other members within the matrimonial home, so as to ensure the safety of the woman along with her children. As mentioned earlier, the only means of dispute resolution among the tribal section is futile in the present scenario; it is important that strict legal recourse has to be taken at this point of time, considering this is the highest within the last 10 years of instances of domestic violence.



# **QUEER VULNERABILITIES**





# NO LOCKDOWN ON DOMESTIC AND COMMUNITY VIOLENCE AGAINST QUEER PEOPLE DURING CORONAVIRUS PANDEMIC

- Pawan Dhali<sup>1</sup>

## Abstract

*The article highlights the lived experiences of gender and sexual minorities during the Coronavirus pandemic. It enumerates various instances where queer people have been subject to violence at home and subject to scrutiny and vigilantism in public spaces. Through these instances it argues that the pandemic has increased the discrimination and stigma faced by queer persons while existing legal frameworks have fallen short in responding to such instances.*

**Keywords :** *LGBT+ Community, Domestic Violence, Stigma, Discrimination*

- Sushmita and Heena (names changed) are both music artists in their early 20s and live in the Nadia district of West Bengal. They have been in a relationship for two years, which became known to their natal families not long before the lockdown. While Sushmita has a certain degree of support from her family, Heena has been subjected to repeated physical and emotional violence by her parents and other family members. They

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<sup>1</sup> Pawan leads the Varta Trust a Kolkata-based gender and sexuality publishing and advocacy non-profit. He would like to acknowledge the following colleagues from Varta Trust's legal aid and citizen journalism programmes as co-authors for this article (in alphabetical order): Chandan Kumar Nayak, Diksha Sanyal, Joyita Mondal, Kaushik Gupta, Pradosh Dash, S. Susan, Shivalal Gautam, Sudha Jha, Sudipa Chakraborty and Sukanta Banerjee.

have often threatened her that they will marry her off after the lockdown is lifted.

Heena's parents also told the local women's police station that Sushmita had 'corrupted' their daughter. The police in turn summoned Sushmita to the police station, roughed her up along with Heena's parents and threatened her with dire consequences if she tried to contact Heena. On another occasion, even Sushmita's parents were abused and threatened by the police. When Sushmita mentioned the Supreme Court of India's verdict on Section 377, Indian Penal Code (*Navtej Singh Johar & Others Vs. Union of India Ministry of Law and Justice, September 6, 2018 – henceforth Johar*), the police official in charge rubbished her claim, saying she did not accept the verdict!

During the lockdown, Sushmita and Heena have decided to downplay matters and keep in touch very discreetly. They realise they are not in a position to leave home during the lockdown, and neither do they have the financial means to set up their own house. Heena has bought strategic peace with her parents. She has 'agreed' to not meet Sushmita in return for not being pressured into marriage. She has 'agreed' to stay home in return for the police not threatening or harassing Sushmita anymore (though it seems the threats have not stopped). Heena's parents also seem to have a plan to have her 'treated' because they think she has a disease. Both women have decided not to shy away from seeking legal aid if the violence against Heena recurs after the lockdown and are also on the lookout for job opportunities.

- Suman, 28, a trans masculine individual from Baripada in the Mayurbhanj district of Odisha left home in December last year because of lack of family acceptance. He resigned from his job in Baripada and shifted to the state capital, Bhubaneswar. Unfortunately, he could not find a new job in Bhubaneswar and then came the coronavirus pandemic and lockdown. He also had to discontinue his hormone therapy. Suman is currently with one of his friends whose family is supportive. But, he feels guilty that he is unable to contribute financially to his hosts. At the same time, he cannot imagine returning home to Baripada, even as the unlock process gathers pace.

- Neema (name changed), 25, trans woman from Tezpur in Assam, is the only child and lives with her parents. Her parents disapprove of her gender identity as well as her work as a freelance model, dancer and choreographer. She is dependent on them for food and shelter but meets her own expenses for hormone therapy and bachelor's level studies. She says gender affirmative surgery is crucial for her career as a model and dancer, and she was saving up to travel to Delhi or Mumbai for the surgery. But, the pandemic and lockdown have dashed her hopes. Her earnings have stopped, and unwanted dependence on her parents has increased.

Varta Trust, a gender and sexuality advocacy non-profit based in Kolkata, came across these stories through two of its key activities. The first story was reported by Sushmita when she was referred to our legal aid project (Project Varta: Expanding Queer Friendly Legal Aid in West Bengal) by a queer support forum. Sushmita described the events over phone and then sent in a detailed written timeline over email along with an audio message from her partner Heena. Project Varta is a collaborative effort of Varta Trust and SAATHII, Chennai, and is financially supported by CREA, Delhi. The project seeks to bring together lawyers, paralegal workers, teachers and students of law, human rights workers and legal aid agencies and develop an effective response system against the rights violations faced by queer people in West Bengal. It includes district-level community awareness generation meetings, sensitization of legal stakeholders, development of legal literacy material, and provision of free or subsidized litigation support.<sup>2</sup>

The other two stories were documented as part of a situational assessment conducted under the Varta Community Reporters Training and Citizen Journalism Programme. This programme is currently assessing and documenting the impact of the coronavirus pandemic, the associated lockdown and the Amphan super cyclone on queer communities in Assam, Odisha and West Bengal, as well as the response put up to these challenges by the queer communities and their allies. Stories based on the findings from the situational assessment and other groundwork done by the programme

2 <<https://vartagensex.org/qfln/>> accessed 15 July 2020

participants (seven queer individuals and allies from the three states) are published in the *Varta* webzine (Dhall 2020). The stories are further amplified through social and traditional media coverage towards advocacy and raising resources for the immediate and long term sustenance of queer and other marginalized communities. This programme, too, receives funding support from CREA, Delhi.<sup>3</sup>


What legal responses might be possible in the case studies provided above? In the case of Sushmita and Heena, Kaushik Gupta, criminal lawyer with the Calcutta High Court, says that as and when they take recourse to legal aid, the best option will be to file a writ petition with reference to *Johar* and subsequent High Court orders (example, the Calcutta High Court verdict in *Shampa Singha Vs. West Bengal State & Others*, January 29, 2019) that say that adult same-sex couples cannot be stopped from cohabiting. Heena will also have the option to file a writ petition in the context of her other Fundamental Rights being violated, for example, wrongful confinement.

Gupta prefers the writ petition route to the Protection of Women from Domestic Violence Act, 2005 since it is a quicker remedy. The Act though does have many provisions that queer cis women can benefit from (*ICJ* 2019). Queer and women's rights activists point out that lesbians and bisexual women can seek protection under this Act without revealing their sexuality and instead focus on the issues of confinement, forced marriage and physical violence committed by the family members (including other women). This may make eminent sense given that social stigma against non-normative sexualities is still all pervasive, betrayed starkly by the moralizing attitudes of many police officials. But then, as Gupta points out, on-the-ground application of the Act remains extremely slow. Additionally, some activists speak of a lack of understanding and discomfort around queer sexualities among women's groups at the district level, who are often in the best position to first help a victim of domestic violence.

Gay men in eastern and north-eastern India have also been experiencing family violence or family-instigated violence. Mrinal (name changed) is an artist in

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3 <<https://vartagensex.org/training/>> accessed 15 July 2020



his 20s; he is partnered with another man and lives in Bishnupur, Bankura district of West Bengal with his father. Just as the lockdown began, recurring arguments with his father around his sexual orientation and relationship flared up. His father filed a false complaint of harassment and violence against him with the police and also revealed his sexual orientation. A police official visited their home, beat up Mrinal and warned him of more severe consequences if there was a second complaint against him from his father. This was clearly an attempt to force Mrinal to fall in line. After consulting Varta Trust's legal aid team, Mrinal decided to adopt the same approach as Heena and avoid conflicts with his father till the lockdown lasted. But, he was better off than Heena in terms of being able to go out of the home for household purchases and in the process keep in touch with his partner.

Violence against queer people during the lockdown has not been restricted to their homes but has extended to the neighbourhood and wider community as well. In April–May this year, Joyita Mondal, a trans activist based in Islampur, Uttar Dinajpur district of West Bengal, and one of the participants in Varta Trust's citizen journalism programme, reported a series of incidents of 'coronavirus vigilantism' in Gangarampur town of Dakshin Dinajpur district.

Dinajpur Natun Aalo Society, an NGO headed by Mondal, implements a state government-funded HIV intervention among trans women in the district. Mondal came to know Juhi (name changed), a trans woman in her early 20s and a Launda dancer by occupation, through the HIV intervention when she tested positive for HIV and was helped to register for antiretroviral therapy at a district hospital. Before the coronavirus pandemic broke out, Juhi was a regular traveller to Bihar for Launda Nach during the biannual Lagan (wedding) season. But, since December 2019, all her travels came to a stop and so did her earnings.

Juhi has been fortunate to have parents who are tolerant of her gender identity and occupation, though they are unaware about her HIV status. Trouble came looking for her from people in her neighbourhood, when they alleged that since she was a Launda dancer, she must have travelled to Bihar, and was likely infected with coronavirus, and was therefore a threat to the whole neighbourhood. They demanded that she be sent off to quarantine

immediately. The local ASHA workers affiliated to the National Health Mission arrived at Juhi's place to take her to a quarantine facility. Juhi, who was not even fully aware about the pandemic, panicked, thinking that her neighbours had come to know about her HIV status and called up Mondal for help.


Mondal stepped in to reassure Juhi and convince the neighbours and ASHA workers that Juhi did not need to be quarantined. She spoke to the Chief Medical Officer of Health and the local Ward Councillor. All through, she had to make sure that Juhi's HIV status did not become public. The quarantine was stalled, but the neighbours were not quite convinced.

In May, Mondal and three other trans women participated in a blood donation camp and posted photographs on their Facebook accounts with the intention of social advocacy. Some persons in a neighbouring locality saw the photographs, and since Mondal was seen lying down on the bed in some of them, word spread that she and the other trans women were coronavirus positive! This led to a chain of happenings, including small shopkeepers downing shutters. Mondal again approached the local administration officials and visited each of the wards where the rumours had spread to explain the reality. Thankfully she was received well, and people understood the 'fake news' element of the matter. But, within a few days, there was another development.

Several men, most likely affiliated to a political party, landed up in Mondal's office in Gangarampur with the local Ward Councillor and told her and her landlady (who was supportive of Mondal's work) to shut down the office till the lockdown was over. If this was not done, they said they would lock up the office on their own and prevent any visitors from coming to the office or to the landlady's house. They did not want Mondal to step out even for relief work among the town's trans communities. Mondal had to agree to their demands temporarily. The irony was that the Gangarampur Municipality had decided around the same time to make all trans persons (both in urban and nearby rural areas) eligible for ration access with or without ration cards.<sup>4</sup>

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4 Sample of special coupon (beneficiary copy) for accessing food grains issued by the Executive Officer, Gangarampur Municipality, Dakshin Dinajpur district – as sanctioned by the Government of West Bengal Food & Supplies Department – for trans persons (among other vulnerable groups) – shared by Joyita Mondal.



Earlier, in February, the Balurghat District Hospital had opened a four-bedded transgender ward, still a rarity anywhere in India after six years of the *NALSA* verdict (*Maitra 2020*). These hard-earned gains from the State were the outcome of persistent advocacy by Mondal and her colleagues. The Ward Councillor's presence among the men who forced Mondal to close her office seemed in direct contrast to these positive developments.

Incidents of similar vigilantism were reported to Varta Trust, also, by trans men and gay men in and around Kolkata city. What seemed significant was that in all these incidents the gender expression, gender identity or the sexual orientation of the individuals concerned either appeared or was known to be non-normative to people at large. While the coronavirus pandemic has not spared any section of society, a strong link between queerness and vulnerability to stigma, discrimination and domestic and / or community violence seems obvious.

It seems pertinent to assert here that Indian laws and legal systems seem to be falling far short of the vision and 'judicial apology' encapsulated by the apex court in *Johar*. One might daresay that this failure has come forth when the very elusive 'order of nature' has put the intent of *Johar* to test during a public health and economic crisis. Even the recently enacted Transgender Persons (Protection of Rights) Act, 2019 may be of little help for trans persons battling domestic violence. First, the rules and regulations are still not in place. The draft prepared by the central government in March 2020 had shortcomings and trans activists recommended several revisions. The government has just issued a fresh draft with a month's time given for further civil society inputs (*Ratnam 2020*).

Second, if trans persons have to avail of clauses that provide protections like the 'right to residence,' they must first endure an unconstitutional and cumbersome requirement for 'transgender certification' (*Leaflet 2020*). Besides the Act, access for trans women *as women* to many laws like sexual assault laws or even the Protection of Women from Domestic Violence Act remains a big question mark (*Chhabaria and Tripathi, 2020*). If anything, the pandemic and lockdown have underlined strongly the need for an anti-discrimination

legislation, queer-inclusive family and employment laws, laws that recognize diverse forms of violence against queer people, and police reforms.

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# THE BLIND SPOT IN OUR DOMESTIC VIOLENCE LEGISLATION: ANALYSING THE EXCLUSION OF SEXUAL AND GENDER MINORITIES

- Parth Maniktala

## Abstract

*The Protection of Women from Domestic Violence Act, 2005, restricts the scope of its remedies to women alone – an exclusionary classification that overlooks the threat of domestic abuse faced by sexual and gender minorities (SGMs). This article seeks to trace patterns of familial and intimate partner violence that are exclusive to SGMs. While the COVID-19 pandemic is per se horrific for all domestic violence victims, certain unique barriers compound the difficulties of SGMs. It is argued that the exclusion of SGMs from the protective ambit of the PWDVA falls foul of our constitutional commitment to equality. Further, the article proposes certain reforms, at both the legal and socio-cultural level, that can reduce the inequities of our current approach to domestic violence.*

**Keywords :** *Domestic Violence Act, Gender and Sexual Minorities, Right to Equality*

## I. Introduction

On March 24, 2020, the Indian government announced a “total lockdown” to contain the spread of the COVID-19 pandemic.<sup>1</sup> One of the fallouts of this

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<sup>1</sup> Nistula Hebbar, “PM Modi announces 21-day lockdown as COVID-19 toll touches 12” *The Hindu*,

lockdown was an alarming rise in cases of domestic abuse. Data provided by the National Commission for Women (NCW) in mid-April indicated an almost 100% increase in domestic violence cases during the lockdown.<sup>2</sup> And yet, this statistic doesn't accurately capture the severity of the crisis. Since victims<sup>3</sup> of domestic violence need space, time, and access to technology to report their abuse, it is believed that many cases don't ever reach the authorities.<sup>4</sup> Moreover, data suggests that about 77% of the victims do not even mention the incident(s) of abuse to anyone.<sup>5</sup>

The frightening rise in domestic violence during the COVID-19 pandemic has accurately been described by UN Women<sup>6</sup> as a “shadow pandemic.”<sup>7</sup> However, there is another pandemic brimming under the veil of the present one: that of domestic abuse against sexual and gender minorities (SGMs).<sup>8</sup>

‘Heterosexism’ refers to a social system that privileges heterosexuality and heterosexual relationships “at the expense of non-normative sexual orientations and gender identities” and relationships.<sup>9</sup> Our legal, policy and practice-based responses to domestic violence have overwhelmingly assumed a heteronormative framework in which women feature as victims and men as

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March 24, 2020.

- 2 Shemin Joy, “Coronavirus Crisis: No lockdown for domestic violence” *Deccan Herald*, April 26, 2020.
- 3 There is an emerging debate on whether we should address individuals who have been subjected to domestic violence as ‘victims’ or ‘survivors’. Many stakeholders and practitioners have suggested that the terms can be used interchangeably in a respectful way. For the present discussion, I shall be using the term ‘victim’ – since it also appears in the Preamble to the Protection of Women from Domestic Violence Act, 2005. Ultimately, it is a choice that should rest with the person who has been subjected to the violence.
- 4 *Supra* note 2.
- 5 Vignesh Radhakrishnan, Sumant Sen, *et.al.*, “Data: Domestic violence complaints at a 10-year high during COVID-19 lockdown” *The Hindu*, June 22, 2020.
- 6 UN Women is the United Nations entity dedicated to gender equality and the empowerment of women.
- 7 UN Women, “Press release: UN Women raises awareness of the shadow pandemic of violence against women during COVID-19” May 27, 2020.
- 8 ‘SGM’ is an umbrella term that includes individuals who may identify as lesbian, gay, bisexual, transgender/transsexual plus (LGBT+). The “plus” is inclusive of other groups, such as asexual, intersex, queer, questioning, etc. I shall be using the terms ‘SGM’ and ‘LGBT+ persons’ interchangeably in this article.
- 9 William Leonard, Anne Mitchell, *et.al.*, “Coming forward: The underreporting of heterosexist violence and same sex partner abuse in Victoria” *Australian Research Centre in Sex, Health and Society* (2008).

perpetrators. Since the entire movement against domestic abuse started as a battered women's movement, we are ingrained to think that the victims are all married, straight women.<sup>10</sup> The same presumption underlies the Protection of Women from Domestic Violence Act, 2005, ('PWDVA' or 'the Act'),<sup>11</sup> which defines an "aggrieved person" exclusively as a "woman,"<sup>12</sup> and the abuser as an "adult male person."<sup>13</sup>

During the drafting of the PWDVA, the issue of making a gender-neutral, as opposed to a gender-specific, domestic violence legislation was heavily debated.<sup>14</sup> However, ultimately, a law that focused exclusively on women as victims of domestic violence was preferred, given that women – the world over – have disproportionately been at the receiving end of such violence.<sup>15</sup> Nevertheless, while restricting the protective scope of the Act to just women, the drafters seemed to have ignored the threat and trauma of domestic violence experienced by individuals whose sexual or gender identities don't conform to traditional socio-cultural or physiological norms.

In this article, I argue that the exclusion of SGMs from the PWDVA is constitutionally impermissible. I shall further demonstrate that there are certain patterns of domestic abuse unique to SGMs, and the lockdown has, in fact, exacerbated their vulnerability to such abuse. Finally, I shall propose certain structural reforms aimed at creating a more comprehensive and inclusive framework to combat domestic violence against SGMs.

## II. Examining the Legal Position

The PWDVA has been described as one of the most important and influential pieces of social reform legislation ever enacted by the Indian State.<sup>16</sup> It defines "domestic violence" in the broadest terms to include physical, emotional,

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10 Maya Shwayder, "A Same-Sex Domestic Violence Epidemic Is Silent" *The Atlantic*, November 5, 2013.

11 The Protection of Women from Domestic Violence Act, 2005 (Act 43 of 2005).

12 *Supra* note 11, s.2(a).

13 *Supra* note 11, s.2(q).

14 Jayna Kothari, "Violence that's not gender-neutral" *The Hindu*, November 17, 2016.

15 *Ibid.*

16 Lawyers Collective, "Staying Alive: Sixth Monitoring and Evaluation Report on the PWDVA" (2013).

psychological, verbal, and sexual violence.<sup>17</sup> It confers, for the first time, a right to reside in the “shared household” to all women who have or had a relationship with the male respondent.<sup>18</sup>

Notably, domestic violence is of two kinds: one, violence that is inflicted on individuals within families – by parents, siblings, or relatives; and second, intimate partner violence (IPV), which is committed by a spouse, or a romantic/sexual partner. The PWDVA seeks to cover both kinds of violence; it extends its remedies to women who are, or have been, related to the abuser by marriage, a relationship in the nature of marriage, consanguinity, adoption, or as members living together in a joint family.<sup>19</sup>

The Act is indisputably progressive, in so far as it defines “domestic violence” in comprehensive terms and protects individuals against abuse in a wide-range of personal relationships. However, its fatal blind spot lies in its failure to protect vulnerable SGMs against both familial and intimate partner violence. I shall first describe how the Act fails to safeguard the rights of gay, bisexual (male) and trans individuals against familial violence. For this, I shall rely on a textual interpretation of the Act. Next, I shall analyse how the Act excludes LGBT+ victims of IPV violence. To explain this, I shall trace relevant judicial developments.

## **A. Familial Violence Against Gay, Bisexual (Male) and Trans Persons**

Most SGMs in India remain closeted, fearing familial disapproval, discrimination, and violence.<sup>20</sup> Such violence includes beatings, home confinement, ostracism, mental and psychological abuse, verbal abuse, and forced marriage.<sup>21</sup> Several instances of homosexual individuals in India being

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<sup>17</sup> *Supra* note 11, s.3.

<sup>18</sup> *Supra* note 11, s.19.

<sup>19</sup> *Supra* note 11, s.2(f).

<sup>20</sup> Shashank Malviya, “LGBTQ – A part of our society” *Times of India*, June 27, 2019.

<sup>21</sup> International Gay and Lesbian Human Rights Commission, “Violence On the Basis of Sexual Orientation, Gender Identity and Gender Expression Against Non-Heteronormative Women in Asia” (2010).

forced into 'conversion therapy' have also come to light.<sup>22</sup> In one such case, a bisexual student from Kerala died by suicide after her parents forced her into 'conversion therapy.'<sup>23</sup> In some parts of rural India, honour killings have been planned against homosexual family members.<sup>24</sup> In another horrifying development, families have subjected lesbian and gay members to 'corrective rape' in attempts to "cure" their homosexuality.<sup>25</sup> The Crisis Intervention Team of LGBT Collective in Telangana claimed that 15 'corrective rapes' had been reported to the group in the preceding five years.<sup>26</sup> A member of the Team added that the number under-represents the situation, since many of the cases go unreported.<sup>27</sup>

A survey conducted among 2,169 transgender persons from three Indian states found that only 7% of the respondents presently lived with their families.<sup>28</sup> This was largely because their families did not accept them, or were not supportive of them.<sup>29</sup> The harassment of trans children starts at an early age; many families have threatened, and even assaulted, their male-born trans children for dressing up as women.<sup>30</sup> The lack of acceptance from their families can cause great anguish to trans children. Rajesh, a professor at Delhi University, who runs a transgender resource centre, said, "The trauma they go through at a tender age severely affects their mental health. They feel unaccepted and unwanted throughout their lives. It becomes difficult to bring them back to mainstream education and professional lives."<sup>31</sup>

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22 Romita Saluja, "India's LGBTQ+ community face domestic violence and pressure to 'convert'" *South China Morning Post*, June 28, 2020

23 Cris, "Kerala student dies in Goa, death puts focus on inhuman 'conversion therapy' on queer people" *The News Minute*, May 16, 2020.

24 Rashmi Patel, "Being LGBT in India: Some home truths" *LiveMint*, August 27, 2016

25 'Corrective rape' or 'homophobic rape' is a hate crime, wherein a homosexual person is raped with the intention of "converting" them to heterosexuality.

26 Rupam Jain, "Parents use 'corrective rape' to 'straight'en their gay kids" *Times of India*, May 31, 2015.

27 *Ibid.*

28 Sumit Chaturvedi, "Abuse Of Transgender Indians Begins In Early Childhood" *India Spend*, January 6, 2017.

29 *Ibid.*

30 UNDP India, "Hijras/Transgender Women in India: HIV, Human Rights and Social Exclusion" (2010).

31 Fareeha Iftikhar, "'Accept us for who we are': Transgender children deprived of normal school life" *Hindustan Times*, November 15, 2018.

On the whole, families inflict severe and manifold kinds of violence on SGMs. The protective framework of the PWDVA, however, does not extend to all such victims.

On a plain textual reading of section 2(a) of the PWDVA, only a “woman” can be an “aggrieved person” for the purposes of the remedies offered by the Act. The term “woman” is broad enough to include heterosexual, bisexual, and homosexual women. But, the term is clearly exclusionary of homosexual and bisexual men, who – as a result of their sexual orientation – may be subjected to grave forms of familial violence.

Additionally, the term “woman” is trans-exclusionary. This is because the law, as stated by the Supreme Court in *NALSA v. Union of India*,<sup>32</sup> recognises transgender persons as “neither male nor female.”<sup>33</sup> The Court instead directed that they be treated as “third gender” for all legal purposes. Even the Transgender Persons (Protection of Rights) Act, 2019 (‘Trans Act’),<sup>34</sup> is ambiguous about treating trans women as “women” simpliciter. Section 4 of the Act recognises the right to self-perceived gender identity of all transgender persons. However, section 5 dilutes this very right, by requiring transgender persons to procure a “certificate of identity” from the District Magistrate, after they comply with a prescribed procedure. Moreover, the Trans Act does not specify if trans women will be recognised as “women” for the purposes of other legislations. In the absence of this clarification, it is unclear if the benefits of the PWDVA extend to either male-to-female or female-to-male trans persons.


Section 7 of the Trans Act allows for a transgender person, who has undergone sex reassignment surgery (SRS), to obtain a certificate indicating their changed gender – as either male or female (albeit after several bureaucratic hurdles). It can be argued that a male-born person who undergoes SRS to become a woman and obtains a certificate under section 7 can – for all legal purposes – be treated as a woman and, therefore, fall within the ambit of section 2(a) of the PWDVA. However, the Trans Act does not explicitly mention this. The Act is silent as to the legal consequences of undergoing SRS and obtaining a

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32 (2014) 5 SCC 438

33 *Ibid.*, ¶119 (per Sikri J.).

34 The Transgender Persons (Protection of Rights) Act, 2019 (Act 40 of 2019).



certificate “indicating change in gender.” Moreover, a conclusion that such a person would be a “woman” for all intents and purposes would deprive them of all the safeguards available to transgender persons under the Trans Act. On either interpretation, the person would have to sacrifice one crucial legislative protection – either against domestic violence or against trans discrimination.

To sum up, the PWDVA does not afford protection to gays, bisexual men, and transgender persons against familial violence. Such exclusion is in blatant disregard of their vulnerability to abuse within family setups.

## **B. Intimate Partner Violence Against Sexual and Gender Minorities**

I shall now examine whether the protective ambit of the PWDVA extends to SGMs in cases of IPV. For reasons discussed above, gays, bisexual men, and transgender persons cannot access the remedies available under the Act, even when they are victims of abuse inflicted by intimate partners. This is because only a “woman” can be recognised as an “aggrieved person” as per section 2(a) of the Act.

The forthcoming discussion will, therefore, only examine whether lesbian or bisexual women (when they are in a relationship with a non-male person) can avail of the protections offered by the PWDVA.<sup>35</sup>

To understand the status of female victims of same-sex intimate partner violence (SSIPV), we must trace certain judicial developments. In *Indra Sarma v. VKV Sarma*, the Supreme Court observed that the PWDVA restricts the scope of its remedies to women who are in a domestic relationship with men, and therefore, “...the Act does not recognize the relationship of same sex (gay or lesbian) and, hence, any act, omission, commission or conduct of any of the parties would not lead to domestic violence entitling any relief under the DV Act.”<sup>36</sup>

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<sup>35</sup> Admittedly, if a bisexual woman is subjected to IPV by a male partner, she can fall within the protective framework of the PWDVA.

<sup>36</sup> AIR 2014 SC 309.

This position, however, was made convoluted by the Supreme Court's decision in *Hiral Harsora v. Kusum Narottamdas*, where the Court struck down the words "adult male" in Section 2(q) of the PWDVA, on the basis that it violated Article 14 of the Constitution.<sup>37</sup> The Court observed that women can also be "abettors" of domestic abuse, and consequent to this decision, an aggrieved woman can bring a case against another woman under the Act.

Does this mean that female victims ofSSIPV can access the remedies available under the PWDVA? The answer appears to be 'no.' In *D Velusamy v. D Patchaiammal*, the Supreme Court observed that "a relationship in the nature of marriage," as per Section 2(f) of the Act, must be between persons "otherwise qualified to enter into a legal marriage."<sup>38</sup> Marriage laws in India do not explicitly permit same-sex marriages, and, in fact, reflect a strong heterosexual bias and use terms suggesting only a heterosexual partnership.<sup>39</sup> Further, in October 2018, the Supreme Court dismissed a plea seeking the recognition of civil rights, including same-sex marriage, for members of the LGBT+ community.<sup>40</sup>

Therefore, in so far as same-sex marriages are not recognised in India, female victims ofSSIPV are denied the protections offered by the PWDVA. The mandate of *Hiral* is thus limited to female relatives (for instance, mothers-in-law and daughters-in-law) bringing cases against each other. On the whole, lesbian, gay, bisexual, and transgender victims of IPV are entirely excluded from the scope of the PWDVA.

### III. Violation of the Constitutional Guarantee of Equality

Article 14 of the Indian Constitution declares, in categorical terms, that no person shall be denied the "equal protection of the laws." Admittedly, Article 14 is not absolute, since the doctrine of 'reasonable classification' has been incorporated in it by judicial decisions.<sup>41</sup> This doctrine requires courts to assess

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37 AIR 2016 SC 4774.

38 AIR 2011 SC 479.

39 Nayantara Ravichandran, "Legal Recognition of Same-Sex Relationships in India" *Journal of Indian Law and Society* (2013).

40 PTI, "Review plea filed in SC for civil rights of homosexuals" *Hindustan Times*, April 16, 2019.

41 H.M. Seervai, *Constitutional Law of India* 442 (Universal Law Publishing, 4th edn., Volume 1, 1991).



whether the classification is based on an intelligible differentia, and whether that differentia has a rational nexus with the legislative objective.<sup>42</sup> On a simple application of the classification doctrine, it is difficult to see what legitimate state objective is served by excluding SGMs from the protections offered by the PWDVA. Rather, such an exclusion entirely overlooks the severity and extent of domestic abuse faced by the LGBT+ community.

Moreover, the doctrine of ‘reasonable classification’ has been criticised for being too formulaic; it ignores the transformative vision of our Constitution that sees equality, liberty, and dignity as the foundational ethos of human existence. But, with the recent judgments delivered in *Navtej Johar*<sup>43</sup> and *Joseph Shine*,<sup>44</sup> the Supreme Court has evolved a more substantive vision of equality – one that shifted the focus from ‘reasonable classification’ to the idea of *disadvantage*. As Gautam Bhatia notes, “True equality – as we can intuitively sense – is about identifying disadvantage, about identifying the *axes* of disadvantage and, then, working to remedy them.”<sup>45</sup>

It is submitted that excluding LGBT+ victims of domestic violence from the protective ambit of the PWDVA falls foul of the “equal protection of the laws” principle embodied in Article 14. It further entrenches their position of disadvantage by increasing barriers to justice for them.

#### **IV. Contextualising Intimate Partner Violence Among Sexual and Gender Minorities**

The Supreme Court, in *Navtej Johar*, categorically held that the assumption of LGBT+ persons constituting a “miniscule fraction” of the country’s population cannot be a ground to deprive them of their fundamental rights.<sup>46</sup> In fact, studies have shown that SGMs may be at a higher risk of IPV. A study conducted in Delhi, focusing on men who have sex with men (MSM), found that 61% of the respondents reported having perpetrated at least one type of

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42 *State of West Bengal v. Anwar Ali Sarkar*, AIR 1952 SC 75.

43 (2018) 10 SCC 1

44 (2019) 3 SCC 39

45 Gautam Bhatia, “The Citizenship (Amendment) Act Challenge: Three Ideas” *Indian Constitutional Law and Philosophy Blog*, January 21, 2020.

46 *Supra* note 43.

violence (emotional, sexual, physical, or restrictions on movement) against their partner in the preceding year.<sup>47</sup>

Unfortunately, there is no comprehensive Indian study examining the statistics of IPV across different sexual orientations. However, studies from comparative jurisdictions can offer us some guidance as to the extent of IPV in both heteronormative and non-heteronormative relationships. I shall presently be relying on data from the National Intimate Partner and Sexual Violence Survey of 2010, conducted under the aegis of the Centers for Disease Control and Prevention, a national public health institute in the United States. This survey found that as compared to 35% of heterosexual women, 44% of lesbian women and 61% of bisexual women had experienced domestic abuse by an intimate partner.<sup>48</sup> For bisexual men, that number was 47%. For gay men, it was 40%, as opposed to 21% for straight men.<sup>49</sup>

Not only are SGMs more vulnerable to IPV, the patterns of abuse may in fact be more pernicious. “Outing” is the process by which the same-sex abuser tells family members, friends, and co-workers of the victim’s sexual orientation. The prospect of losing their job, residence, friend-circle, or custody of children as a result of being “out” weighs heavily in a LGBT+ person’s decision to stay quiet about the abuse.<sup>50</sup> An abusive partner may also use homophobia or transphobia to control and isolate a partner by suggesting that they will not be believed, or that they shouldn’t report the violence as they will be discriminated against by medical practitioners and police officials.<sup>51</sup> Sometimes, SGMs internalise society’s negative perceptions about their sexual orientation and gender identity – leading them to believe that they are less deserving of protection or assistance.<sup>52</sup>

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47 P.K. Abdul Rahman and The Naz Foundation, “Masculinity and Violence in the Domestic Domain: An Exploratory Study Among the MSM Community” International Center for Research on Women (2002).

48 Centers for Disease Control and Prevention, “NISVS: An Overview of 2010 Findings on Victimization by Sexual Orientation” (2010).

49 *Ibid.*

50 Pamela Jablow, “Victims of Abuse and Discrimination: Protecting Battered Homosexuals Under Domestic Violence Legislation” *Hofstra Law Review* (2000).

51 JM Calton, LB Cattaneo, *et.al.*, “Barriers to help seeking for lesbian, gay, bisexual, transgender, and queer survivors of intimate partner violence” *Trauma, Violence and Abuse* (2015).

52 *Ibid.*

Families and friends are the likeliest points of communication for heterosexual female victims of IPV. Data from the International Violence Against Women Survey (IVAWS), conducted by UN and Statistics Canada, indicates that, on average, 54% of respondents reported violence to their families, 39% to friends or neighbours, 17% to community-based institutions, and only 12% to the police.<sup>53</sup> However, when it comes to LGBT+ victims of IPV, there is a significant lack of familial and social support structures. Most families might not be aware of the victim's homosexuality, or might look at it with contempt.<sup>54</sup> Friends and neighbours, too, might not be sensitive to their plight and may be unwilling to offer the requisite support.<sup>55</sup>

Further, social stereotypes operate to delegitimise the severity of IPV in same-sex relations. Lesbian IPV is seen as harmless because women are not perceived to be physically strong and dangerous.<sup>56</sup> Similarly, there is a popular misconception that gay IPV is simply a fair fight between two men.<sup>57</sup> In some cases, victims of gay IPV may not be able to recognise themselves as such because men have been socialised to believe that only women can be "victims" of domestic abuse.<sup>58</sup>

Many scholars argue that idealised understandings of LGBT+ relationships further cloud understandings of IPV, particularly among lesbian women, whose relationships have often been understood to exist outside of traditional power dynamics.<sup>59</sup> Finally, SGM victims of IPV may be unwilling to come forward with their stories in order to avoid drawing negative attention to LGBT+ communities or for fear of being alienated within LGBT+ communities.<sup>60</sup>

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53 Suraj Jacob, Sreeparna Chattopadhyay, "The Pyramid of Reporting Domestic Violence in India" *Economic and Political Weekly*, January 5, 2019.

54 *Supra* note 50.

55 *Ibid.*

56 Janice Ristock, "Relationship Violence in LGBTQ Communities: Moving Beyond a Gender-Based Framework" *Violence Against Women Online Resources* (2005).

57 *Ibid.*

58 *Supra* note 50.

59 Suzanne Merlis, Deanna Linville, "Exploring a community's response to lesbian domestic violence through the voices of providers: A qualitative study" *Journal of Feminist Family Therapy* (2006).

60 Monica Campo, Sarah Tayton, "Intimate partner violence in lesbian, gay, bisexual, trans, intersex and queer communities" *CFCA* (2015).

## V. The Shadow Pandemic

With the nationwide lockdown imposed to check the spread of the COVID-19 pandemic, individual mobility has come to a dreadful halt. Movement restrictions, loss of income, isolation, stress and anxiety—all put individuals at an increased risk of harm at hands of abusive partners and families.<sup>61</sup> While the pandemic is *per se* horrific for all domestic violence victims, certain unique factors compound the difficulties of SGMs.

First, the PWDVA fails to account for domestic violence against SGMs, which means crucial remedies such as protection orders, residence orders, and compensation orders are unavailable to LGBT+ victims of abuse. The only recourse is the criminal process, which is often painfully lengthy and imposes a much higher burden of proof than that required for civil remedies. Moreover, the Indian Penal Code only provides remedies in cases of physical abuse. Protections against verbal, emotional, and economic abuse – which are available to heterosexual female victims under the PWDVA – do not apply to LGBT+ victims of domestic violence.

Second, the general financial vulnerability of SGMs enhances their dependence on partners and families.<sup>62</sup> Many of them cannot seek independent accommodation and are, therefore, confined in abusive households. Hamsafar Trust, an organisation working with the LGBT+ community, said it received 87 distress calls in the two months after the lockdown, compared with about seven the month before that.<sup>63</sup>

On the other hand, many SGMs have either been disowned or have had to flee their homes to escape abuse.<sup>64</sup> These individuals are particularly vulnerable during the lockdown. Many transgender persons relied on begging,

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61 Joht Chandan, Julie Taylor, *et.al.*, “COVID-19: A public health approach to manage domestic violence is needed” *The Lancet*, May 8, 2020.

62 Ineke Mushovic, Laura Durso, “The Unfair Price: Poverty in the LGBT Community” *Talk Poverty*, October 9, 2014.

63 *Supra* note 22.

64 Laura H. Thompson, Sumit Dutta, *et.al.*, “Violence and Mental Health Among Gender-Diverse Individuals Enrolled in a Human Immunodeficiency Virus Program in Karnataka, South India” *Transgender Health* (2019).

performances at weddings and celebrations and sex work to stay afloat.<sup>65</sup> With the lockdown imposed, they find themselves without income and shelter.<sup>66</sup> Many of them are reluctant to return to their parental homes due to fear of verbal and physical abuse. Simmi, a trans woman working in a beauty parlour in Turkman Gate said, “I did not have enough money to survive, so I returned to my parent’s house in West Delhi. But, now, I am going through mental trauma because my parents and siblings pass comments and taunts on my gender choice the whole day. I don’t know what to do. I feel suffocated.”<sup>67</sup>

Third, many LGBT+ persons continue to conceal their sexual or gender identities from their families. The lockdown puts them in perpetual surveillance and exacerbates the process of hiding and concealing their identity. The same is likely to induce psychological stress, eating disorders, depression and anxiety symptoms, and suicide ideation.<sup>68</sup>

Fourth, under the lockdown, victims of IPV often find it difficult to report to authorities, because they may not be allowed to leave the house or may not find the requisite space and time to make a call to helpline numbers.<sup>69</sup> In some cases, heterosexual women have relied on other family members to report on their behalf. For instance, the Press Trust of India reported that the NCW received a complaint filed by a father, who claimed that his daughter was being brutally beaten by her husband.<sup>70</sup> But, this avenue of reporting may not be available to sexual minorities in cases where their families might not know that they are living with a same-sex partner or might be disapproving of the relationship.

Many countries are relying on community-based initiatives to combat domestic violence during the pandemic. This includes code-word projects and

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65 Fareeha Iftikhar, “Transgender community struggling to cope with lockdown” *Hindustan Times*, April 30, 2020.

66 *Ibid.*

67 *Ibid.*

68 Ilan Meyer, “Prejudice, Social Stress, and Mental Health in LGBT Populations” *Psychol Bull* (2003).

69 EPW Engage, “COVID-19, Domestic Abuse and Violence: Where Do Indian Women Stand?” *Economic and Political Weekly* (2020).

70 PTI, “Lockdown turns into captivity for women” *The Telegraph India*, March 31, 2020.

local counselling efforts.<sup>71</sup> However, SGMs continue to face stigma and social exclusion from the same communities that are otherwise depended upon to be accommodative and caring for straight, female victims of domestic abuse.

Finally, a history of poor relations between the police and LGBT+ communities has resulted in a fear and mistrust of the police. SGMs continue to face violence, discrimination, and trans/homophobic attitudes by police officers and are, therefore, unwilling to report cases of domestic abuse.<sup>72</sup>

Psychologists have highlighted that SGMs are at an increased risk of domestic violence during the pandemic, partly because of the stressors they already experience as marginalized members of society. Psychologist Carrie Lippy notes, “Being on lockdown, having fewer choices, having other people make large life choices for you, like when you can leave the house — these things replicate the trauma that some LGBTQ people have experienced both in their relationships and as members of oppressed and marginalized groups.”<sup>73</sup>

## VI. The Way Forward

Heterosexism, heteronormativity, and homo/bi/transphobia are deeply ingrained into the Indian consciousness. The way forward must, therefore, include both legal reform and a compelling social counter-narrative that sensitises people to the gravity of domestic abuse against SGMs.

There is a need to amend Section 2(a) of the PWDVA to specifically include LGBT+ persons within the definition of an “aggrieved person.” This would grant them access to multiple civil remedies offered by the Act. Further, we must establish institutional safeguards to secure the privacy of LGBT+ victims of domestic violence. Several victims might wish to seek justice without revealing their sexual or gender identity to the larger public. We must devise legal procedures that are accommodative of this reality. The names of the parties can be anonymised in case transcripts, and the parties should have a

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71 Megan O'Donnell, Amber Peterman, *et.al.*, “A Gender Lens on COVID-19: Pandemics and Violence against Women and Children” *Center For Global Development*, April 3, 2020.

72 *Supra* note 60.

73 Ashley Abramson, “How COVID-19 may increase domestic violence and child abuse” *American Psychology Association*, April 8, 2020.

*right* to opt for *in camera* proceedings (as opposed to the Magistrate having the *discretion* under section 16 of the Act).

Research suggests that domestic violence service providers (counsellors, medical practitioners, etc.) may lack understanding and sensitivity to issues specific to abuse against LGBT+ persons, and some may knowingly or unknowingly discriminate.<sup>74</sup> Additionally, domestic violence service providers are often unaware of the particular strategies used by abusers in same-sex relationships, such as the threat of “outing” as a form of control. In some cases, lesbian abusers have presented themselves as victims to shelters homes, in order to pursue their partner in these spaces – making it impossible for them to seek support.<sup>75</sup> Lack of understanding and discrimination may affect trans or intersex individuals more severely; for example, trans women may be refused entry to “women only” domestic violence shelter homes.<sup>76</sup>

As a policy measure, we must specifically train Protection Officers, counsellors, and healthcare professionals to respond to the special needs of LGBT+ victims of domestic violence. At the bare minimum, they must be trained to use language that is sensitive and inclusive of LGBT+ victims; they must also be taught patterns of abuse specific to SGMs.<sup>77</sup> Further, domestic violence service providers should make their ‘accepting’ views known – by making sure that the resources they distribute to the community are explicitly LGBT+ inclusive.<sup>78</sup>

There is also a dire need for more qualitative and quantitative studies, especially in the Indian context, that analyse the extent and severity of domestic violence against SGMs. The National Family Health Survey – NFHS (2006) showed that domestic violence is much more prevalent against women belonging to the scheduled castes and tribes (SC/ST), as compared to women outside these categories.<sup>79</sup> Research has also suggested that women who have a lower household income and/or are illiterate are at a greater risk of being

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<sup>74</sup> *Supra* note 51.

<sup>75</sup> *Supra* note 50.

<sup>76</sup> *Supra* note 51.

<sup>77</sup> *Ibid.*

<sup>78</sup> *Ibid.*

<sup>79</sup> D. Sujatha, “Redefining Domestic Violence: Experiences of Dalit Women,” *Economic and Political Weekly*, November 22, 2014.

subjected to domestic violence.<sup>80</sup> Similar studies are required to understand how class and caste identities affect LGBT+ victims of domestic violence. Without such extensive research, our legal and policy interventions will never be able to address the issue in a meaningful way, and we will risk homogenising the experiences of SGMs, which would otherwise vary based on identity and demographic factors.

Finally, we need to construct compassionate modules of outreach and awareness that de-stigmatise issues surrounding LGBT+ communities. A culture of trans/bi/homophobia, discrimination, stigma, ridicule, disbelief, and additional hostility—on the part of the general public and law enforcement professionals—has forced countless LGBT+ victims of domestic violence to stay silent about their abuse. To bring about meaningful reform, we must unbuild this culture.

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80 Meerambika Mahapatro, RN Gupta, *et.al.*, “The risk factor of domestic violence in India,” *Indian Journal of Community Medicine* (2012).



# THE BI COLLECTIVE: NOTES ON EXPERIENCES OF A QUEER SUPPORT GROUP DURING COVID-19

– Abhiti, Anupriya and Amarinder Arora<sup>1</sup>

## Abstract

*The Bi Collective Delhi is an independent voluntary community collective for persons who identify as bisexual, biromantic, bi+, bi-curious and pansexual people. It is meant to be a resource and support group and provide a safe space for people attracted to people of their own and other genders. This essay explores how a contemporary support group, such as the Bi Collective, has transitioned to a virtual space due to requirements of physical distancing and reflects on the shared experiences of its members.*

**Keywords:** *Bisexuality, Lockdown, Support Group*

In October 2017, Navdeep Sharma, founder of The Bi Collective Delhi, sent out an email about the first Bi Collective meet-up to those who had filled a google form expressing their interest to attend, over Facebook. The first meeting was attended by three people, and since then, the collective has steadily grown and now has 50+ members. The collective's primary mode of communication is through a Whatsapp group.

The collective organizes meet-ups every Sunday at various venues in Delhi. The collective has also organized events ranging from webinars with experts, curating a moving library, comic book making workshops, zine making sessions, to specific panel discussions with experts on queer theory in India.

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<sup>1</sup> Abhiti, Anupriya and Amarinder are members of the Bi Collective.




The members of the collective also march at the Delhi Pride Parade together, carrying the Bi flag.

The collective has been active through the country-wide lockdown period – in person meet-ups have been replaced by zoom meet-ups. There's a consistency in participation amongst the members who make themselves free every Sunday evening to connect, talk, discuss and vent with others. In the current unprecedented times, especially in the countrywide lockdown, the presence of a space like The Bi Collective – even digital – has proven to be very important. During this time, many members who were on the Whatsapp group but could never attend meetings in the past, have now become active and attend the zoom sessions regularly. It has also been beneficial for people who have had to move back to their native places and live with their families.

When you are living with family, as a queer person, it often becomes difficult – almost impossible – to be your true self. The pandemic has confronted queer persons with this reality rather harshly. A member, Anmol, says, “I cannot dress, talk, or move in the ways I wish to, in ways that reaffirm my identities. I can't help but feel distant from myself, or the self I used to have four months ago.” A lot of queer persons do not tell their families about their identities out of fear of rejection, and/or lack of acknowledgement, empathy and respect that one deserves. The fear is compounded in a lockdown-type situation, as there is no way out if the family somehow finds out. The environment in the house can become hostile, which can cause severe mental health problems.

They also talk about the loneliness that has crept in because of the inability to access the outside world, and about how having access to safe spaces and being able to engage with like-minded people has helped them during the pandemic. “The past four months of staying at home during the lockdown haven't been the easiest. There are days when I feel suffocated and alone. I have observed that this loneliness is different from the “I don't have people to talk to” kind, but the bi collective has eased the heaviness of my loneliness with its simple presence, even when I am not as active in the group or the meetings. I have begun to attend more meetings recently and hearing all these wonderful people talk about things – internet memes or serious issues that the community faces – helps. I tend to be quiet (even when I wish I could talk




more), but again – the lovely people here make me part of the conversations anyway. I get to laugh, think, and spend time with them. I am so grateful that the collective keeps reminding me in its own ways that even though I have not stepped outside of my neighborhood in months, that even though I have not met these people in person for months – they are still here. The life and self I had before the pandemic, before all of this, did not just disappear. It gives me hope, and reason, to keep going forward – even on days when I wish time for me would just stop.”

Another member recalls, “Living alone and feeling loneliness were separate things for me until this pandemic struck. The confinement in my room left only my mind to explore the world, assisted, of course, by the internet. The desire for touch has increased so much that, some days it hits like a high tide. Many of us, it seems, have grave issues in our lives. No jobs or overworked, feeling lonely at home (unsupportive parents) or still away from home, containment zones, etc. – these are just the highlights that this pandemic has brought to the fore. With a companion by your side, life becomes easier. The weekly calls at Bi-Collective have been that companion. There are so many great people here to hear you out and to see and acknowledge the real you. It has stopped many weekends from becoming an endless spiral of boredom and depressing thoughts. Separately, it has also given me new friends.”

Queer persons, especially those who live in cities other than their homes, have a close-knit group of friends, aka our chosen family. It is not just queer people, but everyone has this chosen family. The major difference is that in our lives, oftentimes, the chosen family takes precedence over our actual families. These friends are our confidantes. They understand the struggle that a queer person faces when they are living with their families or otherwise.

In such unprecedented times as this pandemic, the chosen family becomes more important, and access to them pivotal. For a lot of us, The Bi Collective Delhi has become that other family. It is entirely circumstantial because, before the pandemic, we all weren’t as close to the fellow members as we are now.

We recall a recent instance where a member shared how they were anxious about their sexuality being out to the world, as they had started writing



about it on a public platform. Another member from the collective calmed them down and discussed the importance of sharing their writing on social media with some caution and talked to them about potential repercussions. These moments reaffirm the importance of spaces where one feels heard and supported.


The Bi Collective Delhi has come to become more than just a support group. It is fundamentally a community, a growing community of bisexual, bi+, bicurious, biromantic and pansexual persons. Even though in-person meet ups are not possible, it is reaffirming to know that all the members of the group are just a Whatsapp message away. The group, essentially, is always active. There is always someone who shares something interesting for everyone to reflect on and perhaps talk about. Even if one is not actively engaging in conversation in the group, the constant activity induces a sense of comfort. The comfort of knowing that you can jump in anytime or that you are not alone in feeling what you are feeling. The collective constantly makes efforts to accommodate everyone who wants to join the calls, by trying out different timings to have a larger participation. The group is sensitive in ensuring that everyone who attends gets the opportunity to speak. This makes it a community - its omnipresence, a sense of regularity and a wider shared experience.

## **Pandemic Diaries: The Day-to-Day Life of the Collective**

### **Job Losses, Work Stress and Making Difficult Decisions**

Chandra, a young journalist, had been unhappy with their job for months, as they weren't being treated well at their place of work. They decided to quit a few weeks after the lockdown was announced. The difficult decision was made after several rounds of deliberation with other members at the virtual meetings. They finally took the plunge, having been able to share their concerns with several pairs of empathetic ears.

Many members lost their jobs as a result of the lockdown. Some were transitioning between jobs when the lockdown was announced and are now stuck in a distressing limbo. In fact, one of the reasons why the meetings are being hosted regularly, every week, is that an admin suddenly found herself



with more time, given that their internship and job contract had paused. Similarly, a number of members have had to move back to their native towns and cities, owing to abrupt loss of employment or the shutting down of colleges and universities. Going back to a life that you do not fully relate to, is a difficult adjustment to make – to say the very least. The pain is compounded by the fact that there is no end in sight for these tough times, but having a support group makes the experience just the tiniest bit easier.

## **The Account of a Frontline Worker**

Saif is a doctor at a renowned hospital in Delhi. The problems they have been facing during the lockdown range from the daily commute to work in the absence of any public transport, to the shoddy manner in which the hospital treats its staff. Saif found themselves sharing their frustrating experiences quite regularly in the group, and others heard them out, working together to provide support, advice and consolation. One silver lining to the doctor's dark cloud has been the recent decision to become flatmates with another BiCollective member. While Saif's account has been a learning moment for others in the group, they were able to access support in the form of personal chats, group messages and, sometimes, just plain appreciation for the crucial work that they are doing in these times. The state and private sector's apathy towards frontline workers has found a formidable opponent in the compassion people choose to offer each other over the internet.

## **Mental Health**

It is no secret that queer folk are more vulnerable to issues of mental health, which can be chronic and need long term care. The collective has grown into a space that counters mainstream stigma against these issues and supports the need to access mental health practitioners. The group chat on Whatsapp routinely has members asking each other for recommendations for sensitive, queer-friendly therapists, who are also affordable and accessible. Pooling resources together, such as crowd-sourced lists of trusted therapists, is one of the ways in which members have been helping each other out. In fact, one of the newer members, Aditi, joined the collective specifically because their psychiatrist suggested that they interact with a queer support group. They



have found the space they were looking for, and have already taken up group activities with great gusto.


Of course, the voluntary group also occasionally struggles with certain serious matters that the members find themselves dealing with. Ken faced a stressful situation, where they were being threatened and blackmailed, and urgently needed relief. But, even in this case, the other members were at least able to offer them immediate support, and were there for Ken until they could find a way out of the situation.

## **Suicide Attempts and Smoking Cessation**

Some accounts speak for themselves and require no prologue or explanation. One member writes, “I tried to commit suicide a couple of times in the early days of this lockdown, where I couldn’t control my anxiety and was overwhelmed all the time and couldn’t handle myself. I used to live alone earlier and had my personal space. But, this lockdown took it all away from me, when my mom and sister shifted in with me. I had to quit smoking suddenly, and to be honest, I was a chain smoker who went through 30–40 cigarettes a day. It made me feel like I was losing my mind. It was horrible. I overdosed on sleeping pills and did a few [destructive] things as well, but a few members of the Bi Collective helped me out. We bonded on a personal level, where I shared my feelings, and the other person could understand them and help me breathe through it. It was because of them that I could fight all of it, and I feel grateful that I have such nice people in my life. The video calls where we all feel free to share parts of our lives helped me to cope with my anxiety and depression to a great extent. I am grateful to Bi-Collective Delhi.”

## **Hypochondriasis and Respite from ‘Cancel Culture’**

Another account that offers a glimpse into the Collective’s penchant for empathy is Rico’s story: “I have been a part of the Bi Collective’s Whatsapp group for 1.5 years, but started engaging with the group only post lockdown. Just before the lockdown my relationship started getting messy and was draining me. That’s why I started therapy and pushed myself to be an active member of a support group. Also, I wanted to join when things were normal, but then I got awkward with new people, so I did not. When I attended the



first meeting, it was a bit scary, because I do not do well with new people, but I achieved a slight level of comfort within a few minutes. The anxiety during the first few days of the lockdown was sickening. I suffer from hypochondriasis. Other factors, like messy relationships, contribute to stress and become more difficult when I need to control my continuous breakdowns with my parents being in the next room. In the past, coming late to home almost every day was an escape. But, now I was stuck living as a closeted queer person with my parents. My relationship with them made me realize the intensity of my life's duality. I have become a pro at lying to my parents and feel like an undercover agent most of the time. The Sunday 10 pm meetings have become an escape for me. One of the major things that I truly adore about the Collective is that it does not indulge in the so-called cancel culture. This culture was rampant in other support groups I have been a part of. There is no space for discussion or diversity of views and opinions. Even if you say something unintentionally, especially if you are new to the group and are just learning the ropes, they will eliminate you. Secondly, most of these groups were gossip hubs and would grow toxic eventually. But, that does not happen in Bi-Collective."

Rico found a group of people who steered away from the pitfalls of 'cancelling' people, and instead nurtured a culture of accountability and dialogue. The collective took out the time to frame a set of guidelines, so members could define boundaries when it came to engaging with different opinions and mindsets. It has been useful to assess whether these opinions come from a place of bigotry versus ignorance or lack of awareness and, then, responding accordingly.

## **Making Decisions Collectively**

The group guidelines, mentioned in the previous section, have also been pivotal in responding to inappropriate behavior. As membership to the group does not require any screening, there have been instances of miscreants joining the collective with ill intentions. But, there have also been cases where members have had the best of intentions, but ended up making others uncomfortable with their comments and/or by sending unsolicited private messages. The admins' prompt interventions were complemented by the collective decision to draft a set of guidelines against lurking, unsolicited messages and sexual

harassment. These rules were put together by around ten group members over two meetings. The effort ensured that the collective remained a safe space.

## Recreation

**Sitcoms** – Many of the members follow pop culture closely, and Afzal deserves a special mention as they are an unparalleled enthusiast. They always have the best sitcom recommendations and are joined by other members who discuss Gopi Bahu or Indian Matchmaking for hours (though the latter show was recently flagged as triggering for LGBTQ individuals as it deals with the issue of arranged marriage). We have also indulged in the occasional Netflix watch party.

**Support for Creative Ambitions** – Kannu is a DJ and one of the admins of the group. They played for Queeriyat, an online Pride Parade, during the pandemic, an event that was attended and enjoyed by many Bi Collective members. They also routinely play their original songs for members during the meet ups to entertain them or get their feedback. Often playfully named the “unsolicited DJ”!

Mara has started a blog dedicated to exploring non-binary fashion. The group wholeheartedly supports them and excitedly cheers their latest posts. The culture of pushing fellow members to explore their highest potential is one that the group strives to maintain.

**Humour** – Like any other group, BiCollective is also, at the end of the day, just a bunch of people having fun. Members indulge in all sorts of harmless humour, such as pulling each other’s leg and renaming their zoom names to sitcom characters. It isn’t unusual to join a group call on a Sunday night, attended by “Moiria Rose,” “Gopi Vau,” and “Lodhi Garden.” Discussions about issues at home or the latest updates from Hinge can go on for hours, and some members eat dinner while on the call, or even have a drink. Others simultaneously do household chores like washing the dishes, or getting done with some light office work. Sometimes, members leave for a nap or to finish other chores, and join again as late as 2:30 am. The meetings usually start at 10 pm, but continue until the early hours of morning more often than members would like to admit.



## Finding Friends and Flatmates

Dr. Saif's interaction with the collective, mentioned earlier, has resulted in the decision to move in with Aditi, a new and enthusiastic member who has been having a great time in the group and attends the meetings very regularly. On one occasion, a member shared their frustrations about issues at work and the resultant anxiety. Each member listened patiently, as many face the terrible possibility of losing their current job. Later, on a personal call, Saif and Aditi spoke about the troubles the two face at work and possible solutions. Not only did they benefit immensely from sharing their concerns with each other, but also realized that they were both looking for a new flat. After a few discussions, the two have found a place together, and will be shifting to their new home very soon. They also look forward to hosting Bi Collective meetings at their flat once it is safe to do so, and Aditi is excited to finally meet other members in person.

## Conclusion

The Bi Collective is an active, thriving space, that is more than just a formal support group. Personal growth, sharing experiences, humour, recreation, activism – all take equal priority when it comes to how members engage with each other. New members usually join using a link that is shared by their friend or by engaging with the Bi-Collective page on Facebook. Admins exchange responsibilities on a quarterly basis, and this happens organically, depending on the time they are able to contribute to the collective's functioning. The founder engages with the collective remotely and provides support to the admins whenever they are in a dilemma. The group has become a more intimate space during the course of the lockdown. The digital meetups have seen a steady growth in participation, as they go on for longer hours. As the group gradually increases in size, it may or may not remain as intimate, but it will definitely continue to set itself apart from collectives that slide down the slippery slope to cliquehood or focus exclusively on external outreach activities. The Bi Collective's functioning is an example of how support groups can be run in the time of a global crisis by being positive, flexible and accommodating. The group's motto continues to be to provide a warm, safe and nurturing space for Bi individuals.

# LAW AND VIOLENCE: GENDER-DIVERSE PERSONS IN LOCKDOWN

- Gowthaman Ranganathan<sup>1</sup>

## Abstract

*This article focuses on the impact of COVID-19 and the lockdown on the Gender Diverse Persons. The Gender-Diverse Persons are facing violence both in the public and private space. In addition to that no protection is being provided to them from the State- the state itself being a participant in the violence. The non-recognition of domestic relationships/ intimate partner relationships of Gender-Diverse persons by the State leaves them no remedy in law which is provided to gender confirming partners, thus PWDVA fails to protect them. Further, the article discusses the impact on the economic condition of the Gender- Diverse persons whose source of livelihood required going out in public.*

**Keywords:** *Gender-Diverse Persons, Criminalization, Domestic relationships.*

## The Context

The media has reported the hardships faced by gender-diverse<sup>2</sup> persons due

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<sup>2</sup> I use the term gender diverse persons to indicate the wide range of transfeminine socio-cultural identities including hijras, jogappas, thirunangais, nupimanbi, kothis, etc., and transmasculine identities. The universal term transgender does not capture the specific material realities and socio-cultural context of these identities. In this paper, the term gender-diverse persons refers primarily to transfeminine socio-cultural identities unless mentioned otherwise. See generally, Jain, D. and Rhoten, K.M., 2020. Epistemic Injustice and Judicial Discourse on Transgender Rights in India: Uncovering Temporal Pluralism. *Journal of Human Values*, 26(1), pp.30-49.

to the lockdown imposed to curtail the spread of COVID-19. These reports highlight the loss of livelihood,<sup>3</sup> economic vulnerability,<sup>4</sup> evictions,<sup>5</sup> increased threat of violence, and difficulty in accessing healthcare<sup>6</sup> faced by gender-diverse persons. There are reports of posters inciting violence against gender-diverse persons appearing in parts of Hyderabad.<sup>7</sup> These posters warned people against talking to, or having sex with, hijras to prevent contracting coronavirus. The poster urged people to beat hijras<sup>8</sup> and report them to the police. There is a history of gender-diverse persons navigating public spaces under the threat of physical violence<sup>9</sup>. They occupy public spaces to earn a livelihood through traditional work like bestowing blessings for money<sup>10</sup> and sex work.<sup>11</sup> These livelihood options are unavailable during the lockdown and a gender-diverse person's public presence is put under further surveillance, increasing their vulnerability to violence by police and goons.

In addition to the threat of violence in public spaces, gender-diverse persons face physical and emotional violence in their homes. This could be in the natal family or in other diverse living arrangements that gender-diverse persons live

- 3 Ramesh, M., 2020. *'Discriminated, Worried': India's Trans-Persons On COVID-19 Crisis*. [online] TheQuint. Available at: <<https://www.thequint.com/neon/gender/coronavirus-transgender-community-impact>> [Accessed 14 July 2020].
- 4 *Transgender's Plight During Coronavirus Pandemic*. [online] The New Indian Express. Available at: <<https://www.newindianexpress.com/cities/delhi/2020/may/22/transgenders-plight-during-coronavirus-pandemic-2146509.html>> [Accessed 14 July 2020].
- 5 *Evicted from Homes, Transgender Community Fights for Survival Amid Coronavirus Lockdown*. [online] Available at: <<https://www.cnbctv18.com/healthcare/evicted-from-homes-transgender-community-fight-for-survival-amid-coronavirus-lockdown-5723661.htm>> [Accessed 14 July 2020].
- 6 BBC News. 2020. *'If I Don't Get Medication What Will Happen to My Body?'* [online] Available at: <<https://www.bbc.co.uk/news/world-52457681>> [Accessed 14 July 2020].
- 7 The Week. 2020. *Hate Posters Against Transgenders In Hyderabad Amid COVID-19 Fears*. [online] Available at: <<https://www.theweek.in/news/india/2020/03/30/hate-posters-against-transgenders-in-hyderabad-amid-covid-19-fears.html>> [Accessed 13 July 2020].
- 8 A marginalized transfeminine socio-cultural identity.
- 9 People's Union for Civil Liberties, Human Rights Violations Against the Transgender Community, A Study of Kothi and Hijra Sex Workers in Bangalore, India, September 2003.
- 10 This practice is called differently in different parts of India – the terms include badhai, challa mangna, kada kekaradhu, etc. See generally Saria, V., 2019. Begging for change: Hijras, law and nationalism. *Contributions to Indian Sociology*, 53(1), pp.133-157. See generally Reddy, G., 2006. *With respect to sex: Negotiating hijra identity in South India*. Yoda Press.
- 11 Raj, A., 2020. *Unable to Beg or Solicit, Karnataka's Trans People Seek Govt Help*. [online] TheQuint. Available at: <<https://www.thequint.com/coronavirus/unable-to-beg-or-solicit-karnatakas-trans-people-seek-govt-help>> [Accessed 14 July 2020].

in. Orinam, a bilingual web resource for gender and sexual minorities based in Chennai has published a list of safety measures to counter violence during the lockdown.<sup>12</sup> In a conversation with Dr. L. Ramakrishnan, a volunteer with Orinam, he confirmed receiving cases of violence faced by gender-diverse persons at home.<sup>13</sup> The safety measures were published by Orinam because of these incidents. It is difficult to document cases of violence faced by gender-diverse persons as they seldom reach the formal legal process. They are often resolved through an informal network of service providers including peer counselors and other interventions by non-governmental organizations to subvert a crisis.<sup>14</sup>

Furthermore Gender-diverse persons face violence in the implementation of lockdown and quarantine measures. The narrative of Siku, a Nupi Manbi<sup>15</sup> from Manipur testifies to this violence.<sup>16</sup> Siku is a migrant worker in Bangalore who lost her job due to the pandemic and was compelled to return to Manipur. At Manipur, she was placed in quarantine at a state facility for men. Being quarantined with men made her uncomfortable; she reached out to a well-known activist, Santa Khurai, who successfully initiated the process for a separate quarantine facility for gender-diverse persons. On return to her hometown, Siku faced severe harassment from neighbors and some local organizations. Her family was harassed as well, and these groups wanted the family to be quarantined for an extended period. Unable to face the hostility by the locals, Siku has taken refuge at a hotel.

12 *Locked Down in The Time Of COVID-19: Safety and Self-Care for Queer and Trans Persons | Orinam.* [online] Available at: <<http://orinam.net/locked-down-safety-self-care-queer-trans/>> [Accessed 14 July 2020]. Some of these measures include the need to be near an exit in case of a physical threat. The non-exhaustive measures suggest staying away from objects that may be used to cause harm. The directives also advise people to alert about one's location to people they trust and to keep essential documents including identity documents handy for a quick exit. The directives recognize that violence can be at an emotional level, where one may not be able to express their gender identity freely at home, resulting in emotional distress.

13 Conversation on July 09, 2020 with Dr. L. Ramakrishnan, Volunteer, Orinam.

14 See generally Murthy. S., Mohan. S., *Crisis Intervention by Lesbii*, in Narrain, A. ed., 2011. *Law like love: Queer perspectives on law*. New Delhi: Yoda Press.

15 A marginalized gender identity in Manipur.

16 *'I Feel the Pain of Having Nowhere to Go': A Manipuri Trans Woman Recounts Her Ongoing Lockdown Ordeal - India News, Firstpost.* [online] Available at: <<https://www.firstpost.com/india/i-feel-the-pain-of-having-nowhere-to-go-a-manipuri-trans-woman-recounts-her-ongoing-lockdown-ordeal-8494321.html>> [Accessed 14 July 2020].

Police violence to impose the lockdown has been reported, and the media circulated videos of police violence carried out with impunity.<sup>17</sup> When the criminal legal system<sup>18</sup> is used to impose the lockdown, it will target those who are already vulnerable to its violence.<sup>19</sup> It is important to note that gender-diverse persons have historically been criminalized and face threat of detention in places like the beggar's home which detains the ostensibly poor under anti-begging legislations.<sup>20</sup> Criminalization of certain gender-diverse persons can be traced back to the notorious Criminal Tribes Act of 1871 which criminalized certain people for belonging to communities notified under it. The Criminal Tribes Act has been repealed, but it continues to resonate in the policing of gender-diverse persons even now.<sup>21</sup>

Continuities from the Criminal Tribes Act can be seen in the amendment made to section 36A of the Karnataka Police Act, 1963 in 2011, which provided for surveillance and criminalization like the provisions of the Criminal Tribes Act. A writ petition filed in the Karnataka High Court against this amendment was closed with the state undertaking to change the word eunuch in the section to persons.<sup>22</sup> This change is a welcome move, but there is apprehension of the law being disproportionately used against gender-diverse persons despite the change in language.<sup>23</sup> The fear of such legislations being used through the criminal legal system adds another layer of violence in the lives of gender-diverse persons. Further, instances where the Karnataka Prohibition of Beggary Act, 1975 was used to detain gender-diverse persons<sup>24</sup> are reminiscent of the Criminal Tribes Act.

17 Covid19|Watch how police is dealing with people stepping out amid lockdown, available at: <[https://www.youtube.com/watch?v=5wNQ\\_V-Ol78](https://www.youtube.com/watch?v=5wNQ_V-Ol78)> [Accessed 14 July 2020].

18 I use the term criminal legal system instead of the well-established criminal justice system to highlight the inherent injustice of the structure of the system which disproportionately incarcerates and impacts marginalized persons.

19 Sonavane, N., Bokil, A., *Why Relying on Criminal Law Should Not Be the Answer to A Pandemic*. [online] Available at: <<https://thewire.in/law/criminal-law-coronavirus-pandemic>> [Accessed 14 July 2020].

20 See generally, Ramanathan, Usha. "Ostensible poverty, beggary and the law." *Economic and Political Weekly* (2008): 33-44.

21 See generally Gupta, A., 2008. *This alien legacy: The origins of "sodomy" laws in British colonialism*. Human Rights Watch.

22 Jayna Kothari, 'Courts Recognizing Transgender Rights' (OxHRH Blog, 28 February 2017) <<http://ohrh.law.ox.ac.uk/courts-recognizing-transgender-rights>> [07/12/2020]

23 *Id.*

24 See generally Kodur, Prerna, Ranganathan, Gowthaman. A Report on the Human Rights Violations Against Transgender Persons in Karnataka, Onedede, Bangalore (2014).

These different forms of violence on gender-diverse persons is further entrenched by the economic vulnerability faced by them during the lockdown. A Reuters report cites noted activist Anindya Hajra saying, “India’s estimated 2 million trans people would be among the worst hit by the move because many make their living on the streets.”<sup>25</sup> In the report, Hajra further notes, gender-diverse persons “do not have the social privilege of operating within a distant ‘online’ world when their lives are precariously balanced on the thread of social interaction and functions.”<sup>26</sup> Directions from the Telangana High Court<sup>27</sup> and the Karnataka High Court<sup>28</sup> in ongoing proceedings to earmark wards for gender-diverse persons and to distribute groceries and release pensions is a welcome move. The extent of the impact of these directions on the gender-diverse persons is yet to be seen.

This violence faced by gender-diverse persons are interrelated and are entrenched by economic vulnerability. In the context of COVID-19, the implementation of quarantine and other measures add to the violence experienced by gender-diverse persons.<sup>29</sup> Some of their means of livelihood like seeking money for blessings is perceived as begging, and they face detention in beggars’ homes. Many gender-diverse persons are sex workers which leads to further criminalization and violence from the criminal legal system. The loss of these means of livelihoods increases the threat of violence. The pervasiveness of violence in the lives of gender-diverse persons is not fully captured by distinctions like domestic/state violence and public/private sphere. It is crucial to look at the continuum of violence and vulnerability to imagine legal redressal.

25 *India’s ‘Invisible’ Trans Community Struggles as Coronavirus Shuts Life Down*. [online] Available at: <<https://www.reuters.com/article/us-health-coronavirus-lgbt-india/indias-invisible-trans-community-struggles-as-coronavirus-shuts-life-down-idUSKBN21C098>> [Accessed 14 July 2020].

26 *Id.*

27 *Earmark Special COVID-19 Wards for Transgender Community in Hospitals: Telangana High Court*. [online] The New Indian Express. Available at: <<https://www.newindianexpress.com/states/telangana/2020/jul/01/earmark-special-covid-19-wards-for-transgender-community-in-hospitals-telangana-high-court-2163627.html>> [Accessed 14 July 2020].

28 Kothari, J., Article-14.com. 2020. [online] Available at: <<https://www.article-14.com/post/a-high-court-steps-in-for-a-covid-hit-destitute-community>> [Accessed 14 July 2020].

29 See generally Narrain, S. *Persecuting Difference: The Drive Against Bangalore’s Transgender Community*, Narrain, A. ed., 2011. *Law like love: Queer perspectives on law*. New Delhi: Yoda Press.

## Evaluating Legal Responses

The Protection of Women from Domestic Violence Act, 2005 (PWDV) is a comprehensive law to address domestic violence. However, it does not extend its protection fully to gender-diverse persons. The PWDV addresses violence in a domestic relationship<sup>30</sup> in a shared household.<sup>31</sup> The definition of domestic relationship and shared household are progressive and goes beyond the heteronormative matrimonial relationship and matrimonial home as understood in marriage and divorce laws. The PWDV allows an action against natal family members which is crucial for gender-diverse persons who experience violence from the natal family.<sup>32</sup> Despite the law providing for action against the natal family, it is difficult to enforce the law against the natal family.<sup>33</sup> Cases against the natal family are seen as suspect and the legal institutions take recourse to informal reconciliations often sending the aggrieved person back to the spaces where they experience violence.

A significant limitation of the PWDV in addressing violence faced by gender-diverse persons is that it protects only persons identifying as women. Thus, the law is available only to survivors of violence who identify as a woman. Section 2(a) of the PWDV defines an aggrieved person to mean “...any woman in a domestic relationship with the respondent, who alleges domestic violence

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30 Section 2(f) of PWDV - “domestic relationship” means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family

31 Section 2(S) - “shared household” means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household.

32 *Supra* note 25. Domestic relationship includes relationship by consanguinity, adoption or family members living together as a joint family. Though the text makes it possible to bring an action against the natal family, a successful complaint is rare.

33 See generally “Staying Alive: Evaluating Court Orders, Sixth Monitoring & Evaluation Report 2013 on the Protection of Women from Domestic Violence Act, 2005,” Lawyers Collective, New Delhi, January 2013 at page 56. The report notes that, “in cases where daughters/sisters have alleged emotional violence such as being pressurised into getting married and filed cases against fathers/brothers, Courts are not inclined to grant Protection Orders. However, in these cases maintenance is granted.”

by the respondent.” The gender specific language of the law is appropriate in the context of the emergence of this law which was to address violence experienced by women.

The PWDV aims at creating a civil remedy administered by the criminal legal system which can provide reliefs that were unavailable or difficult to get through matrimonial proceedings. After the Supreme Court’s decision in *National Legal Services Authority v. Union of India*<sup>34</sup> and the enactment of the Transgender Persons (Protection of Rights) Act, 2019 (hereinafter referred to as “the Transgender Rights Act”), the word woman could be interpreted to mean a transgender person who identifies as a woman. However, this still leaves out transmasculine persons and the many gender-diverse transfeminine persons who may not identify as women. Further, the Transgender Rights Act, which has faced severe criticisms and protests for being contrary to the principle of self-determination of gender, provides a higher threshold to identify as man or woman, as opposed to identifying as transgender.<sup>35</sup> This effectively leaves out gender-diverse persons from the ambit of the PWDV unless they identify as a woman.

Gender-diverse persons are left with little recourse to address violence in the Transgender Rights Act as well. Section 18 (d) of the Transgender Rights Act states that “whoever harms or injures or endangers the life, safety, health or well-being, whether mental or physical, of a transgender person or tends to do acts including causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse shall be punished with imprisonment for six months to two years and with fine.”<sup>36</sup> Critiques have pointed out to the low threshold of punishment. However, it is also important to note that this provision does not recognize the context and material realities in which violence occurs against gender-diverse persons. For instance, violence by the police against

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34 *National Legal Services Authority v. Union of India*, WP (Civil) No. 400 of 2012.

35 Pathak, Sushmita, India Just Passed a Trans Rights Bill. Why Are Trans Activists Protesting It? December 04, 2019, available at <https://www.npr.org/sections/goatsandsoda/2019/12/04/784398783/india-just-passed-a-trans-rights-bill-why-are-trans-activists-protesting-it>, last accessed on 05/18/2020. Knight, Kyle, India’s Transgender Rights Law Isn’t Worth Celebrating, available at <https://www.hrw.org/news/2019/12/05/indias-transgender-rights-law-isnt-worth-celebrating>, accessed on 18/05/2020.

36 Sec. 18(d), The Transgender Persons (Protection of Rights) Act, 2019.



gender-diverse persons is well documented and does not find a mention in the Transgender Rights Act.

The absence in redressal for violence in the Transgender Rights Act must be understood in the context of criminalization of gender-diverse persons through anti-begging, anti-sex work laws and laws relating to public nuisance, obscenity and state-level laws regulating the power of the police. The proposed Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018 will contribute to the criminalization of gender-diverse persons.<sup>37</sup> In a context where gender-diverse persons face constant surveillance and the threat of violence and criminalization, the question is whether recourse to the criminal legal system is a solution?

*Jayalakshmi v. State of Tamil Nadu*<sup>38</sup> continues to be a reminder of the brutality of police violence faced by gender-diverse persons. In this case, the Madras High Court responded to the custodial violence faced by a gender-diverse person and their resultant suicide in the premises of the police station. The court ordered disciplinary action and penalty against the officers involved. Illegal detention at the police station is a reality faced by gender-diverse persons. Accounts of illegal detention are documented by some non-governmental organizations, and it is captured in autobiographical accounts like A. Revathi's 'Truth About Me.'<sup>39</sup> Given the pervasiveness of violence faced by gender-diverse persons in private and public places and their historic criminalization, one needs to evaluate law reform strategy that focuses on the criminal legal system. Proposals for affirmative action have taken a backseat in the conversation on rights of gender-diverse persons. It is time to think of ways to de-regulate the lives of gender-diverse persons by abolishing surveillance and criminalization and holding the State accountable in strengthening socio-economic rights of gender-diverse persons.

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37 See generally Tandon, Tripti, We don't need the Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018, available at <http://theleaflet.in/we-dont-need-the-trafficking-of-persons-prevention-protection-and-rehabilitation-bill-2018/>, last accessed on 05/18/2020

38 *Jayalakshmi v. State of Tamil Nadu*, (2007) 4 MJ 849.

39 See generally, Revathi, A. and Geetha, V., n.d. *The Truth About Me*. London (Penguin Books).



## Conclusion

This article has shown the pervasiveness of violence in the lives of gender-diverse persons which is now entrenched in the responses to the Pandemic. It has shown the limitations with the existing laws to respond to violence and suggests that the criminal legal system which is the perpetrator of violence against gender-diverse persons should not be the primary remedy. The pandemic has shown up the sharp inequality faced by gender-diverse persons, and the response to violence faced by them should address socio-economic inequality. It is crucial to look at the connections between violence and socio-economic inequality. This will allow us to address the root causes of the violence against gender-diverse persons which results from their gender identity and their socio-economic status.

# HOME SWEET HOME?

- Dr. Aqsa Shaikh<sup>1</sup>

## Abstract

*The lockdown because of the pandemic has been extremely challenging for everyone. The LGBTQIA+, and especially the transgender community, have special challenges that may be beyond the imagination of the society. The home which is a safe place for most people can be an extremely hostile, triggering and an abusive place for many queer persons. Anecdotes of harassment, abuse, and blackmail are aplenty. The lockdown also meant financial disruption for the community, especially for the Hijra community. The response from Government has been lackadaisical. Much needs to be done, especially through the instrument of The Transgender Persons Act for creating solid safety nets against Domestic Violence, providing safe-home services and short-term relief, and long-term empowerment of the community through their active engagement.*

**Keywords:** *Transgender Community, Lockdown, Domestic Violence*

*"The ache for home lives in all of us. The safe place where we can go as we are and not be questioned."*

-Maya Angelou

For most people, Home is a place of safety. A place where they find unconditional love, acceptance, and freedom from pretension. A place where you know you will be protected from everything bad. A place where you can be

<sup>1</sup> Dr Aqsa is a medical doctor and a community medicine specialist.

you in the complete madness of it all and still be accepted. For most people, Home is, well, what Home is supposed to be. For some others, not at all. A very important group of people for whom home may be a place of tension is the LGBTQIA+ community. Especially, for Transgender persons. Especially for Transgender persons who are transitioning. Especially, when their family is not supportive, which is the case with most trans folks, anyway.

No wonder, then, that a lot of transgender persons run away from home – a place they grew up in. They run away somewhere; somewhere away from the home where the people who were supposed to protect them have ended up harming them instead – physically, mentally, emotionally, financially and, even, sexually. They run away from home because they do not get acceptance there – acceptance to be who they are, and not who the family wants them to be. They run away from home because they do not want to live with a family which blackmails them, boycotts them, even beats them to keep them in the cages of their bodies, to prevent them from feeling liberated by transitioning, by becoming who they identify with.

While the conflict between a transitioning transgender person and their hostile family is a perennial phenomenon, it gets more intense during certain occasions when people who are staying away from the family have to come back home; festivals, social occasions like marriages in family, illnesses or even deaths. During such times, the children are supposed to come back home to their families to enact the great Indian *tamasha* of Happy Indian family – *Hum saath saath hain*. Also, when the transgender person falls ill or falls in some kind of problem, then also a family reunion is expected. Still, these are the occasions for which a Transgender person is mentally prepared – even if always ill-prepared. But, come 2020 and all the preparations fell apart.

The year 2020 will remain etched in our memories for a very long time. From riots to forest fires to super cyclones to locust swarms, it showed us everything. But, the one thing for which the year 2020 will be most-remembered is the pandemic of Coronavirus Infectious Disease or Covid-19. Along with the pandemic and disease and deaths came the much-dreaded Lockdown – what was supposed to be the bitter pill for the disease had a lot of side-effects.


Schools, colleges, and universities closed. So did most of the workplaces. Work from home became the new norm – and so did suffer at home.

Even work from home was a luxury for a lot of people. A substantial number of people were rendered jobless. All this affected the transgender community in a multi-pronged manner. Transgender students studying in colleges and Universities and staying in hostels (often, not very friendly places to start with) or Paying Guest facilities were forced to return home. Those Transgender persons who were working but were rendered jobless due to lockdown and became financially crippled had to return to their families and get enslaved in financial dependency. Those who were working from office but were now forced to work from home had their privacy curtailed, had more exposure to their hostile family and, thus, more frustration. Those who had partners or were dating were suddenly ensnared in their homes, and the little support and intimacy which they experienced was snapped.

Every move of a Transgender person at home was now monitored. ‘Why do you dress like this? Why have you colored your hair? Why have you kept your hair short or long? Why do you dress like this? Why do you wear so much pink? When did you get those horrendous piercings? Who is this friend? With whom are you chatting?’ Suddenly, a trans person who might have gotten used to a little free life was pushed into a surveillance state where the family’s Big Brother was constantly watching and reprimanding.

Boredom soon caught up, and the family started looking for the *rishtas* for their Trans children. What a better and more historic time to get hitched than the lockdown. Marriage planning by the family may give joy to a lot of cisgender-heterosexual individuals, but when it comes to LGBTQIA+, it is a red flag for trouble – a lot of trouble!

Amidst all this drama and scary lockdown and the sight of migrant laborers walking on the highways, the already fragile mental state of a trans individual went for a toss. It started to build up slowly day-by-day. It started to show in lack of sleep, disturbed sleep patterns, mood swings, bursts of anger, self-directed anger at yourself and everyone else. The skin hunger began to creep in. Social distancing and isolation led to a lot of unfulfilled skin hunger




amongst any persons, and when it comes to LGBTQIA+, it can only get worse. You start craving for a simple handshake, a warm hand on the shoulder, a hug, or even a kiss.

While a lot of these problems mentioned above are faced by most of the members of the LGBTQIA+ community, some problems are unique to the Trans community. A section of the Trans community is transitioning at any point in time. Transition through gender affirmation procedures can be a very long process. One could be transitioning through one or multiple aspects. The transition could be in the form of medical or surgical transition – through puberty blockers, cross-hormone therapy, laser hair reduction, top surgeries and bottom surgeries, genital reconstruction surgeries, plastic surgeries, etc. It could be in the form of voice therapy, even. The transition could also involve legal transition, social transition and so on. Lockdown did put a brake on transitions of most of these kinds for many trans persons.

In the lockdown, while most doctors and surgeons shut their clinics because of Covid scare, this also included doctors dealing with transition services. Many of the hospitals were converted into Covid-dedicated hospitals, which meant that elective procedures and services were put on hold for an indefinite period. Very few of the government hospitals offered gender affirmation services in the first place, and thanks to Covid, even those that were doing it stopped doing so. Even service providers from private set-ups shut shop, given the uncertainty of Covid and the risks involved to their patients. The poor financial situation meant fewer financial resources to spend on highly expensive gender affirmation services. Also, during the lockdown, most of the government offices were closed or were working only for essential services – making the legal transition very difficult. Most of the government offices dealing with the change of name and gender in the IDs stopped offering their services during this time. The social transition needs amenable social environment, and being locked into a hostile home is not a favorable situation at all for any kind of real-life experience for a transitioning transgender person.


In addition to these special needs, the basic healthcare needs of trans persons were also compromised during the lockdown. There are needs for contraception, abortion services, services related to reproductive tract



infections and sexually transmitted infections, Pre-exposure prophylaxis for HIV, and HIV prevention and treatment services. Almost all of these were compromised or annulled during the lockdown, atleast in the early part of the lockdown.

Also, one must not forget the highly-affected community of *Hijra* or *Kinnar*. The *Hijra* / *Kinnar* community makes its living by engaging in various cultural activities like *Badhai*, giving blessings, and dancing on social occasions like births and marriages, begging and, also, sex work. As expected, the lockdown meant doom for them. Not just were their traditional occupations disrupted, there was an increased marginalization of the transgender community during the lockdown. Many of the members of the Hijra community stay in rented premises. While in the first one or two months of the lockdown, the house rent was not such a pressing issue, but it increased later with eviction threats and risk of homelessness. The lockdown affected the economy of the entire world and India was no exception. This meant that most people stopped giving alms to the begging Hijra community members. As the fear of the virus spread across the world, it brought sex work to a halt for many months, thus again affecting the livelihood of the community members. It is known that such situations can force community members to adopt higher-risk behaviors, be it in the form of unsafe sex or substance abuse. When it comes to food relief, most members of the Hijra community do not possess ration cards or even Aadhaar cards. Therefore, getting the benefit of food supplies became an enormous task. No special scheme was made available by the government through its much-touted 20 lakh crore financial package, with even the direct benefit transfer of Rs 1500 through the National Institute of Social Defence reaching less than 1% of the transgender community. When it comes to the community of transmen, the problem is even more acute, because unlike Transwomen of Hijra community, Transmen do not have traditional *gharana* system or social support networks, as such.

When speaking of Domestic violence, transgender individuals are always at a higher risk, especially when living in highly hostile family situations. This only got exacerbated during the lockdown. Across India organizations running helplines for support of distressed members of LGBTQIA+ community



reported increased calls with stories of physical, emotional, and mental harassment by their own homophobic and transphobic family members. In some cases, things worsened, and families tried conversion therapies. There were increased reports of suicide attempts and self-harm practices by community members.

India has passed The Transgender Persons (Protection of Rights) Act 2019. Though this law was repressive and much-opposed by the Transgender community, it was passed with much fanfare and force. The rules have not yet been notified. Domestic violence is one area in this Act that is severely lacking. It's time to provide safety for the transgender person from domestic violence. There is a need to set up safe-homes for the transgender community, so that those who are homeless or cannot stay safely with their families can stay free-of-cost. It is important to make the night-shelters transgender-friendly, so that the homeless transgender persons can find a place to rest with dignity and safety. It's time to look at our medical and health facilities and see how trans-friendly they are, as we deal with the Covid crisis. The existing The Transgender Persons (Protection of Rights) Act is family-centric and assumes that natal families are the best places for transgender individuals, while not recognizing the *gharanas* or other support networks. Also, the penalties for the abuse of a transgender person are disproportionately lower. It needs no overemphasis that to be truly inclusive, there is a need to involve Trans persons in consultations while framing or revising rules concerning Domestic Violence or any other relevant legislation. Farmers, laborers, and even migrants are supported by the governments during the lockdown and unlock phases. The establishment needs to take an honest look at what they have done for the Transgender community, remove the roadblocks and reach out to the community through financial and food relief support. We do understand that in the pandemic situation, it is difficult to cater to all the sections of society, but one must never forget this – the measure of a civilization is how it treats its weakest members.



## **‘THE BASIC PREMISE IS ECONOMIC AND SOCIAL RESILIENCE’: LOCKDOWN EXPERIENCES OF THE TRANSGENDER COMMUNITY**

– Manisha Arya and Vani Sharma<sup>1</sup>

*Rachna Mudraboyina is a board member for the Human Rights Law Network and their Acting Director for LGBT Issues. She is one of the founding members of the Telangana Hijra Intersex Transgender Committee which was formed in 2014 and of the YouTube channel TransVision. She has been a sex worker since 2000 and has previously worked as a technical consultant for training NGOs in HIV prevention and communication skills with the NGO Path in India, as well as working as a research assistant with various other projects.*

**1. Have there been instances where you get to know about either domestic violence being inflicted by the family of the transgender person, or if they’re living with the community separately from the family, is there any form of violence within the community? Do cases like that occur?**


So, the domestic violence, like this word ‘domestic’ is very, you know – we have a different meaning in terms of writing when you deal with the transgender community, because most of the transgender community leave their natal families and live with their trans families. It can be the *Hijra* community living with their *Guru*, or it can be an independent *Hijra* person with their partner, or it can be a few *Hijra* persons and trans women living together.

<sup>1</sup> Manisha Arya and Vani Sharma are alumni of the National Law School of India University (NLSIU). They spoke to Rachna Mudraboyina about the problems faced by the transgender community and where the state is falling short in addressing these concerns.

So, there is a different setup for trans people. Coming to the word 'domestic,' the violence is also very diverse. Most of the women know that there is some sort of violence inflicted by the *Guru* on their *chelas*, which is similar to the domestic violence which the mother-in-law in the patriarchal family inflicts on the daughter-in-law. The *Hijra-Guru* and disciple relation is also similar to a mother-in-law and daughter-in-law relation. It's not like the mother and daughter relationship; though they call the *Guru* "ma," the relationship is identified along the lines of a mother-in-law and daughter-in-law relationship. So, there is some sort of violence in that, but there is no system of reporting such violence from the *Guru*. That's the starting point.

Secondly, for trans women who are living with partners, or trans men, there is research that has identified that the rate of partner violence in the LGBT communities was around 80% or 88%, and they have done this research for live-in relationships in the transgender community. So, there is domestic violence between couples also. This violence is more if one of the partners is from the cis community, because the trans identity is always seen as a subordinate identity in the general hierarchy. So, the cis male or female identities are seen as authentic and superior to the transgender identity - people who identify as transgender or gender non-conforming. All the laws and all the policies are only based on binary gender, male or female. Within partnerships and relationships, if one of the persons is from the cis community, with respect to domestic violence, transgender persons are not protected, not safe and such violence is not even acknowledged.

Living in a commune - the third set-up that I discussed may have less domestic violence because that is an understanding between trans people that doesn't have a hierarchy within them. They mostly live apart from the *Guru* and apart from their partners. There can be partners within this community - for example, lesbian partners from within the trans women community. They can be trans men, trans women living with partners, along with other trans women. Mostly the violence is absent within such communities due to the lack of hierarchies.




**2. Thank you for explaining it in a broad manner. One question that occurs to me is that in a relationship trans people have with cis people or even among other trans people, is there any form of the institution of marriage or are they legally or socially married? And, are there instances in those kinds of marriages of domestic violence?**

A lot of people within the LGBT community get married to their partners in temple, in churches or through a *nikahnama*. So, informally, this all happens actually. But, formally, they're not protected. These so-called marriages are done along the lines of specific religious marriage rituals. They are not protected by the same specific religious marriage law actually. There is one single judgment that I know from the Madras High Court that says the Hindu trans bride can be treated as similar to a Hindu bride. But, even after the decriminalisation of 377, judges have been saying that civil rights will be dealt with later. So, marriage has never been legal; live-in relationships were there. But, since the decriminalisation of 377, it can be argued that the legal bond is there. There is a judgement of the Jharkhand High Court that was released two days ago saying that though there is no law governing live-in relationships, they should be considered relationships on constitutional lines. Though there are no legal interventions – though people have approached courts, they have often not been considered – there is no law that actually identifies these marriages as being legal; there is no protection for such marriages.

**3. What has been the impact of the lockdown on the transgender community? There is loss of livelihood, and now because of being locked down in one place, you cannot go out for everything. What has been the impact on the economic situation or the physical wellbeing or psychological and mental health of the transgender community?**

Similar to other communities, lockdown has been a lot of economic burden on trans people. Other communities may have some savings, bank accounts and all those things. But, the trans community mostly doesn't have the social entitlements, like Aadhar Card or PAN Card, to open a bank account and to save money. The only money they will have is liquid cash, and most of them




will have gold. So, gold is easier to carry than cash – they will mostly have these forms, they won't have any bank accounts or fixed deposits, etc. So, these forms of savings have also been exhausted because the lockdown has been prolonged for a few more months and has been continuously prolonged for a long time.

So, that might have a bad effect on their economic position. People have donated things such as groceries, but people are still in need of gas cylinders. Trans people have special medical needs. People who want to transition need hormones regularly. Many trans people have diabetes, thyroid problems, hypertension that need treatment. People were unable to purchase medicines because they do not have money. Also, for almost a month and a half, there has been a shortage of antiretrovirals. An NGO has made these available to HIV patients at their doorstep.

The economic needs of trans people have not been addressed. Also, the psychological burden has increased. For example, the term 'social distancing' is offensive to the trans community, because (their) society has already been kept away from development and welfare. Trans people are forced to depend on begging and sex work as their livelihoods. Social distancing might have contributed to more discrimination and exclusion. For example, trans people have reported that when people look at them, they shout "corona, corona." We have seen posts on pillars in metro stations with transphobic content.

The victimisation of the trans community has led to an enormous psychological burden. Online psychological counselling is not available to trans people. There are two or three helplines, but many people are not aware of these helplines because a lot of them are not educated. Poverty has increased due to the lockdown. We have seen suicides because of poverty and a lack of money. In one case in Telangana, a driver stabbed a hijra woman and claimed in the media that she asked him for sex.

During the lockdown, there has been psychological stress due to experiences with biological families. Trans people are not acknowledged in their families. They provide money or other amenities to their natural families to get an acknowledgement as family members. Their experiences have been bad since



they returned to their natural families due to the lockdown. Living away from their biological families results in a lot of psychological stress. But, there is a stigma against trans people in natural families. Trans people have complained of domestic violence.

Trans people have not been able to avail of government benefits. For example, the government has transferred money to bank accounts, but many trans people do not have bank accounts. The house rent circular has been issued saying that homeowners should not ask for rent, but they have been asking for rent.


#### **4. If there's an incident of violence against a transgender person, what is the recourse that is usually taken? Is there any community initiative or is the Welfare Board of any help?**

The community initiative can be taken up by activists or groups or individuals within the community like the guru. NGOs which are a part of the HIV response or other interventions have not been able to address this crisis. I do not want to complain, because many NGOs have done a lot of things. But, many NGOs have become dormant during COVID.

One Dalit trans family was attacked by a mob of Dalit people because they live in a Dalit basti. So, ten to twenty people entered their house and tried to lynch the family. I ran to the place after the family called me. They had approached the police, but the police were not filing a complaint. The police are usually transphobic. So, I pressured them to register a complaint and file an FIR. But, the parties have compromised with the police.

The Telangana Hijras Intersex Transgender Samiti has been active since 2014. First, we have interventions during a crisis. Second, we have policy negotiations with the state. People usually approach community volunteers, and people in the hijra system like the gurus are the only people who are approached if any crisis is there, because there is this understanding of sharing within the community.

Another example was of a trans woman kidnapped recently. We searched for her through the night because her phone was switched off. Three men




had abducted this woman, raped her for the whole night and dumped her at someplace. We found her at 4 in the morning when she called us. The people do not approach the police either. There have been many COVID cases among the police, so that is a deterrent. Also, in terms of COVID, there have been experiences where they approach the police, but they do not help. If trans people go to hospitals, they are not tested for COVID. There are no specific quarantine centres for them. People judge trans persons because of their identity and do not treat them.

We lost a person to COVID. The person was also HIV positive and had not used Anti-retroviral Therapy (ART). The ART that he had bought before the lockdown was imposed did not work for him. The next day he approached a [centre. He was struggling with pneumonia. They transferred him to a specific unit, from which he was removed, because they said that he had no such infection. The next day, this person faced immense difficulty in breathing. He went to the police and was transferred to a government hospital. This person was found dead in the hospital the very next day. The person was not tested for COVID and did not have access to ART. The police, later, declared that the person had died of multiple infections, low blood levels, and kidney failure.

People want to approach for testing, but the concerns are whether the government will test them for COVID and the place where they will be kept if they test positive. We have seen that trans women are being kept with men in quarantine centres.

## **5. Is there any kind of impact of religious or caste identities of trans persons? Have you seen a pattern of such kind during COVID?**

Upper-caste trans people might have privilege in terms of class. They engage in COVID relief work. Because of class privilege, they can approach private hospitals for testing. We have seen specific vulnerabilities in some communities. For example, initially, the Markaz members were blamed for spreading the infection across the country. Soon, areas where Muslim communities were concentrated were declared red zones. No person was allowed to go inside or outside these zones. Only the police and other government officials have been supplying essentials.




People have been burdened by the red zone phenomenon because we are unable to reach them and supply relief kits to them. So, we asked them to come to the boundaries of the red zones, and we supplied kits to them in front of the police. It is very annoying to us and the people. Trans people face double discrimination because of their identity—being trans and Muslim. Only three to four people, mostly my daughter and I, received permission to travel across the city to supply the material we receive from our donors. We have travelled more than 5000 kilometres around the city and supplied this material to more than 50000 trans people.

We were scared of the fact that we would not be in a position to do this if we are susceptible to COVID. This is because we go to the vicinity of red zones. People can say that we might spread COVID from these red zones to other places. I do not understand why they have divided cities into red zones, yellow zones, and orange zones.

On the question about Adivasi trans people, there are many tribal and Adivasi trans people. Many of these people have migrated to cities in search of livelihood. They come from tribal villages and many rely on begging to survive. Due to the lockdown, they have not been able to return to tribal areas. Tribal heads have taken the decision not to entertain people who have migrated to cities. It is a genuine fear because of the threat of COVID infections. We supplied rations to many tribal people. They persistently asked us to talk to the police to allow them to leave for their places, but the police refused considering the worries of the tribal heads.

## **6. You were talking about community members not having bank accounts, due to which they are losing out on welfare schemes. Are there problems on the part of the banks given the trans identity?**

Banks are accepting applications and opening bank accounts for trans people given that they have Aadhar or PAN cards. The trouble is because many people do not have Aadhar or PAN Cards. Many of them cannot provide residence proof, which is required for getting these IDs, because they do not live with their families. Only a handful of people, like *hijra gurus*, have been able to get



these IDs and have bank accounts. Most of the community does not have these identity proofs. It is not that the bank does not want to cover them.

## **7. Has the government taken any steps to help the trans community?**

During the lockdown, only the Maharashtra government has set up a transgender welfare board. Other than this, no government has provided help. We have an informal setup comprised of women activists, NGOs, etc., called the Telangana Joint Action Committee in Telangana. We have lobbied the state government, highlighting issues concerning trans people, such as housing, pension, etc. The government has issued orders to state collectives to visit trans communities and listen to them and provide relief. Kerala issued a government circular provisioning Rs 2000 each for trans people; no other state has taken such measures.

We have travelled across five states and filed cases. We filed two cases in Bihar and received positive orders. Similarly, we filed cases in Jharkhand, Madhya Pradesh, Rajasthan, and Maharashtra. One case is pending in Rajasthan and Mumbai. People have started approaching courts to make sure that COVID relief measures are more inclusive of trans people.

## **8. The Transgender Persons (Protection of Rights) Act, 2019, was enacted last year. Section 12 mentions the natural families' obligation to provide shelter to transgender people. Have members of the community found this provision of any help?**

First, we have rejected the Act because we think it is unconstitutional. But, the government has issued rules under the Act on 20 April. The Act and the Rules are draconian. I do not think any of us has used that provision.

Due to the lockdown, a lot of marginalised communities have been affected, including the trans community. From 2016, we have been against the rehabilitation of trans people. We have been asking for reservation in education and employment for trans people. The right to food and the right to housing have not been implemented in terms of policies.





My basic point is: what will happen to trans people if they are mostly dependant on sex work?

We have been fighting against the Trans Act and the Trafficking Bill. The Trans Act has a clause concerning the rescue and rehabilitation of trans people who are bonded labourers. The state does not go beyond rehabilitation. Initially, when we approached the Telangana government, it assured us that the trans people would be placed in shelter homes with migrant labourers. We rejected that proposal. We do not need shelter homes because the government can convert them to rehabilitation centres. And, rehabilitation centres are dangerous places for trans people. There can be human rights violations in these centres. A lot of funding has been sourced to rehabilitating trans people, and we are trying to counter this rehabilitation approach.

Many trans people engage in sex work to sustain their livelihood. After the NALSA judgement, we have not seen any policies such as MNREGA, MESMA, or subsidised food. Trans people should be able to switch to other professions or livelihood options, like business or working in academic institutions. The government should provide financial support to trans people so that they can switch to other professions. The basic premise is economic and social resilience.



# **NOTES FROM THE NEIGHBOURHOOD**




## FIELD NOTE : DOMESTIC VIOLENCE CRISIS RESPONSE IN PAKISTAN DURING COVID-19

– *Beenish Zia and Nida Ali*<sup>1</sup>

The Asma Jahangir (AGHS) Legal Aid Cell has been working for more than three decades to ensure awareness and to provide access to justice to the most destitute and vulnerable women in Pakistan. Now, more than ever before, is a need for a vigilant and rigorous approach by the human rights organizations and civil society organizations. During these unprecedented times, the protection of basic human rights is far more challenging than ever before. The strong network built over the decades through our community based paralegal centers provides a rare, unfiltered and authentic insight into the grass-roots realities of the impact of COVID-19 on the most defenseless segments of our society. The world, including the most developed countries, is recording a colossal rise in domestic violence reporting during this pandemic; however, Pakistan, being a highly underdeveloped country, has its own subjective challenges to deal with.

Pakistan has been coping with COVID-19 for nearly a 100 days now. With the increased constraints on travel and the dependency of women on men, relief providers will have to reach out to the vulnerable communities rather than vice-e-versa. Our 16 community based paralegal centers have been developed over the years through strategic research to ensure they target the most ill-equipped segments of the society to build them up over time. It has been reported that in each of our community based paralegal centers, domestic


<sup>1</sup> Ms Zia and Ms Ali are key members of the Asma Jahangir (AGHS) Legal Aid Cell. They were actively involved in the legal aid efforts to help domestic violence survivors during the COVID-19 pandemic.



disputes are increasing every day and becoming more and more physically violent. The subjects of such domestic violence are not just wives, but mothers and daughters as well.

More than 78% of the legal disputes reported to us are of domestic violence, while they were merely at 38% for the 2 months before the outbreak. This extreme and sudden rise in incidents of domestic violence has been caused by mainly three reasons: the lockdown imposed by the government, the family size and loss of employment. The economic impact of this pandemic has created an existential crisis for the already struggling class of daily wagers. Due to the lockdown, while families are suffering, the effect on women is twofold. Having entire families homebound for so long in small houses has not just increased domestic workload for women, but has also exposed them to constant domestic disputes. The economic uncertainty has contributed to the frustrations and facilitated the men to be more violent and aggressive than before. Another commonality which came forward is that a majority of these women were domestic workers and the sole breadwinners of their big families. They have lost their economic value to their families, value to their families, having lost their jobs, which has created an additional danger for them, as they are no longer a source of financial relief, but a burden for them. Locked inside small homes with demanding families and no economic relief, they are subjected to physical abuse and are more vulnerable than ever before. Due to the notion of social distancing for protection against COVID-19, many sources of relief which were once presumably available to these women are not available anymore. Their paternal homes and shelter homes are either inaccessible or unwilling to take them in. The restrictions on travel and dependency on a male family member to travel have further limited all possibilities.


The government has its sole focus on its economic relief program, “EHSAAAS,” which has caused them to conveniently turn a blind eye to the additional threats faced by women. The relief provided by this program has only been able to partially reach out to 2 of the 16 communities we operate in. As a consequence of this concentrated focus, the government has been negligent in providing other forms of protections which are equally essential and are not mutually exclusive to one another.



Women in Pakistan are already culturally and socially conditioned not to report domestic violence. The social stigma and practical consequences attached to raising their voice against it is often of a magnitude that is quite unbearable for women to survive with. Many don't even understand the protection provided to them by their fundamental rights; until and unless they suffer a serious physical injury, they do not even consider it to be domestic violence - a social construct which conveniently protects the abuser and forcefully silences the victim. In a society which has a mindset like this, it is not accurate to rely on the reported statistics, as the ground reality is far worse. Additionally, the lack of official data on this subject makes it even harder to gain a fuller picture. The data analyzed here is gained through the Asma Jahangir (AGHS) Legal Aid Cell's own network which includes the helpline and community based paralegal centers.

Recently, while giving an interview to a Human Rights broadcasting network Voicepk.net, the CCPO Lahore, Mr. Zulfiqar Hameed stated: 'It is natural that when people are confined to their homes, domestic violence will increase. According to our database, calls to our helpline 15 which records domestic abuse in Lahore increased by 25 % during the lockdown. There has been a decrease of 80 % in cases of murder and almost 40 % in cases of robberies and theft.' Although the police itself highlights the diminishing conditions and quotes a 25% increase, it is vital to remember that due to numerous reasons the actual figure is considerably higher.

It is pertinent to mention, while domestic violence is drastically increasing in the context of pre- pandemic times, the internal statistics, surveys and meetings of Asma Jahangir (AGHS) Legal Aid represent an equally drastic decrease in reporting of these incidents when compared to the first month of the outbreak to the second. The hope of relief is the biggest incentive to report any crime. The government is drastically failing to provide that hope. Since the lockdown, the courts in Pakistan are on a partial lockdown as well. Only a certain class of cases of an urgent nature are being heard by the courts. Domestic violence is not one of them. The police is equally incapacitated by the overwhelming burden of ensuring adequate implementation of Standards of Procedures for COVID-19. The battered women who showed enough courage to report domestic violence in the first month, having returned back waiting



for courts to re-open to proceed with their complaints have reduced the courage of others to step up with their belief in the system to provide relief. While the Asma Jahangir (AGHS) Legal Aid Cell provides free legal assistance, these women have to deal with the police and the flaws of our judicial system on their own. Such a response to their torment has caused great damage to the trust of the society in the possibility of Justice. In consequence of which, while the world is reporting higher number of cases for domestic violence, Pakistan is under-reporting them.

While COVID-19 is expected to have a drastic psychological impact world-wide, domestic violence and the absolute lack of relief during this time in Pakistan is increasing depression and frustration even more. We are adamant about facilitating access to justice for vulnerable women. However, with courts not hearing domestic violence cases, there is little relief we can provide to these battered women. It is absolutely vital for Pakistan's current police and judicial system to step up. The police needs to be more responsive towards the complainants. Since many of them cannot physically go to police stations, an initiative should be taken to facilitate them in their place of convenience for reporting and fulfilling the formalities. Additionally, it is extremely vital for the Judiciary to include cases of domestic violence in its list of urgent cases to repair the lawlessness of the current predicament faced by women throughout the country.



# IN CONVERSATION WITH DR MARIA RASHID: PSYCHO-SOCIAL RELIEF FOR SURVIVORS OF DOMESTIC VIOLENCE IN PAKISTAN<sup>1</sup>

- Prannv Dhaawan and Vani Sharma

*Dr Maria Rashid is feminist practitioner, trainer and researcher who has been working with various non-governmental organizations in Pakistan for the last 22 years. She has a doctorate in Politics and International Studies from School of Oriental and African Studies, London, and her research interests are militarism, masculinities and violence against women and children. She has worked with Rozan for over 14 years as Director. Currently, she is an advisor for Rozan and supports its four core programmes technically and has been involved in Rozan's response to COVID-19. In this interview, she discusses the gender dimension of the COVID crisis in Pakistan. She also discusses some effective civil society response strategies, especially with respect to psycho-social support for survivors.*


**Key Words:** *domestic violence, Pakistan, survivors, civil society*

## 1. Could you begin by telling us a little bit about your organization and the work that it does for the survivors?

Rozan has been working as a national NGO since 1998 with a special focus on mental and emotional health, gender, and violence against women and

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<sup>1</sup> Dr Rashid responded to an email questionnaire on the 13<sup>th</sup> August 2020.



children (especially child sexual abuse). Rozan has sought to enhance support systems and preparedness of communities, as well as the state apparatus, for preventing and responding to violence against women and children. It uses various strategies such as awareness raising, institutional capacity building of core support services such as police and shelter homes, psychological support services for survivors and ongoing sustained policy advocacy with the government. It works in communities of Rawalpindi and Islamabad; however, its outreach for training, advocacy and counselling extends across Pakistan. Counselling for women, adolescent girls and boys, and for children is provided in person, through counselling camps in communities and through a telephone helpline. Rozan's youth helpline was one of Pakistan's first dedicated helpline services for adolescents on sexual and reproductive health. This was later converted to the Rozan Counselling Helpline providing counselling and referral to women, adolescents and children through a toll-free number accessible from all over Pakistan.

In April 2020, as the number of Coronavirus cases increased in Pakistan and the government announced complete lockdown, Rozan decided to upscale its telephone counselling service to 7 days a week, as part of its COVID-19 response with support from UNFPA. This involved increasing the number of counsellors, phone lines, days and hours of coverage and assigning new telephone numbers for the helpline which would be accessible for counsellors working from home. A crisis case management team worked alongside the helpline that provided referral and follow up for GBV cases. Rozan developed and ran a sustained campaign on television, radio and social media to promote the helpline and, also, raise awareness on mental and emotional health needs during the pandemic including the increased risk of domestic violence. In keeping with Rozan's approach that locates capacity building of service provision by the state as central to our response, Rozan also undertook online capacity building of three state run helplines in Punjab and Khyber Pakhtunkhwa, as well as reproductive health service providers working in KP and Balochistan. This extended to ongoing supervision of responders for the three helplines, including system development for one of the helplines.

The Rozan helpline also receives calls by men; however, the primary focus in promotional material is on women. As a result, the helpline is accessed more



by women. The decision to stay open to male callers was based on the dearth of psychosocial counselling support that cuts across gender in Pakistan. A very small number of persons with disability and transgender persons, also, reached out to us. The Helpline receives calls from across Pakistan including Gilgit Baltistan and Azad Jammu Kashmir, although the bulk of calls is received from Punjab, followed by Islamabad (federal territory), Khyber Pakhtunkhwa and Sindh. Callers belong to middle and low income groups. Socio-economic analysis is based on counsellor assessment of callers, as no questions are asked to ascertain income group in view of time constraints as calls are charged.

The helpline service is restricted to individuals who have access to a phone and privacy. The number is not toll free, and people incur cost for calling in, which further limits services to women who can afford to call. Women's limited access to information and communication (radio, internet or television), which had allowed them to learn about the new helpline number, was another barrier. We found that as promotion went up and extended to television, our caller rate increased sharply. As a result, well over 2/3<sup>rd</sup> of the calls (2385 out of 3265 calls till July 30<sup>th</sup>) that reached out to the helpline cited TV as a source of information, with women far outnumbering the men.

## **2. Could you give us some background on the general social, economic, political and cultural context behind domestic violence and gender-based violence in Pakistan, especially with regard to your work?**

Challenges faced by women during COVID-19 have to be understood within the larger frame of women's status in Pakistan and the inadequate state response mechanisms to address women's concerns including gender-based violence. Women in Pakistan lag behind men in education, political participation, ownership and control of productive assets, and labour force participation. They face challenges in access to health and reproductive services and suffer harassment and violence in various settings: within homes, at work places and in public spaces. Empowerment indicators for women vary widely across the class, provincial and rural-urban divides.

Violence against women and girls in Pakistan which also includes a range of harmful cultural practices remains at an all-time high despite a series of pro-women legislation from 2006 to 2016 in Pakistan. There has been a flurry of pro-women laws, policies and institutions since 2001, including the reservation of 17% seats for women in the national and provincial assemblies and the Senate, the setting up of special monitoring institutions like the National and Provincial Commissions on the Status of Women and the appointment of Ombudspersons for the protection of women against harassment in the workplace. Two of the four provinces have domestic violence legislation, although their implementation continues to be riddled by flaws.

It would not be an exaggeration to say that in Pakistan, much like the rest of South Asia, women live with violence or its threat throughout their life cycle. The state provides poor or at best limited safety nets or support systems to women facing violence. Survivors of violence who stand up for their rights not only challenge the 'right' of the abuser to violate them, but also contest the deeply entrenched gender order institutionalized in the very systems created to provide justice and support. For Rozan, strengthening state support services for survivors has always been a critical goal, and it has worked extensively with Police institutions and shelters for women.

Data collected by the Pakistan Demographic Health Survey (2017-2018) on emotional, sexual or physical violence faced by women suggests that 34% of married women have experienced this in their lives, though other studies estimate these figures to be much higher. For example, the Human Rights Watch estimates that approximately 70 % of women in Pakistan are subjected to domestic violence alone. Also important to remember that registered and reported cases of violence represent but the tip of the iceberg in a country where violence is endemic and often invisible because of social sanction and impunity. The same survey revealed that 56% of women did not seek help from anyone. Due to economic inequality and patriarchal attitudes, Pakistan has one the world's widest mobile ownership gender gap, where women are 37% less likely than men to own phones. Internet access in the country is one of the poorest in South Asia. Women's access to digital technology is lower still and further limited to larger cities in the country.

### **3. Based on your experience as an advisor at Rozan, what are the challenges faced by women from different communities and social locations in accessing psycho-social counselling and/or emergency services during this period?**

Women's ability to seek support and help, already beset by cultural norms, access and mobility issues and inadequate state mechanisms, became seriously endangered in lockdowns enforced during the COVID-19 pandemic. Qualitative and quantitative data emerging from Rozan's helpline and two other state run helplines (Punjab Safe City Authority PSCA and Punjab Unified Communication and Response PUCAR-15) show that the ratio of domestic violence cases being reported went up considerably. PUCAR-15 data from cities in Punjab (except Lahore) shows that numbers went up by close to 25% during the months of the lockdown. These ratios were highest for the period where lock down was strictest, and eased slightly after Pakistan went into partial lock down mode, but have still stayed above pre-COVID-19 days.

Support mechanisms for women survivors were not declared essential services and were not available to women during the early phase. This is ironic because the need for these went up as a direct consequence of the pandemic. Police were overstretched with enforcing lockdowns, and women reported difficulties in filing cases directly at police stations.


Key women related state services faced delays in release of budget for regular functioning and non-resident shelter staff faced hurdles in reaching shelters which hampered their operations. State run women shelters reported that the number of cases approaching the shelters was reduced in the first few months due to the unavailability of public transport. Many times state-run shelters shut their doors to women that did approach them for fear of infection. Walk-ins were barred from entry, and women could only enter through court order in the early phase. District governments, including relevant line ministries, did not issue any protocols, directives, equipment or funds for management for precautionary measures. In the early phase, shelters staff also reported a surge in women residents wanting to leave and return to their homes as they were worried about their own health and the health of children they had at home. Where lower courts continued to operate during lock down, their

response to violence cases was sluggish and had to be followed up by NGOs or activists.

Procedures for entry into shelters remain ad hoc to date, with some shelters taking only court admission, others demanding test results and providing referral to government hospitals for testing. A few allow entry after preliminary medical screening and isolate women for 10-14 days or until test results come. For shelters which do not have temporary housing facilities for women awaiting test results, this can mean a 24 hour wait period during which they have nowhere to go.

At the Rozan helpline, the highest number of calls under gender-based violence is related to domestic violence, including emotional abuse and physical violence at home. Some of these involve a threat to life. Child sexual abuse, sexual harassment and exploitation and cases of forced marriages were also reported. 64% of the callers facing violence did not demand referral to services beyond counselling. Married women facing emotional abuse inquired about ways they could manage the violence without taking legal action or leaving home. Most of these cases reported an escalation in violence already happening at home, rather than first time incidents. Some of these women had lost their jobs or were temporarily at home during lock down. This had added to economical strain in the house and, also, taken away their ability to leave the house and escape their home environment on a regular basis, providing some relief from their toxic home life. This also translated into an inability to turn to friends, colleagues and sympathetic family members for help. Many reported that the husbands had lost their work and there was financial insecurity in the house which often resulted in violence against them. For those women calling the helpline, finding privacy and time became a major barrier. Men were home all the time, and they did not feel safe calling.

Single mothers with children who had been financially independent reported economical strain. One woman reported that she had been unable to make rent and was being sexually propositioned by her landlord to make up for non-payment. Cases of forced marriages were also reported where young women were being forcibly married by parents, sometimes into families that were financially better off, to manage their financial situation.



Over one third of the calls received at the Rozan helpline required referral to essential services such as extraction from home, shelter services and legal referral. For most of these cases, violence was already a part of their lives at home. However, they reported that severity and frequency had increased to a point that they needed to leave to protect themselves. Women cited that social distancing had isolated them from possibly supportive relatives or friends. Others felt that where earlier they were able to tolerate violence, their ability to accept it was reduced during COVID-19, and they felt they needed to discuss their options. Some also shared that the information received in the context of COVID-19 was the first time that they had heard of services for survivors of violence. The highest referral needs for cases reporting violence was legal services, followed by protection and security from violence, at times requiring extraction from home, and inquiries about shelter and counselling services. For extraction from home, limitations existed, as the police refused to enter homes unless the survivor called them directly. In such cases, the survivors had to walk out of the house, for the police to be able to recover her.

#### **4. What are the other psychological impacts on women owing to, potentially, the economic precarity?**

Married women shared about an inordinate increase in domestic burden with children and spouses at home during lockdown. For women, this was stressful, not just because of pressure of work, but also because it translated into little or no time for themselves, when they could attend to their own needs. Some women also reported being constantly critiqued for how they managed their day, chores, etc., something which they had avoided in the past as spouses were away during the day. College-going girls and working women reported that they felt trapped within the house where they had little or no privacy or freedom. They felt they were being monitored, e.g., time spent on phones, and were also expected to do additional work at home.

A predominant concern shared by callers was financial worries related to COVID-19. This applied to female callers whose husbands were facing loss of income, or those who were facing termination of their own jobs, often without any notice or other recompense. This led to severe stress and at times conflict within families. For women, losing their jobs, in addition to bringing severe

economic precarity, also meant loss of status within the house and increase in emotional and/or physical abuse. For single women, it meant inability to sustain independent living, leading to loss of home, or sometimes threat of possible sexual exploitation.

Women reported that they did not have control over who they were exposed to and could not get tested until their husbands allowed them to. Some reported excessive fears about contracting the virus and shared their helplessness as they had little control over how to keep themselves and their family virus free, as they did not have authority at home or a say in decision making.

Women also reported guilt for their irritability and sometimes aggressive behaviour with children. Many manifested symptoms of extreme anxiety and depression, including sleep disturbances. Women already suffering from mental illnesses reported a worsening of symptoms and shared that they were unable to access psychiatric help or medicines.


## **5. Has the lockdown/ pandemic exposed any flaws in the legal and emergency response system in Pakistan? Have there been any state or community responses to domestic violence? How effective have they been?**

Limited information about services, constrained access and mobility, as well as lack of coordinated multi sectoral response to GBV was further accentuated during Covid-19. A number of helplines/ hotlines that respond to gender-based violence already exist in the country. These tend to be advertised poorly and, often, do not provide 24/7 coverage or a coordinated response needed to meet the range of services required by a survivor of violence.

The Ministry of Human Rights set up a hotline specifically to respond to cases of abuse and violence during COVID-19 within the first few weeks of the lockdown. This was advertised widely on social media, newspapers and on television. However, feedback from callers was mixed, and informal data released by the hotline reveals a low proportion of calls on GBV.

On the whole state-run helpline services were mostly restricted to providing information and referral. These services rarely ensured constant and vigilant





follow up needed in cases of violence against women. Relevant ministry, department or commission lacked dedicated personnel including trained female staff on ground who could assist survivors, and oversee the many stages between recovery and shelter. Services lacked adequate transport facilities needed to take women from the place of recovery to the police station, hospital, court and final accommodation with security.

Private citizens, activists and NGOs ended up as first responders, or as a pressure group to activate state response mechanisms. Cases of violence against women constantly required intervention to ensure that women received timely and safe services, and this was consistent across classes. There was a need for pressure against police refusal to register cases and consistent follow up for legal assistance and arrangements for court visits, shelter and safety. In these cases, sometimes Rozan helpline's role was to re-direct the cases to senior level police officials and create pressure for action to be taken. A major hurdle remained the need for written applications to initiate the recovery process for women in abusive and dangerous households. Women with children also faced severe challenges in relocating to shelters, as male children over the age of 10-12 are not accommodated and often have to be relocated to a different child protection facility. Family quarters such as half way houses that can provide low-cost and safe housing to women wanting to leave abusive situation but do not wish to reside in the shelter are missing. Lack of facilitation of testing for COVID-19 for women wanting to reside in shelter homes remained a problem throughout this phase.


By and large, the major hurdle was the lack of well-coordinated, multi sectoral mechanisms to respond to calls reporting gender-based violence. Women often required a range of services, including referral for legal support, medical help, COVID-19 testing, police protection and housing such as halfway homes or shelter services. A number of state helplines would give referrals, but these were not integrated and would burden the survivors to connect with each service, a task that can be daunting for survivors going through considerable trauma.

## **6. Could you please share some key takeaways from your organization Rozan's crisis intervention programme as well as helpline initiative?**

Helpline services, such as Rozan's, can only go so far in responding to GBV cases during emergency situations such as a public health outbreak. The Rozan counseling helpline and its crisis case management component with its referral pathways are dependent on state response mechanisms. As such, strengthening state support mechanisms and lobbying with the respective provincial governments is critical. Building strong linkages with other non-governmental service providers and state support mechanisms for redressal of violence and acting as a pressure group to get these systems to work for women remains a core feature of this work.

It is imperative that core services needed for effective response against gender-based violence be declared essential services during all major emergencies, such as health outbreaks or natural disasters, and be integrated in the government national response. This requires prioritization as well as resource investment. Essential services would include:

- 1) timely police action on reports of gender-based violence, including filing of F.I.R and recovery of women from abusive homes without the need for filing of written complaint
- 2) court treatment of GBV cases as 'urgent matters' and adjudicating on priority basis for arrests of offenders, protection orders and maintenance
- 3) Continuity of care at shelter homes by keeping shelters open to new admissions and allocating adequate budgets to keep them effectively staffed and running smoothly with enhanced capacities relevant to the emergency
- 4) Provision of social protection such as cash transfers and financial support for GBV survivors
- 5) Running public awareness campaigns that inform survivors about services

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- 6) One stop helpline services that are widely advertised, accessible 24/7 and run by trained responders and counselors. They need to operate as response centers and not information hubs and must be coordinated with relevant services within the province.
  - 7) Integrated and localized services at the district level, so that police station, health facilities and district administration and the nearest shelter home function as a coordinated unit that facilitates the survivor.

Rozan's key takeaways include 1) the need for strengthening our referral base nationally for various services 2) strategically enhancing capacity of state services, such as police, helplines and shelters, and 3) advocating for increased political will to invest in robust well-integrated mechanisms for supporting women survivors of violence in and beyond emergencies. Unless systems exist already, setting up an emergency response from scratch is an uphill and near impossible task during an emergency.


## FIELD NOTE: DOMESTIC VIOLENCE CRISIS IN BANGLADESH

- *Khushi Kabir and Sushmita Preetha*<sup>1</sup>

Established in its present form in 1980, Nijera Kori is a social mobilization focused, activist NGO in Bangladesh. Since inception, Nijera Kori has worked in rural Bangladesh with the objective of building a strong autonomous organization of the rural poor and deprived, rejecting micro-credit and other service delivery approaches. Composed of local-level landless groups, the 'landless' organisation is a collective through which members develop themselves as critical citizens, mobilise for their rights and participate in the broader political and economic processes. At present, Nijera Kori is working in 1,168 villages, 147 unions, 32 *upazila* and 14 districts of Bangladesh.

Covid-19, the first reported case of which in Bangladesh was recorded on March 8, has changed the socio-economic contours of the country, deepening existing inequalities and injustices and exacerbating the vulnerabilities of already marginalized groups. The pandemic has led to a loss of livelihoods and/or incomes for a vast majority of Bangladesh's population and has increased the precarity of poor farmers and landless communities, particularly women-headed households. Violence against women and girls, especially domestic violence/intimate partner violence (IPV), is on the rise, and was particularly acute during the lockdown period of March-May, as women were trapped at home with their abusive partners with no access to legal, medical or psychosocial support. This is not to say that domestic violence has reduced as a result of the gradual easing of the lockdown, but just to highlight that, compared to that period, women and girls have relatively more—if still

<sup>1</sup> Ms Kabir and Ms Preetha work on social development and gender justice as a part of Nijera Kori team in Bangladesh.



severely constrained—recourses available to them (at the very least, they can leave for their parents' homes to avoid the immediate threat of violence), as do organizations like Nijera Kori who work closely with landless groups to mobilise against violence in their communities.


According to a recent survey by Manusher Jonno Foundation (MJF), a local human rights organisation, at least 4,249 women and 456 children were subjected to domestic violence in 27 out of 64 districts of Bangladesh in April, with 1,672 women and 424 children facing violence for the first time in their lives. The MJF interviewed some 17,000 women and children for the survey, which revealed that 848 women were tortured physically, 2,008 mentally, 85 sexually, and some 1,308 faced financial restrictions from their husbands. During April–May, Nijera Kori interviewed 50 landless domestic violence survivors over phone in 14 districts in Bangladesh to better understand the nature and magnitude of the violence and violations faced by landless women and girls during the pandemic. We also asked them whether they faced similar violence and threats during non-Covid period. An overwhelming majority of respondents stated that the extent of physical and emotional violence increased exponentially during the lockdown period, as their partners were frustrated with their lack of income and shortage of food and other necessities in the house and took out their pent-up aggression on their wives. However, most of them also said that they had been beaten, abused or threatened by their partners on other occasions before the pandemic. A handful of respondents said their husbands had never been abusive in the past, but that the economic burdens had made them aggressive.

Almost all married respondents noted that marital rape had increased as a result of Covid. Some said that their husbands never take consent before intercourse, while others said that they only force themselves upon the wives when they are angry or if they have had a fight. Both groups, however, noted that the frequency of intercourse had increased, and the willingness of their partners to pay attention to and respect their wives' needs and consent had decreased during the pandemic, while their own desire to have sex had, also, decreased as they were tired from the burden of additional housework, the constant quarrels and shortage of food. Multiple respondents said that they were suffering from gynecological problems, which were exacerbated by intercourse, but that their husbands refused to listen to their pleas and complaints of pain. As one woman from Sirajganj shared:

*I have a tumour of sorts in my uterus for the last one year, which makes it very painful for me to sleep with my husband. But still, to please him, I'd have sex 2/3 times a week. I would feel like I was dying every time. If I didn't listen to him or if we had a fight, he would get angry and beat me. He has gagged me, forced himself on me by pinning me down—I couldn't even get respite by begging him for mercy. My husband has no work since coronavirus came to the country. I can't feed the kids even two meals a day; how will I buy medicines for myself? Without the medicines, my health is deteriorating—I have lost weight and have to do all the housework myself. My husband doesn't do anything all day, but insists that I have sex with him whenever he wants—once or twice every day! But, I can't move even if I have sex once. It burns and hurts—I can't even pee—and I get severe cramps. I try to hide from him, but he's always home; how do I hide? Where do I go? I'll die if it continues like this.*

In Bangladesh, domestic violence, particularly in rural areas, is normalised to such an extent that legal recourse is sought only under the most severe of circumstances (i.e., grave bodily harm), and even then, most cases are resolved outside of court through mediations, as survivors don't have the resources, knowledge or time to fight protracted battles in court and/or are pressurised—or threatened—to settle. With COVID, reporting cases has become even more difficult and survivors are not able to travel to police stations, hospitals or shelters. Meanwhile, family courts have been closed indefinitely, so there's no guarantee when, if ever, a case will be resolved – even if a survivor manages to file it against all odds – given the backlog of cases in Bangladeshi courts.

In Bangladesh, there are inadequate survivor-centered state support services even in ordinary times. During COVID, these services have been almost impossible to access for women and girls in villages, and despite the high prevalence of GBV in all districts of Bangladesh, there appears to be no national strategy to provide additional protection and preventive support for victims and survivors during the pandemic. The police, for the most part, are non-responsive. They have made no attempts to facilitate survivors to report cases from a location of their choice and ease the formalities of filing a case; rather survivors and their families in some of our working areas report that they have not been able to file cases at the police stations even when they risked infection and travelled using public transport to reach the police.



Due to Covid, regular field activities of Nijera Kori and the landless organisation had to be reduced to maintain social distancing and follow health guidelines. In response, to continue its work to prevent sexual violence and harassment, an emergency information (hotline) service was initiated as the lockdown began in the country. 119 male and female landless members have been engaged in maintaining the hotline service, and the staff of all subcentres are actively coordinating the initiative. We circulated the hotline number among poor and landless communities in all our working areas, using our existing network of landless groups.

From April to June 2020, we received a total of 2,431 calls, 1,309 from women and 1,122 from men. Based on information received and verified through the call, landless members were able to prevent cases of violence against women while maintaining social distancing. Through their initiatives, they have been able to prevent or stop 423 cases of physical domestic violence, 22 cases of mental violence, 76 cases of sexual harassment, 2 cases of violence over NGO loan, 85 cases of domestic abuse, and 16 child marriages. Additionally, they succeeded in recovering maintenance allowance and *den mohor* (the obligation to pay a certain sum of money by the groom to the bride in Islamic marriages) and, also preventing one-sided divorces and polygamy. In total, Tk 5,76,000 was recovered as maintenance costs or *den mohor*.

Two memoranda were submitted in two cases of rape of a woman and a child. The landless organisation also ensured filing of 14 cases in serious incidents of violence against women. In one case of preventing a child marriage, it was adolescent youths who took the initiative with the support of the landless organisation and the administration.


Depending on the nature of the violence and the request of the complainant, we provided a range of support, beginning with referrals to police stations, shelters, lawyers, NGOs providing legal assistance, journalists, clinics or health services and so on. We followed up with the complainant to ensure they received the necessary service, and if not, contacted the service providers ourselves to speed up the process of assistance. Where the complainant sought interventions, we mobilised our landless groups in the community to conduct *shalish* in case of a failure to reach an equitable outcome on filing cases with the formal courts. The *shalish* (alternative dispute resolution) is a form of semi-formal arbitration which plays a very important role in resolving small-

scale civil and criminal disputes in Bangladeshi villages and has now emerged as a social institution. Where access to formal courts is often not possible or too costly, and, also many disputes are viewed as family or community issues, the importance of *shalish* as an institution is critical, especially given its widespread role in land and sexual-harassment issues. Though *shalish* is recognised by the state as a mediation body, it has limited jurisdiction, and its verdicts with reference to criminal cases, marriages and dowry disputes are not acknowledged by the Court of Law.

Generally, a *shalish* is dominated and/or controlled by the local politically powerful groups. Consequently, in many cases, the victims do not get justice. The institution mostly favours those with better financial means and contacts. To ensure justice, landless organisations have been increasingly active within their working areas in monitoring the *shalish* process and its outcomes. They participate as observers in the *shalish*, and when they notice irregularities or nepotism, they create collective pressure on the judges. In areas where there are strong organisations of the landless, the group members are invited to join the *shalish* as judges along with the powerful elites.

During the pandemic, organising a *shalish* has proved to be challenging for the landless groups, as witnesses or local powerholders, such as the Union Parishad (Rural Council) Chairman, were unwilling to participate in the process citing health risks. However, as the lockdown eased, landless members were able to convince participants of the importance of providing immediate relief to survivors of domestic violence through *shalish*. They arranged the arbitrations in nearby school compounds to ensure social distancing measures could be maintained and handwashing facilities could be provided. They also counselled all who attended the session to wear a mask, even if made from recyclable cloths and *gamchas*. In all the cases of domestic violence brought to the landless groups, verdicts went in favour of the complainant/survivor. Where the survivor did not wish to pursue separation or divorce, written agreements were signed by the perpetrators stating that they would not inflict any further violence on their wives, and that, if they did, cases would be filed against them. Landless groups will continue to monitor these households to ensure compliance. In other instances, landless groups succeeded in recovering maintenance allowance and *den mohor* for the survivors.





Our research has revealed that women are having to bear a disproportionate burden of the housework, and that they are ignoring their SRHR needs and are often the last ones to eat in their households. We are thus working with both men and women landless members to raise awareness on the importance of respecting women's sexual and reproductive health and rights, including women's right to say no to sexual intercourse and access safe birth control options. We are also engaging with men to encourage them to participate in household chores, take care of their children and take responsibility of birth control, rather than put the burden of it on their wives. As of July, these conversations were happening over the phone, but from mid-August, smaller group sessions or workshops have been planned maintaining social distancing.

With the economy still suffering from the shocks and aftershocks of Covid-19, the government is prioritizing economic recovery, and there is fear that the question of rights, particularly women's rights, may be forced to take a backseat. Although the lockdown has eased in Bangladesh, landless women's suffering is far from over, and inclusive and sensitive short-, medium- and long-term interventions need to be developed with inputs from different stakeholders to address the issue of domestic violence.

# FAILING WOMEN EVERYDAY: LEGAL PROTECTION FROM DOMESTIC VIOLENCE IN SRI LANKA

– Ermiza 'Tegal'

## Abstract

*This article outlines the experiences of domestic violence victims with the formal protection system in Sri Lanka during the COVID-19 lockdown. It demonstrates that failures and weakness inherent in the protection system resulted in the State system failing to adapt during the lockdown. It looks particularly at the failures and weaknesses associated with the legal protection system including obstacles to accessing protection, delays, patriarchal attitudes and impunity, unfair burden on complainants during the legal process and failure to provide meaningful services. The article demonstrates that there has not been meaningful legal protection for survivors of domestic violence in Sri Lanka and argues that there have been inadequate administrative and policy developments to support the implementation of the Prevention of Domestic Violence Act of 2005 over the past 15 years. Whilst the COVID-19 lockdown raised attention to State failure over this issue, there is no indication that the issue will receive due priority even after the lockdown.*

**Keywords:** *Sri Lanka, domestic violence, lockdown*

## Background

During the island-wide COVID-19 lockdown between March and May 2020, service organizations in Sri Lanka reported widespread incidences of domestic

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violence. The Chief Nurse at the National Hospital in Colombo was the first to publicly raise concerns about the increase in women admitted to accident and emergency services with domestic violence injuries and said that, “the biggest problem above all of this is that women (are) being attacked by their husbands while they are at home due to the curfew.”<sup>2</sup> The National Committee on Women (NCW) received 123 complaints of violence within the first 10 days of the lockdown, and of the 460 complaints received by the NCW in April, 111 were of domestic violence.<sup>3</sup> Women In Need (WIN), a nonprofit organisation addressing gender-based violence and operating in six urban centers across the country, reported that 60% of the approximately 250 calls received in the first two weeks of lockdown related to domestic violence.<sup>4</sup> Women also complained of non-payment of court ordered maintenance by former partners and the consequent loss of access to food and basic necessities.

The state and non-state responses to women facing violence were limited primarily to advisory support. There were mixed reports from around the country on the willingness of the police to respond and take action on complaints. The priority concern for law enforcement was the lockdown, and there were no directives to the police to prioritize responding to domestic violence. Victims also experienced being told to come back with the complaint after the curfew was lifted. A local child’s right activist was quoted saying, “Police efforts are fully on COVID-19, but we need to ensure we respond to violence as well. If the government has recognised rice and *parrippu* (lentil) as an essential service, then protecting women and children should also be an essential service.”<sup>5</sup> There were no systematic outreach measures providing physical safety, except for access to the limited state safe housing which was said to be for ‘serious cases.’ During the lockdown, there was no recourse to judicial protection, as courts across the country were either closed or minimally functional.

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2 Tegal, E., & Galappatti, A. (2020, April 17). Unsafe Homes: Sri Lanka’s COVID-19 Response Must Address Violence Towards Women and Children. Daily Mirror Online. <http://www.dailymirror.lk/news-features/Unsafe-Homes-Sri-Lankas-COVID-19-Response-Must-Address-Violence-Towards-Women-and-Children/131-186718>

3 Hapuarachchi, P. (2020, May 6). Rate of Violence against Women increases amidst COVID-19. News 1st. <https://www.newsfirst.lk/2020/05/06/rate-of-violence-against-women-increases-amidst-covid-19/>

4 Tegal & Galappatti (2020)

5 Tegal & Galappatti (2020)

There were no visible outreach efforts assuring victims access to protection orders, maintenance, safe houses, and medical or social services. Additional fears in the COVID-19 context included fears about being removed from homes if victims complained of violence against them, and of mothers being separated from their children and of being placed in 'quarantine' when removed from homes during curfew. Victims also reported lacking safety and privacy within their homes to make a phone call to seek advice or assistance, or not being able to visit neighbours, family members or friends to seek support, safety or respite.

As stark as the lack of a concerted response to women subjected to domestic violence was during the COVID-19 lockdown, survivors under the usual 'normal' circumstances are not well supported or protected by formal systems.

## Legal Challenges

When Sri Lanka's Prevention of Domestic Violence Act (PDVA) came into effect in 2005, it introduced 'protection orders' which complainants could obtain against perpetrators of domestic violence. The PDVA did not criminalize domestic violence per se. In response to the fact that law enforcement and judicial institutions had paid little heed to conduct that was already classified as criminal under existing laws, the PDVA merely called attention to this as domestic violence when it was perpetrated within a domestic setting. The two progressive ideas that the PDVA did introduce were (1) that victims of domestic violence were entitled to protection and (2) emotional abuse was a form of domestic violence.

The PDVA has been in operation for 15 years. However, significant institutional challenges to its implementation include bureaucratic delays and inefficiency, lack of independence of law enforcement authorities (including judges), overwhelming domination of the legal profession and spaces by men, women's lack of familiarity with legal procedures and rules, women's lack of formal and informal connections, constant threats of further violence and exploitation by men in positions of power over women in the legal system, demands for bribes and sexual favours by male officials (including the police) and the influence of

male perpetrators on authorities to condone and support their behavior.<sup>6</sup> To date, no policy or administrative measures have been put in place to respond to these challenges.

Survivors of domestic violence also experience delays in obtaining protection orders, which increases their vulnerability to violence. A study of the PDVA found that although Section 3 of the Act provides for an application for a Protection Order to be considered “forthwith” by the Magistrate, judges do not always treat such applications with the urgency required.<sup>7</sup> There are delays in serving notice of the application on the perpetrator or informing him of the protection order, and this exercise is further hindered when the whereabouts of the perpetrator are unknown,<sup>8</sup> with the burden of locating the respondent being transferred to the complainant. If the respondent fails to appear in court, magistrates have refused to adjudicate the applications *ex parte*<sup>9</sup> and do not issue much needed protection orders. There are also delays in obtaining certified copies of protection orders, which impacts enforcement. Protection orders are also not communicated to local police stations, which has resulted in some victims being required to ‘prove’ to the police that there is a protection order in place when they complain of breaches. In a recent case, over fifteen breaches of the protection order and consequent complaints to the police and magistrate court did not see the perpetrator arrested and brought before court. Varying evidential burdens are applied by different judges, which mean that there is no certainty about what evidence is required to obtain protection orders.

Judges have also required victims to participate in mediation as a requisite for pursuing a case in court, which has resulted in revictimization and, sometimes, women withdrawing their complaints due to intimidation by the perpetrator.<sup>10</sup>

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6 *Battered wives or Dependent Mothers? Negotiating Familial Ideology in Law*, Chulani Kodikara (2017), p. 6

7 *Cases Filed under the Prevention of Domestic Violence Act No. 34 of 2005: An Analysis*, Dhara Wijayatilake (November 2011). Also reported in *Report of the Leader of the Opposition's Commission on the Prevention of Violence against Women and the Girl Child* (December 2014), p.

8 Wijayatilake (2011), p. 27 and 52; *Sri Lankan New Law on Domestic Violence: Ensuring Implementation*, Shyamala Gomez (2006), p. 1

9 Wijayatilake (2009), p. 32 and 53; *Report of the Leader of the Opposition's Commission on the Prevention of Violence against Women and the Girl Child* (December 2014), p. 55

10 *Concluding Observations on the 8<sup>th</sup> periodic Report of Sri Lanka*, Committee on the Elimination of Discrimination against Women (March 2017), p. 6

The poorly worded PDVA provision for ‘mandatory counselling, psychotherapy or other forms of rehabilitative therapy for the respondent and the aggrieved person’ has often been applied by requiring victims to attend mandatory family counselling. This has not ensured “protection” for the victim, with instances of court counsellors using their positions of influence within the court to advise female victims to return to the abusive environment and seek reconciliation with the abuser, thereby making redundant the protection order<sup>11</sup>. It has been argued that invoking the PDVA may result in further violence rather than deterrence, with perpetrators being openly contemptuous of and blatantly disregarding protection orders.<sup>12</sup>

The PDVA and law enforcement mechanisms for domestic violence have failed to design systems and measures to respond to survivors’ lived realities. Domestic violence is under reported, yet there are no mechanisms that improve the safety of spaces in which complaints may be lodged and protection sought. A 2015 literature review confirmed that prevalence cannot be ascertained only by official complaints, as it was observed that women mainly seek support from informal networks, with only a few visiting agencies from which to obtain help.<sup>13</sup> The same review found that 25–35% of legally married women reported experiencing violence from their partner. Another study reported that in 30.5% of female homicides, the alleged perpetrator was the husband.<sup>14</sup> Women have particularly refrained from taking legal action due to the fear of “losing their reputation and social standing.”<sup>15</sup> A study by WIN found that 90% of the 796 victims interviewed who eventually sought help had suffered in silence for many years before they asked for the help of family, friends, neighbors and others.<sup>16</sup>

11 *Factsheet-UPR 2017-Sri Lanka: 3<sup>rd</sup> Cycle Universal Periodic Review*, Civil Society Collective in Sri Lanka (2017), p. 4; *Some aspects of criminal law discriminatory of women*, Charitha Kulatunge, Daily News (December 2015), available at: <http://www.dailynews.lk/2015/12/14/features/some-aspects-criminal-law-discriminatory-women>


12 Kodikara (2017), p. 12

13 Guruge, S., et al (2015) Intimate partner violence in Sri Lanka: a scoping review. *Ceylon Medical Journal* 2015; 60: 133–138

14 Kitulwatte I.D.G., et al (2017) Study On The Pattern Of Unnatural Deaths Of Women Brought For Medico-Legal Autopsy. *Sri Lanka Journal of Forensic Medicine, Science & Law*–May 2017–Vol.8 No.1

15 *Sri Lanka: Sexual and domestic violence, including legislation, state protection, and services available for victims*, Canada: Immigration and Refugee Board of Canada (January 2012), available at: <<http://www.refworld.org/docid/4f4f3322.html>>

16 *Voices of Survivors: Case Stories of Domestic Violence Victims*, Women in Need (August 2010), p. 16



There is no recognition within law enforcement or judicial processes that victims often lodge complaints after many years of suffering or as a last resort, which means that compulsion to attend mediation or counselling with the perpetrator can be extremely difficult emotionally and increases vulnerability to further victimization. There have also been experiences of the police (extra-legally) requiring complainants to lodge a complaint on three separate occasions before they institute action in court. This leaves women in situations of continuing violence, and it places additional emotional stress and increased risk of retaliatory violence from perpetrators. This failure to respond to complaints of violence and requests for protection is, therefore, in itself a form of violence perpetrated by state officials.

Although recognized by the PDVA, in reality there is no acknowledgement of the forms and gravity of emotional abuse by law enforcement and the judiciary in making protection orders. If there is a response at all, it is on the basis of physical harm that has been caused to women. Emotional abuse in the form of insults, controlling behaviors including control of finances, control of movement, control of use of social media, resulting in isolation, loss of confidence, or loss of decision making and autonomy are not recognized as serious infringements of personal well-being and dignity. The lack of formal recognition of marital rape as a form of sexual abuse is enabled by the fact that the Penal Code of Sri Lanka specifically excludes marital rape as a criminal offence. This extends to other forms of sexual harassment within a marriage, also, not being recognized as forms of violence within legal processes. A part of this continuum of violence, a part that is never acknowledged, is the social expectations of women related to reproductive and care work. These expectations place heavy physical and emotional stress on women and are used by perpetrators to justify domestic violence. Those within the protection system also fail to provide protection when violence is couched in the language of 'failing' such social expectations.

The prevalence of domestic violence in Sri Lankan society is attributed to the widespread acceptance of the notion that it is part and parcel of family life and constitutes a temporary disruption within otherwise harmonious household relations. And, this is reflected in the commonly encountered phrases of

“violence in the home is only until the rice is cooked” and “home fires must be kept confined to the home.”<sup>17</sup> The normalization of domestic violence in this manner is rooted in patriarchal cultural narratives that legitimize and protect perpetrators of this form of violence. Even during the legislative debates on the enactment of the Prevention of Domestic Violence Act in 2005, some politicians framed this violence as a normal part of married life within Sri Lankan culture which did not require a legal response or judicial intervention.<sup>18</sup>

The Prevention of Domestic Violence Act of 2005 has not been adequately supported in its implementation over the past fifteen years. The learning from challenges women face have not been converted into operating procedures for the police, specialized responses from health and social service sectors or judicial guidelines. The manner in which the law has been implemented has reinforced impunity and has not addressed the social taboos and challenges complainants face. There has not been adequate social messaging to raise awareness of domestic violence and promote values that prevent it within homes, schools, communities, institutions and in the media. The fundamental gap has been in the urgently required political will that has been lacking for decades. Aside from the enactment of the PDVA and largely unrealized policy statements,<sup>19</sup> there have been no significant measures taken by the state to improve protection for victims of domestic violence. Allocation of resources to finance systems for meaningfully accessing justice, providing services, providing relief and collecting data for monitoring the protection system must become key priorities.

Domestic violence is a highly deprioritized issue in the Sri Lankan political landscape. Its prevalence and the impact that it has on individual lives, relationships and, consequently, the fabric of our society is not acknowledged. The experiences of victims during the COVID-19 lockdown in March 2020 highlighted the systemic gaps and failures in our local mechanisms to protect


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17 *Only Until the Rice is Cooked? Domestic Violence, Familial Ideology and Cultural Narratives in Sri Lanka*, Chulani Kodikara (2012), p. 20

18 Chulani Kodikara (2012), p. 11.

19 *Report of the Leader of the Opposition's Commission on the Prevention of Violence against Women and the Girl Child* (December 2014); Policy Framework and National Plan of Action to Address Sexual and Gender Based Violence in Sri Lanka (2016–2020).





women facing violence in their households. The Sri Lankan state failed these victims, one of the most vulnerable categories of persons during the lockdown. As COVID-19 restrictions are lifted, there is no indication that the Sri Lankan state will undertake meaningful efforts to improve protection for survivors of domestic violence.

## IN CONVERSATION WITH SARALA EMMANUEL: CONFRONTING THE CHALLENGE OF THE SHADOW PANDEMIC IN SRI LANKA

*- Prannv Dhawan and Vani Sharma<sup>1</sup>*

Sarala Emmanuel has been part of feminist networks, working in Batticaloa which is in the east of Sri Lanka, for more than 15 years. Her experience has been in supporting women survivors during the war, in the post-tsunami context and, more recently, following the Easter attacks, as well as now in the COVID-19 context. She works extensively with local women's networks: her longest involvement was with Suriya Women's Development Centre, where she worked for over a decade, which provides everyday support for women survivors of gender based violence, from legal support to immediate emergency response, to group processes of healing and individual psychosocial support. This includes the whole range of support that is needed for a survivor of domestic violence or gender based violence to make the decision to move away or access remedies to improve their socio-economic situation. Currently, she is also working with women in the informal sector, more specifically on labor rights. In this interview, she discusses her experiences with civil society response to the domestic violence crisis in Sri Lanka. She also outlines the limitations of the legal frameworks and disaster response plans in preventing and responding to the shadow pandemic.

**1) How has the pandemic and the lockdown exacerbated/impacted the problem of domestic violence? Please share how it has impacted state protection against DV. Could you**

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<sup>1</sup> Prannv and Vani interviewed Ms. Emmanuel on 12<sup>th</sup> July 2020.

## **share about certain effective response strategies that have been implemented by the state/civil society to counter this challenge?**

I can share two or three examples of the kind of challenges we faced and the experiences of women. There are articles which have already been written in the Sri Lankan context about the increasing domestic violence during COVID-19. I'm talking specifically about the period from March to June when Sri Lanka had strict curfew measures in force. It was not like in other contexts; there was absolutely no mobility and no way of accessing any kind of external support.

One of the women, I'll call her Shanti; she has been in this abusive relationship for some time, and I've been talking to her about what she can do about it. We've had several conversations over the last year. And, she has moments of feeling like, yes, she can stand up to this man, but generally also, then, being very fearful about making it worse if she confronted him in anyway. So, during the COVID-19 time, the time of the curfew, I think there were a couple of days when there was extreme violence in the home, and he basically kicked her out with the kids and locked her out of the house. Because there was a curfew, one of my colleagues was talking to her over the phone, but couldn't find any support for her. Even when she called the emergency police line 119, she said they never came. Finally, the third time she called 119, she told them if you are not going to come on time, then what's the point of coming. And, it was horrific; the fact that it was impossible to access any immediate support or relief. In terms of the law; I met her last week, and I've been talking her through the kind of options that are there. One of the things she needs is economic support for the kids. She has no income at the moment, other than what her husband gives her. Secondly, she wants him out of her house because of the violence and abuse. She said *"I can't live like this anymore; I don't want him to remain in the house."*


When talking about the two existing laws which we've used over the last 15 years or so, one is the maintenance legislation, and the other one is the Prevention of Domestic Violence Act. I'm not a lawyer, but in my experience the maintenance law is more powerful because it enforces payment every

month, and if you don't pay, then a warrant can be issued for arrest, etc. It's the more familiar one, and women opt for that because it's very hard, culturally, for women to choose divorce, per se, but maintenance doesn't challenge the institution of marriage.

But, for her, for Shanti, we face all the challenges which are in the details. She does not have a marriage registration. She does have birth certificates for the children, but she never registered her marriage. So the negotiations in the court are going to be all the more difficult. And, then, in terms of the nature of the relationship, he has all the documents. So, any chance of any legal action, then, just gets delayed. My whole conversation with her when I met her last week was about what can be a strategy for her to get her national ID card from him, because without her national ID card, it's impossible to even start the process, let alone obtain the other documents; like, the deed for her house, for example, is also with him. So, in terms of the realities of women, the prerequisites for even accessing the safety of the law are really challenging, and these are structural, and these are beyond the COVID-19 context. And, there she is experiencing this violence every day in the context of curfews and lockdowns, etc.

The second story I wanted to share was – again I'm using a different name for this woman – about Lakshmi, who is a woman living with physical disabilities due to the war. She was injured, and she has been living with physical disabilities. During this time, things became harder, more than for any able bodied person. She is also in a long term violent abusive relationship, but when she started getting the relief money which was given by the state, the social security money of 5000 rupees and, also, some relief goods from women's organizations, etc., her husband became really violent. The violence increased because the husband was beating her, demanding the relief money and the relief things. And, he also kicked her out of the house with the children, and she was in this shrub area overnight and was unable to charge her phone and couldn't call anybody.

In the morning, she finally managed to get a battery for her phone from one of the neighbours to make a call. She had called the emergency police number, and they didn't come because it was curfew time. Finally, when the police came,



they took her to the hospital. After she got treated, the hospital ambulance also had restrictions on where it could and couldn't go. The ambulance couldn't take her to the women's shelter, and hospital procedures, also, said that children couldn't travel in the ambulance with her which meant that she couldn't take her children with her. These kinds of logistical constraints which are, also, gendered, really made access to support hard. So, trying to resolve all these issues, where women activists can't go themselves and are trying to negotiate over the phone with various service providers, was really fraught.


The last example I want to share is of a young woman who was in a romantic relationship, but during the time when she was stuck at home, due to various conflicts in the household, she was forcibly taken and married off to her lover. And, then, she was sent to his house immediately when she was mentally, emotionally, and physically not ready. I met her after two weeks of being married, and it was pretty much marital rape, where she couldn't negotiate any of that with him with no space or support from her in-laws, and she was completely traumatized by that. Marital rape or any kind of abuse is not even recognized in the law. When she was talking to me about it, and I asked her what kind of support she might have, she said that in terms of her church community, her family, his family, the option of leaving that situation was not even on the table. The focus was on making it work because, now, she was married to him. So, her immediate support systems were pushing her to adjust, find ways to make the marriage work. The institution of marriage holds so much value, that even for herself, she can't imagine leaving that institution, but basically she too wanted to make things better and make things work.

Through our networks, we've been trying to document incidents of gender based violence, particularly domestic violence. Most of the feminist activists have been helping other women and girls in crisis situations, and some incidents have also been reported in the press. So, we were trying to do an analytical report, pulling together our experiences as well as media reports. For example, we documented 7 suicides in the last two months. This is a very small town, so it is quite significant to have seven suicides of women. Some of the background stories of these suicides indicated that it was because of increased conflicts and domestic violence in the home that the women had committed suicide. There were also four reported incidents of rape, murder, and child rape that were reported in the press. As usual, it was only the tip of the iceberg, as it's only some cases that got reported, etc.

**2) So, the next question I have is that while you already answered it to an extent, what are the social dynamics at play in the case of violence or abuse in a country like Sri Lanka?**

I think, Sri Lanka is quite special, because it goes to the heart of patriarchy, because at a superficial level, let's say, if you look at it from a liberal feminist view, women's literacy is really high. And, then our health and other social indicators are quite well developed compared to other countries, and poverty levels are low. Of course, there is a diversity of poverty levels in different parts of the country, and where I live, poverty levels are quite high, but having said that, comparatively, with other South Asian countries, Sri Lanka has always been seen as doing well in terms of basic indicators. However, why I said it goes to the heart of the issue of violence is that, where you really challenge patriarchy, in the home, in marriage, that's where you see the social justification, the legitimacy of inequality, power and violence playing out so strongly. We also see it in terms of the dismal representation of women in decision-making in politics, from local government to Parliament. Also, women have very low participation in the labor force, as it's almost half of that of men; and, because this is where you see structural factors coming into play. So, anything that challenges that, beyond just access to education, or beyond, where we see women in public space, etc., anything that challenges that, from marriage to parliament, that's the social and cultural frame in which many girls grow up.

And, the kind of different masculinities, I think the masculine is also formed within a very particular history of militarization and violence and, also, under the influence of other kinds of media that comes from South India, for example, a kind of Tamil masculinity and, also, from film and media here in Sri Lanka. So, it's a particular kind of masculinity which promotes a particular way of being, a particular kind of power. It's a masculinity connected to the ideas of nation-building, of protecting the honour of one's own ethnic group through the control and monitoring of women. The other factor of this that is special to Sri Lanka is that there is very little space to discuss or push for a broad sexual rights agenda. I mean, we still haven't decriminalized the laws which affect LGBT communities. And, it's very hard to even have an open debate around this: movements are now being mobilized, but it's slow, and you have to be careful. There are small movements around sex workers' rights, etc., there is




a history to it of more than 20–30 years. I wouldn't say it's new; I'm just saying that it hasn't had the same kind of impact or mass mobilization that we've seen in India and Nepal and countries like that. So, in terms of challenging culture and patriarchy, it has not been disrupted enough, let's say.

And, generally, it's about keeping the institution of marriage unchallenged, in a way, so there's very little support for divorce. It's very hard legally. There is no mutual consent option at all. Then, we also have personal laws which, again (the reform of those personal laws, the history of that is long, over 20–30 years), we have not gotten anywhere with that movement. The movements are strong and the recommendations have been around for a while, but actually getting it through Parliament is going to be a long battle. So, I would say, socially and culturally, the fact that even though Sri Lanka has these basic statistics globally as being a fairly progressive country in terms of women's rights, the deeper work that is required to challenge patriarchy is still ongoing.

On the other hand, the fact is that there are very few women in decision making, and even in the labor force, the participation of women is very low. Economic independence, for example, is not common for women, so it's harder to negotiate out of violence. The kind of masculinities that are there in Sri Lanka, as I said, is impacted by the war and mainstream media which promotes a particular kind of violent masculinity and promotes a particular kind of femininity that says, *'if he loves you, it's okay.'* And, the last point being that if we want to really transform and dismantle deep patriarchal structures of oppression in Sri Lanka, we need to broad-base our movements and create activism around sexual rights: from including right to sexual and reproductive health to bodily integrity, rights of sex workers to LGBT community, because our responses to gender based violence can't be articulated in only very narrow frames of male–female domestic violence or within unquestioned normativity of marriage alone.

**3) You generally touched upon the two legal protections that women have, one being the domestic violence law and the other being maintenance requirements. Could you please expand on that by explaining whether there is a statutory and institutional framework to prevent and protect against domestic violence? What are the challenges that it faces generally?**




Yes, if what I remember is correct, the prevention of domestic violence act became law in Sri Lanka at the same time as in India, in 2005. In terms of the practical application of the law, it's used in places where there are stronger women's organizations, women lawyers or lawyers who are trained in it and are more supportive of using the law. For example, where I live [Batticaloa], there's more common knowledge, let's say, of using this law, because there are women's organizations who push the police to file under that, etc.

Some feminist lawyers we work with are involved in bringing specific amendments to the law through the National Committee on Women, as there's recognition that there are sections that need to be strengthened. I asked one of them what specific amendments they have been trying to include. The first recommendation was to expand the categories of the persons who can bring in a complaint to the court so that it's not just the woman; for example, if she's hospitalized and she herself is unable to make the complaint, and, also, in contexts where she might be unconscious, etc., someone else can make the complaint on her behalf. It gives more support for that woman's protection and for the protection of her children, if school teachers or other state officers who are working on child rights can be empowered to file for a protection order.

Secondly, she said that with the protection order, there's provision for counseling, through the courts, which the judge can compel the parties to attend. It's called family counseling. When the review of the protection order happens: you have to show to the courts that you have been through this family counseling process. So, the amendment they are proposing is that you cannot force counseling, without explicit permission of both parties, specifically the woman. They are proposing clearer language to promote individual counselling, so that it's not mandatory to have it with the abuser himself.

Basically, the counselling provision has been used by court to mean family counseling, and the only counsellors attached to courts are the 'family counsellors' who usually attend to divorce cases. Therefore, the focus in domestic violence cases has also turned into a family reconciliation exercise. The women lawyers were trying to, by clarifying the law, introduce the idea that individual counseling for women, in particular, to have the space to






address their grievances, fears and distress is important, to empower women *before* decisions about family can be taken.

That was the second amendment, and the third amendment that she said they were trying to push for was some kind of fund from the state for emergency support, for transport, for women survivors of violence. But, she said, that has already been dropped from the draft. These are some of the issues with the law and reasons why it is not supportive for women survivors. And, that has been recognized, even by the state, the National Committee on Women, and they are trying to push for particular amendments which would strengthen it, so it will be used more and will be more supportive for women survivors. Apart from these gaps, one of the main reasons the domestic violence law is not used so much is that it is seen as breaking up marriages, and the police are not too keen to file protection orders, etc. There is social hostility to the law itself, as it is seen as a disruptive force.

It's seen as breaking up the institution of marriage, because it has the possibility of sending the man out of the house so that he can't come back to his so-called marriage house. So, the maintenance law is the one that's used a lot, and courts are crowded, as elsewhere, I suppose. In some ways it's quicker, faster. It has stronger enforcing mechanisms in the sense of the possibility of arrest. Of course, there are gaps, and it's quite common that men don't pay maintenance. One of the issues we are documenting during this time of COVID-19 was that because men and women have not had work, men have also not paid the maintenance, as the courts were closed.

So even in situations where the men had, say, for example, government jobs, and were getting their salaries, there was no process for women to get access to the support. On the one hand, one could be sympathetic that the economy is in crisis, and there is no work, and therefore, men cannot pay the maintenance. But, on the other hand, women who have children have to feed them. Whether they have money or not, they have to put food on the table and do whatever it takes to do that. So, in principle, even though one can say there's no work, so men can't pay maintenance, somebody is feeding the children, and she has the children. And, she's doing whatever it takes to do that.




So, in terms of the COVID 19 response, access to maintenance payments should be considered as a basic need along with other relief measures; it should be categorised as a fundamental entitlement for women. One should ensure ways of removing the administrative barriers to accessing that. So, what we did as a women's network was, we wrote to the Judicial Services Commission saying that we need to have a phone number, like a hotline, where women can call. So, even if there's curfew, you can call and find out when your case is going to be called and have updates on your case and, also, an easy way of accessing the maintenance, so that even if the courts are closed, you can still get financial support, etc. And, some way for somebody, then, checking the paperwork and making things smoother, so that you're not struggling because you can't get to the courts because of curfew.

We have also said that the back payments should take place, because women bore the cost of care during the months of curfew. We had discussions around whether it should be a blanket minimum amount or cumulative of the monthly amount. These are things we are discussing because we are also figuring out what would be fair. At least, the maintenance payments are happening from July, so what do we do about the three months when the courts were closed?

Some of the research that we did for Surya where I used to work highlighted that in terms of the maintenance law, women got a sense of social recognition of being wronged. So, it was not just accessing financial support, it was also a social recognition because he had to come every month to the courts and give her the money. And, because it wasn't threatening the institution of marriage in the sense that it wasn't divorce, there was general sympathy for her claim – oh, she needs to be cared for, her children needed to be cared for, and it was the man's responsibility.

But, even that sympathy, sometimes, depends on the judge and on the lawyers and on not challenging the institution of marriage. For example, if the woman is in another relationship, all that sympathy goes out. And, sometimes just the sheer numbers of cases annoys the judges – there have been instances where the women lawyers representing Suriya were told that they are breaking up relationships. Because, when you ask the men, they say they want to live with the women. But, our experience is that, in a lot of these [cases], there is a history



of severe domestic violence. In the maintenance cases, we do talk about the violence, but that's not what the law is looking at, it's looking at economics.


The other issue we documented extensively was the issue around putting the father's name on the birth certificate. The maintenance law comes from the British, so it's very old. It provides for maintenance. Even when the man denies paternity, it goes for DNA testing, and then, the judge can order for the maintenance. But, the law doesn't specifically allow for the man's name to be on the birth certificate as the father. And, we have had several incidents where the men just refused to do that. And, then, that requires another legal process.

Because, this is connected to property, basically. It's okay to financially support your *illegitimate* child, but to put your name on that child's birth certificate, you still can say 'no.' So, that's the understanding of the law, especially if you're not married to that woman. These are some of the loopholes we were trying to work through.

**4) You pointed out these various barriers to the access to justice that women face, but I was wondering what the response was to your request to the Judicial Service Commission. When you made a request for the helpline numbers to be there, what was the response then? Because, I think that is a very pertinent suggestion, and that might have helped in bridging these barriers that have been put up in the access to justice. Have there been other alternate initiatives of the state to acknowledge this gap in access to justice and to try to remedy the situation?**

We got no response from them. But, on the other hand, the courts reopened, so cases were being called. So, we also didn't have to push too much on that. But, I mean, if the situation gets worse again, this issue will remain. I mean, I don't know what the next few months are going to be like.

**5) Do you mean to say that when there was a lockdown, then there was no other support except for the civil society grassroots support that people like you and your organization are providing?**




I wouldn't say none; I would say that it was really minimal and completely inadequate. So, the other thing we've been discussing in public spaces and media is that domestic violence and violence against children was a direct result of the lockdown. Therefore, in the relief packages, we need to have not only the food rations and cash transfers, but also services of reproductive health, contraceptives and support for domestic violence.

And, that's why some of the women's organizations also had hotlines established. There were some notices going around about support to, for example, people who have mental illness and who are at home and needed support, counseling, etc. But, I don't think that hotlines are enough. You need people to respond when you call for help for domestic violence. Just as you respond quickly when there is a positive COVID-19 case, you also need to respond quickly when there's domestic violence and to make it part of the emergency package.

**6) What do you think has been the effective response strategy on the ground that has been implemented by civil society? What are the best examples of it?**

Our experience is also drawn from our responses in the post-tsunami context and, also, responding in crisis contexts such as displacement due to the war. So, our local networks have knowledge about [domestic violence] in terms of crises like these. One has to integrate gender sensitivity into relief programs and relief measures, including understanding that women have very specific needs, that one needs very specific support, and, also, other groups like people living with disabilities, the elderly, etc., need specific support. And, because we have that experience, some of the women had managed to incorporate it into the relief distribution work that they were involved in. So, it happened to some extent, but it wasn't state policy, it was not an overarching frame. But, where women's groups were involved in local level decision-making or relief processes, they did talk about the issues of reproductive health, of domestic violence, of having some kind of supportive and gender responsive system.

These gender sensitive responses should be strengthened and should be made the operational procedures, more broadly. There should be an acknowledgement of the huge burden on women in terms of care work.




There has to be much quicker responses and support for women, whether it's medical health or whether it's emotional support, etc. And, it should be seen as part of the support system that is needed in this context.

Your initial framing of seeing these moments / of say in these moments may provide opportunities to rethink and push for something better, I don't know. I think we haven't faced something like this in the past; not in my work experience, and I have lived through a war, and the tsunami disaster, and the Easter attacks last year. Regarding the economic impact of this, I worry that none of us are prepared enough, and I'm saying that not to sound completely helpless and hopeless and debilitated, but in the spirit of having to imagine our strategies outside any known box. What we are doing at the moment is having support groups going, conversations going, using our experience and trying different ways of responding and supporting in this fast changing context.

One thing which is an opportunity is to say that existing economic models are not going to work. For example, even for gender based violence, the solution, usually in terms of support for women is promoting self employment, some kind of loan to start their own work so they can be economically independent. In my opinion, that didn't really work, even before, because you're basically expanding the informal economy and the risks of any kind of income generation is completely on you. There's no social protection, there are no labor rights, etc. And, in this context specifically, that model is not working, it hasn't worked, and we need to think of food security very differently, food sovereignty, also, very differently, and we need to build support systems around that. And, that is what we are also discussing now. Even in terms of responding to violence in the home, etc., we need to focus our organizing around very local, different ways of supporting each other and making sure that everyone in the village has food on the table, etc.

In that sense, yes, it has created a lot of space to have conversations around imagining our local economies differently, talking about things like food security much more at the center, talking about social security as a key component, including care work, including support to women, expanding the social security measures, increasing the amount for disability benefits in Sri Lanka, etc. And, Samurdhi, which is the name of the social security program in Sri Lanka,



expanding that, increasing that – those debates – there has been much more space now opened up for that.

And, that definitely cuts across all sorts of different struggles that we are all involved in. Whether it's reforming personal laws, whether it's supporting legal reform on domestic violence or supporting survivors of domestic violence or any other kind of issues/rights work that we are involved in, the discussions around re-imagining a different economic model for us cuts across all those other struggles. Food security is an important base for all our struggles. So, for example, I work with women who are in the informal economy on labor rights, but we are also talking about the importance of food security and having a food bank, while I'm also supporting Shanti with the domestic violence that she's experiencing at home. So, these are all interconnected struggles. There's been much more space created to make those connections among our different struggles.

# THE NEED FOR A GENDER PERSPECTIVE IN THE RESPONSE TO COVID-19: AN INTERVIEW WITH RENU ADHIKARI

*- Akshat Agarwal and Prannv Dhawan<sup>1</sup>*

Renu Adhikari is the founder of the Women's Rehabilitation Centre (WOREC). WOREC is a leading women's rights organisation based in Nepal. After working as a medical doctor in the remote areas of Nepal for several years, Renu became a women rights activist upon meeting a trafficked woman in the 90s. She has been a strong advocate for women's rights and has played an important role in empowering women of various communities affected by conflict and violence. She is the Chairperson of the National Women Human Rights Defender and a founding coordinator of the Alliance Against Trafficking in Women and Children. She discusses the social dynamics of gender based violence as well as civil society response strategies in Nepal. Her perspective highlights the limitations of legal frameworks in effectively protecting women from domestic abuse, especially during the COVID-19 crisis.

## **1. From your work in Nepal, what are the social dynamics that impact domestic violence or abuse of women in Nepal?**

I think it is the same everywhere. The subordination of women is not a new issue. The patriarchal setup is embedded in the essential structures that support a society. Because of this setup, women are subordinated, and this subordination is the cause of domestic violence. Women are deprived of economic rights. Governments are hesitant to recognise that women do not

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<sup>1</sup> Akshat Agarwal is an alumnus of the National Law School of India University (NLSIU). Prannv Dhawan is a student at NLSIU. Akshat and Prannv spoke to Ms. Renu about her work in Nepal, domestic violence during COVID, and the need for a gender perspective in the COVID response.

have economic rights; they point to the Constitution, etc., to say that women have these rights. But, this is not the case at a personal level.

## **2. Is there a legal framework to regulate domestic violence in Nepal? If yes, is it effective, and what are the challenges that it faces during non-COVID times?**


We have a domestic law, and it has a couple of elements that we, as activists, have problems with. According to the framework, women can register complaints with the police, women's rights commission or go directly to courts. We have fully autonomous local bodies after federalisation. Now, we have deputy chairs in rural areas and deputy mayors in municipalities. They are responsible for dealing with domestic violence. Although there exists a mechanism to deal with domestic violence, there is a tendency to rationalise domestic violence. This rationalisation affects the implementation of the law. After 29 years of work, I have realised that domestic violence cannot be controlled by the legal framework. Domestic violence is a mindset of the society. If the society thinks that domestic violence is fine, the implementation of legal frameworks will fail.

There is a lot of hue and cry about domestic violence increasing in the pandemic. I doubt that. Domestic violence existed before the pandemic. There is more attention to the problem now. The fact that the people have to live with the abuser all day has aggravated the situation.

## **3. Are there specifically trained officers who have a specific mandate to support the women who are facing domestic violence; because, elected officials may not be that sensitised to these issues?**

There is a provision for protection officers in the domestic violence law. But, the position of women development officers, who acted as protection officers, has been removed after federalisation. So, this job has been left to untrained elected women representatives. And, some women are more patriarchal than men. If we wear trousers, some of these women representatives in southern Nepal think that we should be beaten up or abused. There are areas where





elected women representatives have hired legal officers or counsels. In those municipalities, things are better. The situation has improved, but it has not risen to the level that we want.

#### **4. What has been the situation in Nepal concerning complaints of domestic violence received by NGOs during COVID? Have state protection mechanisms functioned effectively during COVID?**

We are receiving more cases. The Government initially denied that there were cases based on police reports. But, it was not difficult for us to convince them to consider the data. So, the Parliamentary Committee on Women and Children organised a meeting where they invited us and the Women's Commission. We presented our data at the meeting. Since the police did not have a lot of data, we also explained to them that women do not file domestic violence complaints. After this meeting, there has been a recognition that domestic violence has increased during COVID. There has been a sincere effort to address this problem. The Government has formed a National Directing Committee. We have been given the responsibility to operate it. We are busy with that work at the moment. But, at the same time, the government has been very receptive. The police have also come out with a different method and given multiple directives.

#### **5. What are some of the best practices concerning this response? Is this collaboration itself a best practice? Is the government open to working with NGOs?**

There is a protection cluster composed of the government, UN agencies, and civil society. The Ministry of Women and Children has formed an NGO coordination unit. The Minister himself organises several meetings. We are committee members and act as technical experts because we are working on domestic violence. It is a good collaboration, but not very effective from time to time on the government's side. Although we get frustrated sometimes, we are known faces in Nepal. So, the police, municipal leaders, or the survivors themselves can call us directly.

## **6. How can a gender perspective or feminist lens help a South Asian response to the pandemic? What is the role of civil society in this?**


The government has not considered the gender perspective at all, and not just on the issue of domestic violence. Since the lockdown was imposed, thousands of migrant workers started coming back from India. 30 percent of COVID cases in Nepal are migrant workers from India. The PM of India assured us that he would keep our people there, but that did not happen. When the workers returned, the government failed to manage their quarantine. Women suffered immensely due to this failure. There were no provisions for pregnant women, women with little children and other vulnerable persons.

But, after the flow of migrant workers was controlled, we became very vocal about these problems. So, things are a little better now. But, the issues concerning pregnant women still need to be addressed. On the issue of migrant workers from abroad, a large number of women also came back. There is a stigma around women who work as migrant workers in different countries. There are no plans for these women. The mental health impact on women has not been addressed. So, there has not been a gendered response. Women are suffering the most. But, we have been able to mobilise the government. For example, a province's government has asked me to research into the work needed to implement a response that incorporates a gender perspective.

## **7. You have been active with the women's movement in Nepal. How has your work been affected by the pandemic?**

Although our planned activities were disrupted, online communication has given me a very effective way to ground this movement. I would have never been able to connect with the number of women that I am connecting with at the moment. We brought parliamentarians, government officials, and women from the community together. They directly spoke with each other. A lot of things changed because of this interaction. Now, we are trying to connect with counsellors, who are remotely working to provide counselling to women.

Every month, development ministers of several states sit with women's rights activists and the Women's Rights Commission to review the situation. In fact,



this is giving us an opportunity to surface issues that people tend to ignore. The new budget increased health expenditure after we pushed for it. Now, a big chunk of the money will be spent to improve reproductive health, providing institutions, etc. Therefore, I would say that my work has not been affected to a great extent. It has become economical for us. We have to arrange for coffee, tea, etc., when we invite ministers for physical meetings. Now, this money can be utilised elsewhere such as providing relief packages for women.

People are not listening to women activists who are working at the community level. There is a tendency to push away issues that affect women, especially during times of crisis. This has affected women activists who may not have access to the internet. But, people like me, who are connected to the internet, have not been affected.

# THE SHADOW PANDEMIC: PERSPECTIVES ON THE PREVALENCE OF DOMESTIC VIOLENCE AND ACCESS TO JUSTICE IN THE MALDIVES


- Dr Marium Jabyn

## Abstract

*COVID-19 crisis in Maldives has demonstrated a very close connection between gender and human rights, particularly with the right to be safe and free from violence. It has also confirmed that the Domestic Violence Prevention Act of 2012 (DVPA) has not been a very practical instrument to address the situation of domestic violence in the country, and that the national domestic violence strategy is lacking in many ways, including adequate attention to the intersections of gender, class, ability and a strengthened understanding of the impact of social divisions on women's experiences and domestic violence.*

**Keywords:** *Maldives, domestic violence, gender*

Since the beginning of nation-wide lockdown, rights groups in the Maldives have feared and warned the authorities of a potential surge in domestic violence and have been urging authorities to ensure protection and safety to women. They have raised concerns that the regular support systems are unavailable during the lockdown, and availability of health services are limited to COVID-19 specialty services and emergency services only, which means that less and less women will come forward with reports or even for treatment. The quarantine will hit victims of domestic violence especially hard — some will see verbal hostility escalate into physical abuse, and for others routine



beatings will become more severe. The stress caused by social isolation and fears around financial security will also be straining healthy relationships. As feared, while the number of reported cases at the beginning of the lockdown were lower than normal, there was a surge in the reporting in the immediate aftermath of the lockdown. The severity of the cases reported were also higher than the normal experienced in the Maldives, forcing the Government to launch a nation-wide campaign to combat domestic violence.


## **Factual Background**

Women experience more physical, emotional and financial forms of abuse and violence in the Maldives. While, every one in three Maldivian women is a victim of domestic violence, and women are also most at risk of violence by their partners or ex-partners. Reports this year at gender ministry indicate that while there are 38 cases of sexual violence committed against females reported, there is only one report of a sexual violence case committed against a male reported to the Ministry. Trends have been similar in the past years as well. However, this year, there was a drop in the number of reported cases initially when the lockdown was announced, and in the immediate aftermath, there have been serious allegations of rape and sexual violence committed against women and young girls, reported to the authorities and discussed widely in the media. The Maldives police services to date, has not published domestic violence data, and there is little to indicate if any woman has ever been a victim of spousal homicide. While there have been a few cases where women were found to have died in suspicious circumstances, even when sexual violence was identified in the post mortem reports, there have never been adequate investigations to identify and punish the perpetrators. On the flip side, one woman who attacked and killed her ex-husband in a grocery shop, was charged and sentenced to life imprisonment within a week, a record speed prosecution case in the Maldives. Prior to murdering her ex-husband, the woman in this case had filed several reports of harassment and violence by her husband/ex-husband with the police and with the then relevant gender architecture in the country.

## The Socio-Legal Challenges –

The Constitution of the Republic of Maldives guarantees secure social, economic and political justice to all of its citizens. A number of legislations, including the DVPA, provide a legal framework to facilitate and ensure democratic justice for vulnerable groups such as women. However, the legal and institutional frameworks, under DVPA, have not been effectively operationalized to date. DVPA provides for the criminalisation of the offence and protection orders, and allows the police to search and seize without a court order under special powers given to police to deal specifically for domestic violence reports. This makes it easier for justice agencies, such as the police, to investigate crimes that have significant impact on women and girls. However, studies and anecdotal evidence suggest that police invoke these powers rarely, discriminately and display favoritism. Furthermore, although DVPA lays down key provisions on what constitutes an act of domestic violence, criminal charges in the Maldives cannot be laid based on the sections in the DVPA, and therefore, there have been no charges laid as separate domestic violence offences under the DVPA, to date. This also forces one to question the use and benefits of DVPA special procedures for investigations, prosecutions and access to effective remedies and reparation to women.


Key features of adequate access to justice for women suffering from domestic violence also needs to include a number of institutional arrangements, such as accessibility to shelters and physical and mental recovery through accessible health services, which is yet to receive adequate attention by the State. The Ministry of Gender, Family and Social Services (MGFSS) is the official State body responsible for the protection of women, and it provides its services through Family and Child Service Centers (FCSC) established throughout the country. DVPA has also established an independent body, the Family Protection Authority (FPA). Both of these government offices continue underfunded and under-staffed and lag desperately behind in the national mandates created for these institutions. Although there are nineteen buildings constructed across the country to serve as shelters, these have not been furnished or staffed, and after a decade of being abandoned, are not physically safe to be used as shelters anymore. Furthermore, in the provision of health services, while it is a requirement, availability of psycho-social support is significantly limited and only affordable to a limited few.



There is a gender dimension to law and justice in the Maldives which is highly observed, but rarely identified as an issue or ever attended to. During her visit in 2013, the Special Rapporteur, Gabriella Knaul, paid particular attention to the integration of a gender perspective and women's rights in the justice system. She noted that, while there has been progress since 2008 to appoint female judges to the bench, there is no policy or strategy to increase women's representation on the bench, and the approach of the system, law and justice sector institutions included, is quite conservative and representative of a highly traditional and patriarchal societal structure. Gender biases and discriminatory attitudes and practices are widespread within the judiciary and the administration of justice. Despite nation-wide training to sensitize law and justice sector officials on the new laws and systems, both the ignorance of the law and 'rejection of the law' is common amongst judges, magistrates, prosecutors, lawyers, and the police. There are many reports of police officers refusing to register reports of domestic violence, and the country is yet to see positive progress in the realm of prosecution. There is a strong social belief that women are supposed to stay home and look after their families while men must work and provide economic support to the families. Even with the rising pressure of sustaining families in the capital with one income salaries, it is believed that a woman's place is the private sphere of life, and this is reflected in the limited participation of women in positions of power and decision making in the country. It is also noted that women are not properly educated about their own rights and are subjected to strong social pressure and stigma, especially concerning sexual violence, which prevents them from denouncing violations and bringing their cases to the courts. In addition to these, multiple access to justice studies have shown that women do not trust the police or the courts to provide them with justice.

## **COVID-19 Crisis in Domestic Spaces**

Covid-19 has highlighted the already existing problems in the system: (a) no way to report violence and abuse; (b) the challenges of getting protection in the form of protection from the MGFSS or FPA, and restraining or protection orders from the courts; and, finally, (c) the impossibility of seeking adequate and timely health services. While the MGFSS has gone into 'disaster-management' and overseeing food security and eviction matters for vulnerable groups, both



this Ministry and the Ministry of Health has stopped providing regular services that are of prime value to victims of violence and abuse. These circumstances are exacerbated when the situation involves outer islands and women from lower economic classes in the Maldives. When partners abuse or hit women, they would usually run to their friends or families. While covid-19 lockdown made this aspect of support impossible, it is unclear how many women have been afforded temporary shelter by the Ministry of Gender or the Maldives Police Service. It is, however, a fact that major office buildings and service centers in Male' and across the country were closed during the lockdown, and would have prevented reporting as well as attaining the necessary protection and services. Marginalized women therefore, not only suffer violence from their batterers, but also from the State: by the lack of adequate institutional support in the form of social services, shelters and by coercive controls by the State and its agencies, and this violence occurs in gendered and classed manners.

## **The Way Forward**

The Maldives needs to give prime importance to two areas when addressing gender-based violence: empowering women and girls and eliminating toxic masculinity. An effective response to domestic violence addresses the immediate and long-term needs of women experiencing abuse (health and empowerment) and focuses on changing cultural norms, attitudes and legal provisions that promote the acceptance of male superiority, and, also, undermine women's enjoyment of their full human rights and freedoms. Herein lies the problem in the Maldives national DV Strategy. While it focuses on aspects such as criminalization of the act of domestic violence, providing protection to victims, rehabilitation of perpetrators and ensuring justice for victims, there is limited to no attention on the second aspect of addressing domestic violence. Both the MGFSS, FPA, UN agencies and civil society groups in the Maldives work towards empowering women and girls; however, sufficient interest in generating information on why men batter their partners is absent. These authorities and human rights defenders must also equally focus on preserving traditional masculine values: that men must mask distress, emotions are feminine and weak, men must maintain hardness and violence as an indicator of toughness and power. Thus, equal attention must be afforded






to re-define manhood and empowering men to combat these social values that negatively affect both women and men.

Another reason affecting women's rights is that law, institutions and society, all fail to understand that women, female and disempowered, are affected by multiple and complex combinations of different forms of discriminations, overlapping and amplifying each other, which has a negative effect on their rights. Many of these features are quite visible in the Maldives. For example, rural and poor women do not get elected to the parliament or become judges or cabinet ministers. Women find it harder to access loans from commercial banks. When multiple oppressions overlap in the experiences of an individual, it creates interconnected barriers and complex forms of discrimination that can be insidious, covert and compounded. For example, the barriers and challenges faced by a poor uneducated woman from a remote island, who is running for a seat in the parliament, will be compounded due to the intersecting vulnerabilities of gender identity and socio-economic realities. Being a woman, being poor and economically dependent, does not exist independently of each other, but rather they inform each other and create complex convergences of oppression for women. Majority of the women in the Maldives are financially dependent on their husbands or families, and they have little to no recourse or support outside of their families. This makes seeking assistance and protection in domestic violence cases particularly hard and almost impossible for the majority of the victims.

Given the social context of the Maldives, the instant drop in the number of reported cases of domestic violence is most likely to have occurred because women were living with their perpetrators in a lockdown situation, and services from government agencies during the lockdown were impossible to attain. It is not uncommon that connections between gender and human rights become more visible in such disaster situations, when vulnerabilities are compounded. In the case of the Maldives, barriers to access to services and access to justice just became more prevalent due to covid-19 lockdown. The pandemic has shown us many things, including that the Maldives has neither the legal, nor the institutional structure to address domestic violence. There are no protection mechanisms, and with the courts closed and working



online, the possibilities of seeking a restraining order against the person who one is living with is next to impossible. The pandemic has also brought the domestic violence conversation to the forefront, and with the surge of cases that immediately followed the end of the official lockdown in the Maldives, the severity of the cases of sexual violence and abuse of women and girls has forced the Government of the Maldives to immediately embark on a national plan of action to combat domestic violence. With the new energy, it must also be borne in mind that deconstruction of domestic violence does not only require social movements which openly confront and name the damage, or bring individual stories of abuse and violence to the forefront, but it also needs a nuanced approach to re-framing domestic violence in the Maldives by paying equal attention to the issues of violence of the law, addressing toxic masculinity and paying adequate attention to the intersections of gender, class and abilities and how that affects women's experiences and domestic violence. Comprehensive sensitization and awareness-raising programmes on gender equality and women's rights continue to be of critical importance for all State institutions, including the judiciary, prosecutors and lawyers, in order to push for a change regarding patriarchal and discriminatory attitudes and practices and make access to justice a reality for women in the Maldives.