

COVID-19 LOCKDOWN: A REFUGE FROM THE PANDEMIC OR THE HARBINGER OF A WOMAN'S AGONY

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“Domestic violence is a burden on numerous sectors of the social system and quietly, yet dramatically, affects the development of a nation... batterers cost nations fortunes in terms of law enforcement, health care, lost labour and general progress in development. These costs do not only affect the present generation; what begins as an assault by one person on another, reverberates through the family and the community into the future.”

-Cathy Zimmerman

INTRODUCTION

Gender-based violence expounds violence that is inflicted upon a woman on the sole basis of her sex. It entails physical, mental or sexual harm, coercion and denial of a basic liberty. Such violence includes domestic violence (DV), non-consensual sex and other forms of sexual violence, trafficking in women, female genital mutilation and dowry-related deaths. Not only does this have an adverse effect on health status of a woman but also affects her degree of productivity, the belief of self-sufficiency, confidence and overall quality of life.

In 1983, domestic violence was finally recognized as a criminal offence in India. However, until the enactment of the PWDVA³, which came into effect in 2006, there wasn't any specific civil law as such to discuss the complexities of domestic abuse, including the underlying existence of violence within family networks, the urgency for protection and maintenance of the victims of abuse. The mere punishment and imprisonment of the abuser does not entail the fact that justice has been served through and through. The in-Toto recovery of the victim should be the main goal.

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³ Protection of Women from Domestic Violence Act, 2005, No. 43 of 2005, India Code [Hereinafter “PWDVA”].

As per the Crime in India Report of 2018 released by the National Crime Records Bureau (NCRB), every 1.7 minutes in India, there is a crime against women and every 4.4 minutes, a woman is subjected to domestic violence.⁴ The COVID-19 outbreak has only worsened the case. The National Commission for Women (NCW) registered an increase of 94 per cent in complaint cases where women were assaulted in their homes during the lockdown. Another factor that has not received coverage is the growing number of cases where migrant women walked hundreds of miles with men, some with their children in their advanced stage of pregnancy, without basic amenities like food. Therefore, owing to the pandemic, nearly half a billion women are at risk in India. Yet, no formal policy or any detailed COVID response plan has been proposed by the government to overcome these issues.

RISE IN DOMESTIC VIOLENCE DURING LOCKDOWN

In a study, conducted by an American organization, on the aftermath of Hurricane Harvey, it was observed that stress borne out of disasters increased the occurrence of violence in families during and post the disaster⁵. A WHO report, upon comparing the violence rates before and after any disaster, suggests that the shortage of basic amenities, lack of social support, disruptions to the economy, feelings of helplessness, powerlessness and paucity in access to basic means of livelihood could have both sudden and indelible effects on violence in society. The report showed a general trend of increase in sexual violence and intimate partner violence rates whenever there was an occurrence of disaster.⁶

Conditions during COVID-19 appear strikingly similar to those during disasters- loss of jobs, alienation from social support and economic strain, to name a few. It wouldn't be ludicrous to say that such analogous circumstances following the pandemic could actually harbour the chances of violence in families. Several startling figures were revealed from the first quarter by the NALSA reports which also revealed that a total of 144 domestic violence cases were

⁴*Crime In India 2018 Statistics*, 1 NCRB (2018),

<https://ncrb.gov.in/sites/default/files/Crime%20in%20India%202018%20-%20Volume%201.pdf>.

⁵ Ashley Abramson, *How COVID-19 may increase domestic violence and child abuse*, AMERICAN PSYCHOLOGICAL ASSOCIATION (September 12, 2020, 3:44 PM), <https://www.apa.org/topics/covid-19/domestic-violence-child-abuse>.

⁶ Krug EG et al., eds. *World report on violence and health*, World Health Organisation (2002) [Hereinafter "WHO Report"].

reported in Uttarakhand. Moreover, Haryana reported 79 cases while a total of 69 cases were reported in Delhi.⁷

ECONOMIC STRESS AND DOMESTIC VIOLENCE: A RECIPROCAL RELATIONSHIP

Researchers have found out a direct link between financial stress and domestic violence. The rates of domestic violence seemingly rise with an increase in financial stress. Research also shows that the repeat victimization of women is seen to be more frequent in cases where the family is under some sort of financial strain.⁸

Now, the cause-and-effect relationship could be applied the other way round as well. Domestic violence may even bring distress and poverty to women, entrapping them in a vicious cycle of poverty and abuse. The decision of a woman to leave her abusive partner, more of often than not, depends on her economic backing or condition. For example, a woman with not much resources and means to support herself economically could experience severe financial stress while deciding to leave her abusive partner. Sometimes, women just succumb to these financial ambiguities, coupled with the lack of empowerment and self-worth, and decide to stay with their abusers for the rest of their lives.

On March 24th, India entered into the first phase of lockdown together with the lockout of all public transport systems, restaurants, offices, factories and educational institutions. In what we envisaged would last for only 21 days but continued for months-long and disrupted the Indian economy to the core. By the first week of April, economists had stated that there had been a job loss of approximately 40 million people in the unorganised sector.⁹ Stringent lockdown rules restricted most of the economic activities, causing millions to lose their source of income. By June, more or less 84% of the Indian households had seen a decrease in

⁷ *Domestic violence cases in India on the rise during lockdown, says reports*, TIMES OF INDIA (May 18, 2020, 2:00 PM), <https://timesofindia.indiatimes.com/life-style/relationships/love-sex/domestic-violence-cases-in-india-on-the-rise-during-lockdown-says-report/articleshow/75801752.cms>.

⁸ Traci Pederson, *Is Financial Stress a factor in domestic violence*, PSYCHCENTRAL, (2016), <https://psychcentral.com/news/2016/04/26/is-financial-stress-a-factor-in-domestic-violence/102318.html>.

⁹ Tanisha Mukherjee and Nilanjan Ray and Sudin Bag, *Opinion: Impact of Covid-19 on the Indian Economy*, ET GOVERNMENT, (Oct. 20, 2020), <https://government.economictimes.indiatimes.com/news/economy/opinion-impact-of-covid-19-on-the-indian-economy/75021731>.

their income.¹⁰ Such economic distress stemmed anxiety and feelings of helplessness among people. The abusers projected their frustration by inflicting a higher level of abuse on women.

By the end of May, the numbers of domestic violence complaints were on a ten-year high. India generally has an underreporting problem when it comes to domestic violence, where 90% of the victims seek help from their friends and immediate family members¹¹. However, given the lockdown, the victims faced a dearth of social support, where otherwise they could have sought shelter and help. Generally, victims could flee and find shelter elsewhere, which isn't possible during lockdown. Lack of social support is one of the major factors that foster domestic violence. This situation is not something exclusive to India; many women across the globe are facing similar problems of being locked up with their abusers.

MORE COMPLAINTS FROM RED ZONE AREAS

The Central Government mandated the nationwide lockdown, dividing all the districts in the country into three zones: Red, Orange and green, with 130 districts being listed under 'Red Zone' with the most stringent lockdown provisions.¹² Several researchers from the University of California, Los Angeles and UCLA studied the variations in the number of reported crimes between 2018 and 2020, categorising the crimes into four types- domestic violence, harassment, cyber-crimes and rape and sexual assault. After scrutinizing the reports, they found out that the districts with more stringent lockdown measures (Red Zones) recorded a 131% increase in domestic violence complaints compared to that in the green zones where there were less stringent lockdown provisions.¹³ The same report also showed the cases of rape, and sexual assault fell down by almost 66% in the red zone areas. This could be

¹⁰ *How the COVID-19 Lockdown Is Affecting India's Households*, KNOWLEDGE@WHARTON, (Jun. 09, 2020), <https://knowledge.wharton.upenn.edu/article/covid-19-lockdown-affecting-indias-households/#:~:text=Rural%20households%20have%20seen%20disproportionately,resilience%E2%80%9D%20than%20their%20rural%20counterparts.>

¹¹ Vignesh Radhakrishnan and Sumant Sen and Naresh Singaravelu, *Data / Domestic violence complaints at a 10-year high during COVID-19 lockdown*, THE HINDU, (Jun. 22, 2020, 12:04 AM), <https://www.thehindu.com/data/data-domestic-violence-complaints-at-a-10-year-high-during-covid-19-lockdown/article31885001.ece>.

¹² Bindu Shajan Perappadan, *Corona virus / Health Ministry identifies 130 districts as red zones*, THE HINDU, (May 01, 2020, 11:07 AM), <https://www.thehindu.com/news/national/coronavirus-india-lists-red-zones-as-it-extends-lockdown-till-may-17/article31478592.ece>.

¹³ *Domestic violence complaints peaked in red zones during lockdown: Study*, DECCAN HERALD, (Jul. 24, 2020, 11:41 AM), <https://www.deccanherald.com/national/domestic-violence-complaints-peaked-in-red-zones-during-lockdown-study-864965.html>.

attributed to the fact that people barely came out of their homes which meant less mobility in offices and public places. The researchers also gathered Google Trends data and Google Community Mobility Reports which indicated that the frequency of search of the terms “domestic abuse” and “domestic abuse help-lines” had been increasing since mid-March. Perhaps, this report made one thing certain - violence against women remained constant. While the lockdown took the edge of certain crimes like rapes and sexual assaults, it definitely aggravated the prevalence of other forms of violence like cybercrimes and domestic violence.

THE PSYCHOLOGICAL RAMIFICATION POST ABUSE

The deleterious effect of Lockdown is no secret, and the plight of the victims, being locked in with their abusers, coupled with the general state of uncertainty has led to a surge in the number of domestic abuse complaints in the past few months. The victims are subjected to a portfolio of abuse, both physical and psychological. The general emphasis is given on physical sufferings; however, not much is anticipated or discussed about the psychological trauma that these victims go through.

Economic and psychological stress, followed by isolation due to being locked-in had disrupted the natural and social environments of a lot of people, making them feel helpless and vulnerable. The abusers now compensate for their lack of control by exerting mental and physical violence on the victims.¹⁴ The physical injuries endured by the victims are no secret: bite marks, cuts, bruises, loss of vision and hearing, knife cuts, and sexually transmitted diseases which sometimes even lead to death.¹⁵ A study conducted on domestic violence victims shows that among the women that have reported being abused, nearly 50% of them were found to be malnourished.¹⁶

¹⁴ Shelly M. Wagers, *Domestic violence growing in wake of corona virus outbreak*, THE CONVERSATION, (Apr. 08, 2020, 10:11 PM), <https://theconversation.com/domestic-violence-growing-in-wake-of-coronavirus-outbreak-135598>.

¹⁵ Kavita Alejo, *Long-Term Physical and Mental Health Effects of Domestic Violence*, 2 Themis: Res. J.J.S.F.S. (2014), <https://scholarworks.sjsu.edu/cgi/viewcontent.cgi?article=1016&context=themis>.

¹⁶ Leland K. Ackerson and S.V. Subramanian, *Domestic Violence and Chronic malnutrition among women and children*, 167 (10) Amr. J. Epi. (2008), <https://academic.oup.com/aje/article/167/10/1188/232214>.

Women are also subjected to psychological abuse like demeaning, belittlement and insults, threats of being abandoned, threats of hurting someone they care about or general infidelity of the husband. The psychological effects of abuse are more deep-seated and unrealized. More often than not, domestic abuse victims get diagnosed with depression and PTSD. It has been found out that depression in abused women tends to be chronic and has a life-long effect even in the absence of abuse for a long time.¹⁷

The rate of PTSD among women who have a history of domestic violence ranges from 30% to 81%, which is way more than the rate of PTSD among the general community of women.¹⁸ The victims have frequent episodes of anxiety attacks. Research shows that women that have been sexually abused have faced more severe physical abuse than the women that were only battered. When it comes to psychological disorders, there is no stark difference between the victims of marital rape and stranger rape¹⁹. Feelings of unworthiness and hopelessness, coupled with a lack of self-esteem and apprehension of future abuse often culminate into suicidal thoughts in the minds of the victims. Needless to say, the lack of social and emotional support often leaves the victims feeling isolated and alone in their battles.

Several women have lost their jobs and sources of earning, owing to the pandemic. This has led to the loss of some level of empowerment that these women had. Several researches back “economic dependence” of women on their husbands as a predominant reason for women to stay in abusive relationships. With the loss of empowerment, women have now accepted their fates, being juggled in the hands of their abusers. Being trapped with their perpetrators, women are left with little to no hope to ask for help or find shelter, and in the meantime, they have to fight their abusers, being isolated from any support.

¹⁷ Dr R.C. Ahuja, et al., *Domestic Violence: A Summary Report of a Multi-Site Household Survey*, International Center for Research on Women and The Centre for Development and Population Activities, (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>

¹⁸Mindy B. Mechanic and Terri L. Weaver and Patricia A. Resick, *Mental Health Consequences of Intimate Partner Abuse: A Multidimensional Assessment of Four Different Forms of Abuse*, NCBI (2010), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2967430/#R31>

¹⁹ Jennifer A. Bennice and others, *The Relative Effects of Intimate Partner Physical and Sexual Violence on Post-Traumatic Stress Disorder Symptomatology*, NCBI (2010), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2981038/#R16>.

LAWS DEALING WITH DOMESTIC VIOLENCE IN INDIA

There are several laws which protect a married woman from being abused by her husband or any in-laws for that matter.

SECTION 498A OF INDIA PENAL CODE

It states that if a woman's husband or his relatives subject her to harassment or any act of cruelty, they'll be liable for imprisonment that might extend up to three years as well as fine. The term cruelty has been defined under the same section as any act that amounts to coercion for dowry demands from the woman or her family members or any activity that abets the woman to commit suicide or inflict grievous injury upon herself (mental or physical). But, since marital rape for women above 15 years of age has not been explicitly recognised under the ambit of "cruelty", victims often have to rely on PWDVA to seek justice.

PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT 2005

It prohibits a broad range of physical, mental, sexual and economic violence against women, and all of these are exhaustively described under the Act. The ambit of the Act includes women who are in a live-in relationship as well. Under this Act, a woman has the right to be free from abuse and can choose from different recourses. She has the right to get a restraining order against her husband and his relatives, to continue living in the same house, i.e. even after reporting her abusers, to claim maintenance, to have custody of her children and to claim compensation and to not be thrown out of her marital home.

FAMILY COURT ACT, 1984

The 59th report of the Law Commission laid emphasis on the institution of distinct courts to deal with matrimonial, personal and family issues. Upon establishment, such courts would help in speedy disposal of matrimonial and personal issues that are long pending in civil and criminal courts. The Supreme Court in *K.A Abdul Jaleel v T.A. Shahida*²⁰ had said, "The Family Court was set up for settlement of family disputes and the reason for the enactment of the said Act was to set up a court that would deal with disputes concerning the family by adopting an approach radically different from that adopted in ordinary civil proceedings."

²⁰ K.A. Abdul Jaleel v. T.A. Shahida, Appeal (civil) 3322 of 2003 (India).

DELAY IN CRIMINAL JUSTICE: THE LOOPHOLES

As collected by the National Crime Records Bureau (NCRB), data under PWDVA covers entirely the criminal violation of the orders of the courts under PWDVA, including the cases of the contempt of a courts' protection order passed when the case is still in trial. According to NCRB data, cases reported under the PWDVA breach rose by 8 percent, from 426 in 2014 to 461 in 2015.²¹ This implies that the data does not include the actual data recorded under Section 306, 304B and 498A addressing dowry deaths, torture and cruelty by the husband and in-laws, and abetment to commit suicide respectively. However, under PWDVA, which is a civil law, cases are directly listed with the court with respect to matters dealing with maintenance in domestic abuse cases, and protection of the victim from the in-laws and the husband and not recorded by the NCRB. There have been numerous attempts made by women's rights organisations, however, this data on court proceedings have remained unavailable.

What makes the process more tedious is the involvement of different authorities like protection officers (PO), service providers, lawyers, magistrates to ensure justice and rehabilitation of the victim. Each level of implementation comes with its own sets of complexities. POs are frequently overwhelmed with various cases simultaneously and are not adequately guided and trained in enforcing such provisions of the law. More than 50% of PO still consider domestic violence as more of a family affair and urge the complainant to sort it amongst the family.²²

Another drawback in the law's implementation is that service providers do not have a standardised protocol. In such scenarios, service providers are primarily NGOs, and usually have no contact with the POs or the police. They are mostly not qualified under the Domestic Violence Act or instructed on how to deal with domestic violence cases. While some of the aggrieved women are directed to shelter homes, they are mostly overcrowded and in poor conditions with no means for women to be self-sufficient. So, the victims have no option but to relocate or be homeless.

²¹ Manisha Chachra, *Ten Years Of Domestic Violence Act: Dearth Of Data, Delayed Justice*, HINDUSTAN TIMES (2017).

²² *Id.*

A lot of lawyers are not acquainted with the notion of service providers (SP) and hence fall back in coordinating with the domestic violence victim in the timely delivery of proper legal services. Moreover, the judiciary is not even remotely aware of the SP's roles in counselling or even the filing of the Domestic Incident Report (DIR). Neither do the magistrates follow the procedures provided for speedy trials.

UNDER REPORTING PROBLEM IN INDIA

The NFHS report that is published every 10 years shows that a majority of the victims of domestic violence don't register any formal complaint or follow the institutional routes. Both personal (humiliation, fear of retribution, financial dependency) and social influences (distorted power dynamics of men and women in society, family privacy, victim-blaming tendencies) are the reasons too many cases go unreported. But we still need to know whether all those unreported incidents are still invisible to the victim's social community or not. The silence and repression of those who know and victim blaming behaviours lead to the creation of an environment of tolerance that decreases inhibitions towards abuse, making it more difficult for women to come forward, and encourages social defeatism.²³ Among the social aspects that influenced violence rates are those that create an environment conducive for violence.²⁴

Healthcare providers hardly ever search for signs of abuse or ask women about abuse experiences, though most women prefer regular questioning about domestic violence by their doctors. India appears to lack mandated mechanisms such as regular screening and monitoring by hospitals when women visit with suspected injuries.²⁵

FUNDAMENTAL BARRIERS TO SEEKING REMEDY

Like any other case, cases under domestic violence also require the investment of time, energy, courage and money. Although women, under the Indian Constitution, are entitled to free legal aid²⁶ and although the statute clearly states the duties of disclosing to the woman,

²³ Elizabeth Shrader and Monserrat Sagot, *Domestic violence: women's way out*, PAN AMR. H. ORG. (2000), <https://www.paho.org/hq/dmdocuments/2011/GDR-Domestic-Violence-Way-Out-EN.pdf>

²⁴ WHO Report, *supra* note 4.

²⁵ Fiona Bradley, et al., *Reported frequency of domestic violence: cross sectional survey of women attending general practice*, NCBI (2002), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC65059/>

²⁶ INDIA CONST. art. 39A.

who has been subjected to domestic violence, that they are entitled to free legal aid²⁷, we don't see such provisions being disclosed to the victim. Thus, they end up appointing advocates and paying for the costly process.

The PWDVA talks about the first hearing happening within three days²⁸ and thereafter the application to be disposed of by the court in 60 days²⁹. Nevertheless, it seldom happens in reality. That is because, to a certain extent, the Act itself provides for a provision of appeal³⁰. So, the moment one order is passed by the court, and there is a slimmest of chance to appeal against it, immediately an appeal is filed. Thereafter, the matter keeps dragging, ultimately moving up to the High Court. The cumbersome process ultimately bears down on the victim.

There is a provision under section 23 in the PWDVA³¹ for granting ex parte interim relief. Most of the time, when a complaint is filed, we hardly see the court exercising this power. Rather the court adopts the other option, serves notice, lets the other side appear, lets them file an objection and then takes up interim hearing. This oftentimes acts as a disadvantage for the victim whose safety is at imminent risk.

Home is a site of violence, where violence is normalised. The victim and the perpetrator are in the same place, and this happens because of power imbalance. The Act definitely changed the general regime of laws dealing with violence against women in India; however, the Judiciary needs to approach the cases in a prompt manner. Apart from the mandatory physical and sexual medical exams post abuse, a psychological evaluation should also be done because the moment psychological trauma enters in to play, it strengthens the victim's case and helps in getting relief. Ex parte interim orders should be passed in cases where there is imminent danger to the victim, and not just in exceptional cases. Also, there should be an adequate number of protection officers present at any given time. The *Gujarat High Court in Suo Moto v State of Gujarat & Ors*³², while deciding on the matter of an inadequate number of protection, the officers present in Ahmadabad, held that "need of the hour was that

²⁷ PWDVA, § 5(d).

²⁸ PWDVA, § 12(4).

²⁹ PWDVA, § 12(5).

³⁰ PWDVA, § 29.

³¹ *Id.*

³² *Suo Motu v. State of Gujarat and Ors.*, MANU 2013 GJ 0302 (India).

Government assesses needs of each District and accordingly, appoint an adequate number of Protection Officers in each District to receive and attend complaints in time”.

THE RESPONSE OF THE JUDICIAL SYSTEM BASED ON DEEP ROOTED PREJUDICES

While Section 498(A)³³ provides a massive list of activities that are considered aggressive, judgement analysis indicates that adjudicators frequently let their perception of progressivism, patriarchal hegemony and family responsibilities affect their evaluation of the degree of crime and violence involved in these cases. Besides, many judges order detailed medical and forensic evidence before convicting suspects, a few judges convict on the basis of testimony from eyewitnesses, dying statements and precedents, and the absence of medical proof demonstrating previous violence is not considered necessary for convictions to be obtained. Therefore, what qualifies as facts in the court of one judge might not be scrutinised by another judge, highlighting contradictions inherent in the evidentiary procedures and the arbitrary handling of domestic abuse proceedings by judges.

While the concept of a ‘Dynamic Court’ tends to suggest that courts are capable of establishing systemic change and there are instances of such revolutionary jurisprudence in India, there are also various ways in which the criminal justice system fails victims of domestic violence like the innate prejudices of police and lack of efficiency in investigation, to name a few. Some defence interventions, with the implicit or outright collusion of the judicial system, take a shape which is often obscure and invisible. These are intentionally used in cases that have a gender aspect; for example, the systemic negation of victims’ statements of abuse by the use of particular discursive devices such as the passive voice to minimise the perpetrators’ accountability, deflecting the blame from perpetrators to victims and making assumptions about the mental health of victims without any legitimate medical reason.

³³ Indian Penal Code, 1860, § 498A.

MEASURES TAKEN IN INDIA TO COMBAT INCREASE IN DOMESTIC VIOLENCE POST COVID-19 LOCKDOWN

Lockdown 1.0 saw a rapid upsurge in the complaints that were being reported at the National Commission for Women (NCW). In between the first week of March and the start of April, the number of domestic violence cases increased by twice the previous rates in India.³⁴ While most of the countries had rolled out a lot of safety measures in anticipation of a rise in domestic violence cases, it wasn't until April 10 that the NCW announced a special WhatsApp helpline number. Various other helpline numbers by different state government and the central government followed suit. In the initial lockdown period placed as of March 25th 2020, the Courts constrained their operation to dealing with demanding and necessary matters via video-conferencing. The primary statute that deals with domestic violence matters, Protection of Women from Domestic Violence Act 2005, falls within the ambit of civil laws, and the Court during this period, did not hear matters and cases falling under this category. Additionally, Solicitor General in "*All India Council of Human Rights, Liberties and Social Justice v Union of India*³¹¹" said that, a complaint portal has been started by the National Commission of Women as well as a WhatsApp number has also been released to help women facing violence³⁵. Further, Information and Broadcasting Ministry has called on all the radio channels and private satellite TV channels to assess information on the emergency response support system (121) operating for safety of women and women in difficult situation.

The High Court of Kashmir, in matter of *Court on Its Own Motion v Union Territories of Jammu & Kashmir and Ladakh*³⁶, took suo motu cognizance of the rise in the intimate partner violence cases in the state and issued a verdict recommending various measures like increased call-in service availability to encourage anonymous and protected reporting of violence, establishment of dedicated funding to resolve issues of violence against women and

³⁴Jagriti Chandra, *National Commission For Women Records A Rise In Complaints Since The Start Of Lockdown*, THE HINDU (Apr. 03, 2020, 2:22 AM), <https://www.thehindu.com/news/national/national-commission-for-women-records-a-rise-in-complaints-since-the-start-of-lockdown/article31241492.ece>.

³⁵ Gananath Pattnaik v. State of Orissa, (2002) 2 SCC 619 (India).

³⁶ Court on Its Own Motion v. Union Territories of Jammu & Kashmir and Ladakh, WP (C) PIL No. 14/2020 (Through Video Conferencing) (India).

girls in relation to the Jammu and Kashmir Union Territories and Ladakh Territories' response to COVID-19, providing immediate media coverage with regard to all the above-mentioned steps, as well as the provision of services for finding relief and redress against domestic abuse urgent designation of safe spaces as shelters for women obliged to flee their household situation. It is important to treat these shelters as open and accessible shelters. The court also ordered the assigning of informal safe zones for women, such as convenience stores, local pharmacies, where domestic violence or harassment can be reported without alerting the offenders. Lastly increased legal and counselling support for girls and women through an online medium was also suggested.³⁷

While these measures seem achievable in theory, the same cannot be said for the practical implementations. A complete transition to therapy across phones and online media exposed the disparities in women's access to communication networks as it left women with little opportunity to reach out from underprivileged communities. It was further pointed out by the women advocacy groups that NCW received grievances only (and no longer by post) through emails and WhatsApp. Women from only a few sections of the vast demographic section of women have access and are literate to use these technologies. The NCW president, too, noticed that most complaints were generally received by the commission (NCW) not by mail, but by post.³⁸

While making all kinds of stringent policies to ensure an effective lockdown, the government certainly didn't take the downside of lockdown into consideration, and hence no explicit exemption measures as such were provided for the victims of domestic abuse.

CURIOUS CASE OF SOUTH AFRICA AND SWEDEN

While the world was preparing to go under lockdown amidst the chaos of the pandemic outbreak, South Africa was dealing with another despairing crisis of its own: the gender-based violence, which was anticipated to hit an all-time high with the abusers and the victims

³⁷ *Id.*

³⁸ Nomfundo Ramalekana and Aradhana Cherupara Vadakkethil and Meghan Campbell, *Increase Of Domestic Violence*, OX. H. R. HUB (2020), <https://ohrh.law.ox.ac.uk/wordpress/wp-content/uploads/2020/06/OxHRH-Submission-to-UNSR-on-Violence.pdf>.

being locked away in the same house for months to come. What the country wasn't expecting was a drop in the cases being reported by 69.4% between March and April.³⁹

In several provinces, this rising concern regarding the intimate partner abuse had a constructive effect. In such scenarios, the Social Welfare Department had partnered actively with NGO-run shelters to ensure resources and help are open and available to the domestic abuse victims.⁴⁰ It also helped NGOs like Rape Crisis to adapt rapidly by providing accessible online and supplementary resources for telephone reporting and therapy. Thuthuzela Care Centres remained open (one-stop facilities for victims of sexual offence at state hospitals). And there had been extensive pollicisation of a nationwide gender-based abuse hotline. Neither of these programmes had, however, seen a major rise in incidents.⁴¹ At three Thuthuzela centres in the Cape Town metro, the National Prosecuting Authority closely worked with the Rape Crisis Cape Town Trust, the police and the Social Development Department. In rape and sexual harassment cases against women during this time, Director Kathleen Dey reported an approximately 50 percent decrease.⁴²

This change in trend might seem shady from afar, but there are a few possibilities that can substantiate the same, one of them being the ban on alcohol sales. The ban on sale of alcohol reduced the prevalence of cases of domestic abuse and the risk of stranger rape. Sober partners, despite still having the tendency to be aggressive and oppressive, would be less inclined to device excess physical abuse.

Refuge, a British domestic violence NGO, recorded a 700 percent rise in victims' calls and a 25 percent rise in men's calls to change their actions.⁴³ This means that the ban on sale of alcohol and the mandated lockdown might be the reason behind the fall in the number of recorded cases and the decrease in cases of serious abuse and injuries in South.

³⁹Elizabeth Dartnall and Angelica Pino and AnikGevers, *Domestic Violence During COVID-19: Are We Asking The Right Questions?* (Jun. 26, 2020), <https://reliefweb.int/report/south-africa/domestic-violence-during-covid-19-are-we-asking-right-questions>.

⁴⁰ *Gender-Based Violence During Lockdown: Looking For Answers - ISS Africa*, ISS AFRICA (May 11, 2020), <https://issafrica.org/iss-today/gender-based-violence-during-lockdown-looking-for-answers>.

⁴¹ *Id.*

⁴² *Id.*

⁴³ Jamie Grierson, *UK Domestic Abuse Helplines Report Surge In Calls During Lockdown*, THE GUARDIAN (Apr. 09, 2020, 10:30 AM), <https://www.theguardian.com/society/2020/apr/09/uk-domestic-abuse-helplines-report-surge-in-calls-during-lockdown>.

On the flip side, there was an increase in the cases of police brutality (with a 12 percent increase in the cases being reported to the Independent Police Investigative Directorate) and the tight lockdown may also have kept women stuck in their homes. This might deter them from venturing out since they do not have any legitimate excuse to offer to their perpetrator, or they might be afraid of fear questioned by the police.⁴⁴This might lead to women not being able to report the violence since they might not be able to call one of the helpline numbers without the fear of being caught by their perpetrators or they simply can't get to a police station. This will contribute to the number of recorded cases declining. Under the lockdown law, people are authorised to travel in order to provide access to essential resources. The Lockdown Regulation describes essential services that include social work, gender-based abuse and recovery therapy services. In principle, therefore, domestic violence victims are being able to leave their homes and seek help and support, getting access to relief homes and shelters for domestic abuse. However, in actuality, reports of military and police brutality against individuals deemed to be contravening the lockdown regulations, especially in poor low-income areas, are likely to dissuade many women from leaving their homes and seeking support.

Another possibility – one that we may have disregarded – is that the shutdown and the situation brought about by the COVID-19 pandemic has altered habits of violence, for good, and there has indeed been a drop in incidence of violence. Notwithstanding how strange this scenario might be, it would be an error on the part of researchers and activists not to consider every possible alternative.

A topsy turvy trend was seen in Sweden, which is deemed as one of the most progressive countries on the gender-based aspects. Since the beginning of the Covid-19 crisis, there has been a strong soar in domestic violence incidents in Sweden, despite the fact that the Swedish policy response was comparably lax and that an absolute lockdown had so far been avoided. One argument that might possibly explain the increased domestic violence during the

⁴⁴Katie Trippe, *Pandemic Policing: South Africa's Most Vulnerable Face A Sharp Increase In Police-Related Brutality* (Jun. 18, 2020), <https://www.atlanticcouncil.org/blogs/africasource/pandemic-policing-south-africas-most-vulnerable-face-a-sharp-increase-in-police-related-brutality/>.

outbreak and lockdowns elsewhere could be the decreased availability of sex services. A conjecture is sure to be checked in future work.⁴⁵

Domestic violence seems to be the systemic adverse effect of limiting the availability of sex services. A likely reduction in prostitution offering during the Covid-19 pandemic may also have encouraged domestic violence. As the first anti-symmetric criminalization of prostitution was introduced in Sweden in 1999, punishing buyers, but not sellers of sexual services, a third path between criminalization and legalisation seemed to have been identified.⁴⁶ Therefore, it is important to recognise the implications and counterproductive consequences, that such policies can have, while contemplating different types of criminalization or prohibitions on conduct, such as those introduced during the pandemic.

INTERNATIONAL ORGANIZATIONS ON THE IMPENDING STATE OF AFFAIRS

Amid the struggles of battling the virus, the rise in domestic violence post the onset of the pandemic has become a global issue. Several International Organizations have raised their concerns towards the deteriorating conditions of women around the globe and have urged the governments of all countries to pay heed towards the safety of women and make it their utmost priority.

UNITED NATIONS

The United Nations reported a steep rise in the number of calls made to domestic helpline numbers in countries like Malaysia, Australia, China and Lebanon. The UN Secretary General Antonio Guterres appealed to various nations to make sure that women don't have to face violence in their homes, where they should be safest.⁴⁷

⁴⁵Giancarlo Spagnolo, et al., *The Role of Prostitution Markets In The Surge of Domestic Violence During Covid-19*, VOX CEPR (September 13, 2020), <https://voxeu.org/article/role-prostitution-markets-domestic-violence-during-covid-19>.

⁴⁶Arthur Gould, *The Criminalisation Of Buying Sex: The Politics Of Prostitution In Sweden*, 30 J. SOC. POL. (Aug. 06, 2001), <https://www.cambridge.org/core/journals/journal-of-social-policy/article/criminalisation-of-buying-sex-the-politics-of-prostitution-in-sweden/4349F5BC49487E902AD4ECD95AA22753>.

⁴⁷ *UN chief calls for domestic violence 'ceasefire' amid 'horrifying global surge'*, UN NEWS (Apr. 06, 2020), <https://news.un.org/en/story/2020/04/1061052>.

The United Nations had passed two resolutions: one in 1993- DEVAW⁴⁸ and the other in 2004- Resolution 58/147⁴⁹. The former addressed the violence against women in general and puts forth comprehensive guidelines and standards to protect women from all forms of violence while the later specifically addressed domestic violence against women, condemning it and addressed the different forms of domestic violence. During times like these, where all governments have to fight battles on two fronts: one against the virus and one against the violence against women, these resolutions and international obligations should be given utmost importance.

THE UNITED NATIONS PEOPLE FUND

The UNFP issued a public warning that the continuing lockdown is estimated to cause nearly 31 million extra gender-based violence all across the globe. The pandemic resulted in the delay of various programmes targeted to end violence against women, which would lead to nearly 2 million more cases of female genital mutilation, child marriage and domestic abuse.⁵⁰ The UNFP asked the countries to formulate measures to curb the violence against women that is on the rise and to expressly make protection of women a priority.

THE EUROPEAN UNION

Joseph Borrell, High Representative, speaking on behalf of the European Union, addressed the challenge that faced the countries globally and reaffirmed that role of civil liberties and human rights defenders be given utmost importance and solicited extensive support and solidarity to the women battling with violence all over the globe stating that human rights cannot be forgotten during a global crisis.⁵¹

⁴⁸ *Declaration on the Elimination of Violence against Women*, G.A. Res. 48/104, (Dec. 20, 1993), [Hereinafter DEVAW].

⁴⁹ *Elimination of domestic violence against women*, A/RES/58/147, (Dec. 22, 2003).

⁵⁰ *Millions more cases of violence, child marriage, female genital mutilation, unintended pregnancy expected due to the COVID-19 pandemic*, UNPF (Apr. 28, 2020), <https://www.unfpa.org/news/millions-more-cases-violence-child-marriage-female-genital-mutilation-unintended-pregnancies>.

⁵¹ *Declaration by the High Representative Josep Borrell, on behalf of the European Union, on human rights in the times of the coronavirus pandemic*, EC-CEU (May 5, 2020, 3:20 PM), <https://www.consilium.europa.eu/en/press/press-releases/2020/05/05/declaration-by-the-high-representative-josep-borrell-on-behalf-of-eu-on-human-rights-in-the-times-of-the-coronavirus-pandemic/>.

THE COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN (CEDAW)

The Committee expressed its serious concerns regarding the heightened disadvantages and the risks of violence that women face globally due to the pandemic and the subsequent lockdown measures adopted by various countries to curb the spread of the virus. The committee stated that all the signatory states of the 'Convention on the Elimination of All Forms of Discrimination against Women' should ensure that the lockdown measures do not put the women at a disadvantage, abridging them from seeking any form of shelter, health care and economic life. The Committee asked the state signatories of the convention to be accountable for the economic, social and overall wellbeing of women and to do so by ensuring their participation and involvement in various decision and policies that need to be formulated for various preventive and recovery measures.⁵²

POSSIBLE MAKESHIFT APPROACH TOWARDS ADDRESSING THE ISSUE

The lockdown severely curtailed the mobility of people, thus restricting the victims to register complaints with the police. Even though a complaint could also be lodged via an online portal or via a helpline number, it would be rather ludicrous to assume that all women are aware, have access and are literate to lodge a complaint online, given the wide demographic sections that women belong to, with only 45% of women in India owning cell-phones. This calls for law enforcement agencies to come up with pertinent awareness measures.

1. It has become imperative for the law enforcement agencies to come up with the innovative policies which could come in aid of the victims. In several countries, such policies have helped temporarily in backtracking of the gender-based violence issue at hand.

The Supermarkets and pharmacies in Columbia were declared as safe spaces for victims to report for abuse and were given training on how to aptly respond if women approached them seeking help for domestic abuse. In Spain and France, victims are seeking help in pharmacies by using code-words. In France, grocery stores have

⁵²Alyssa Cannizzaro and Eduarda Lague, *International Women's Human Rights: COVID-19's impact on domestic violence and reproductive rights*, PENN LAW (Apr. 20, 2020), <https://www.law.upenn.edu/live/news/9986-international-womens-human-rights-covid-19s-impact>.

turned into temporary counselling homes for women and the French Government has reserved thousands of hotel rooms to serve as shelter for the victims, in light of the social distancing norms⁵³.

Several media sources reported that the Police in Gardai, Ireland, have launched 'Operation Faoiseamh', so as to contact every domestic abuse victim proactively, those who had previously contacted the police about any domestic abuse, with an immediate arrest policy⁵⁴. Similar measures have been undertaken by the police in Odisha and Tamil Nadu. The Canada government is lending cell-phones and free services to vulnerable people. Civil societies have tied up with Uber to provide free emergency rides for victims⁵⁵.

In India, government authorities can learn from the same and adopt such innovative initiatives as well as take the support from the private sector to scale up the initiatives.

2. Fifty-two helpline numbers have been made operational throughout India, some being national while some being state-specific. However, steps must be taken to make women across the country aware of such helpline numbers. Further, free and immediate counselling should also be provided to victims over calls, should a victim seek for help, regarding possible escape plans and child care during abuse, to name a few.
3. More number of NGOs, feminist organisations and domestic abuse shelters should be added in the list of essential services and be allowed to operate, even in strict containment areas. In Quebec and Ontario, similar measures have been implemented; along with the inclusion of shelters for domestic violence as 'essential services' during the period of lockdown⁵⁶.

⁵³ *How Egypt, France and Other Countries Took Measures to Support Women During COVID-19 Crisis*, EGYPTIAN STREETS (May 12, 2020), <https://egyptianstreets.com/2020/05/12/how-egypt-france-and-other-countries-took-measures-to-support-women-during-covid-19-crisis/>.

⁵⁴ *Operation Faoiseamh*, AN GARDA SIOCHANA (Jun. 09, 2020), <https://www.garda.ie/en/about-us/our-departments/office-of-corporate-communications/press-releases/2020/june/operation%20faoiseamh%20-%20domestic%20abuse%209th%20june%202020%20.html>.

⁵⁵ Meg Black, *Uber Offers Free Rides for People Fleeing Domestic Violence During COVID-19 Pandemic*, GLOBAL CITIZEN (Apr. 29, 2020), <https://www.globalcitizen.org/en/content/uber-offers-free-rides-for-people-fleeing-domestic/>.

⁵⁶ Cillian O'Brien, *Essential services: What's staying open when shutdowns expand in Ontario, Quebec*, CTV NEWS (Mar. 24, 2020, 8:24 AM), <https://www.ctvnews.ca/health/coronavirus/essential-services-what-s-staying-open-when-shutdowns-expand-in-ontario-quebec-1.4865643>.

4. Frontline workers working for the National Commission for women for physical rescue of women should be provided with adequate PPE suits and training to follow appropriate social distancing norms while rescuing victims.
5. Vigorous nationwide and state-wide awareness campaigns must be launched to spread awareness about domestic violence along with other safety and hygiene measures relating to COVID-19.
6. An app called 'one love' which enables the users to answer certain questions and post the assessment of the answers, tells the users if they are being abused by their partners or if their partners could potentially turn aggressive in future. It also suggests a proper response or a safe road plan to escape in case an emergency situation should arise. Similarly, an app called 'Aspire news' disguises as a regular news app, but caches a 'help' option which stores suggestive measures for domestic abuse victims⁵⁷. An app called Victims-Voice allows the victims to document their experience of abuse, store pictures of cuts or injuries and medical reports after the abuse. All the information is encrypted and kept off-device so that the abuser may not destroy them and the victims could use the data, if in future they wish to pursue any legal action.

In India, even though we have numerous apps that target domestic violence, we need an app, developed on the similar lines to those mentioned above, which could perhaps help us with the demanding state of gender-based violence.

CONCLUSION

O' Cruelty, why thy victim is generally a woman!

While another hindrance to the prevention of domestic violence has been generated by the COVID-19 outbreak and isolation, studies on this problem have already suggested the prevalence of the crisis before the pandemic. The pandemic has only amplified the limitations of current domestic violence preventative initiatives. Conditions during COVID-19 appeared strikingly similar to those during disasters- loss of jobs, alienation from social support and economic strain and it wouldn't be farfetched to say that such analogous circumstances following the pandemic could actually harbour the chances of violence in families. Women

⁵⁷ Kevin McCarthy, *3 apps that can help those experiencing domestic violence*, NUEMD (Nov. 13, 2016), https://nuemd.com/news/2016/11/30/3-apps-can-help-those-experiencing-domestic-violence_

have also been subjected to psychological abuse like demeaning, belittlement and insults, threats of being abandoned, threats of hurting someone they care about or general infidelity of the husband. Despite there being several laws to prevent domestic violence such as the PWDVA and the penal provisions under IPC, these laws hardly came to the aid of the domestic violence victims during the lockdown. The reason for the same seems to be the major under-reporting issue in India caused due to general unawareness, victim blaming mentality, casual attitude of police authorities, and even the unbalanced power dynamics in families has deterred the victims from reporting their cases. Sometimes, even the cumbersome process of investigation, and proceedings under the PWDVA have acted as major barriers for recourse. Further, the response of the judicial system is also plagued with deep rooted prejudices. We need to encourage and reinforce policies of action to tackle domestic violence in every region. This virus outbreak has exposed the limits of existing domestic violence prevention measures and has shown that there is still a lot of work that must be done. Several International Organisations such as the UN, UNFP, and the EU have strongly called on the nations to take steps towards mitigating the rising violence against women amidst the severe lockdown restrictions. India could learn from the countries implementing several make-shift approaches towards alleviating the plight of the women. The COVID-19 pandemic may be seen as a window to rethink our future and to take long-lasting steps. Homes should not be relegated to torture chambers for women. In the so-called 'private' spaces, the protection of women should not be violated, further reducing women to second-class citizens who rob them of their identity and their beings. In order to build a better society, smashing patriarchal hegemony and gender bias at home and in public spaces is imperative. It is vital that actions are taken to stop abuse in order to ensure that homes remain as 'safe spaces' for everyone. The corona outbreak is new and scientists are seeking a solution to deal with it, but the patriarchal virus is ancient and there is still no remedy for it. To build a better world, addressing patriarchy and all other types of injustice and prejudice is necessary. In addition to taking these suggestions into account, the government has to take other important measures to combat domestic abuse. Only then can it alleviate the brunt of violence that women face.