

IMPACTS OF LOCKDOWN ON DOMESTIC VIOLENCE: A LEGAL PERSPECTIVE

“Pandemic has also affected rights of women, children and senior citizen. One of the critical areas which have come to our notice was raising violence within the family itself. **Justice Ramana**, Supreme Court Judge and Executive Chairman of National Legal Services Authority”

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Abstract

Fuelled by the mandatory stay-at-home restrictions, social distancing, economic uncertainties and the anxieties caused by the pandemic, domestic violence has increased globally and nationally. The World Health Organization has reported that the risk of intimate partner violence is likely to increase, as social distancing measures are put in place and people are encouraged to stay at home. Domestic violence includes all acts of physical, sexual, psychological or economic violence that may be committed by a family member or intimate partner. In the world, women are vulnerable at the rises of new pattern of violence, as there has been a rise in 60% calls by women subjected to domestic violence in Europe. Within few days of lockdown in India the National Commission for Women (NCW) noted a rise in number of cases of domestic violence via email in the view of COVID 19 outbreak. According to the NCW, there have been 69 cases of domestic violence, 77 cases under right to live with dignity, 15 cases of harassment of married women in the home, 2 cases of rape or attempt to rape. Curiously, several police, official and NGO helplines have witnessed a decrease in the number of calls they received during the lockdown period. In cases of domestic violence during the lockdown, women are not being able to reach the police, even women wish to go to their parents' home, they are unable to travel due to the lockdown. The increase in violence against women especially domestic violence/abuse is a real worrisome. The NCW Chairperson views that the real figure is likely to be higher, since the bulk of complaints come from women who send their complaints by post, and might not be able to use the internet. The main reason for not reporting number of cases is because of people locked in with their abusers will not be able to get access to a mobile phone nor the space and time to call for help. This could immensely lead to increased rate of threats, physical, sexual, psychological abuse, humiliation. In the Indian scenario when the country was putdown to a nation-wide-lockdown, the Government has to look into the need to formally integrate domestic violence and mental health repercussions into the public health preparedness and emergency plans against the pandemic. We need an aggressive nationwide campaign to promote awareness about domestic violence,

and highlight the various modes through which complaints can be filed during the lockdown. Reaching out to people facing domestic violence and in distress needs to be classified as an 'essential service' by the government. The Protection of Women from Domestic Violence Act was enacted in 2005 that provides protection for women and victims of abuse and lays down various mechanisms for its implementation, yet, the aforesaid Act has not been implemented effectively. Judicial remedy is also not so efficacious during the lockdown. Therefore, it is the need of the hour to discuss the impact of lockdown on domestic violence from a legal perspective.

Introduction

One of the important issues that arrest the minds of the scholars, jurists, academicians in the recent days is the impact of lockdown on domestic violence against women. Prior to lockdown, the percentage of domestic violence complaint was less. After the imposition of lockdown across India, the number of domestic violence (DV) cases has increased very significantly. No lockdown for domestic violence. The main reasons are stress, and connected risk factors such as loss of employment, frustration, cut off in salary, limited resources, family constraints, consumption of alcohol. The surge in DV cases is not only in India, rather, it is a common phenomenon in and around the globe. The women and children who are the victims of domestic violence are left with no option but continue to stay with their abusers because of the lockdown due to the COVID 19 pandemic. Therefore, the fundamental issues for the current discourse are what constitute domestic violence? Whether the law against domestic violence is suffice to safeguard the constitutional rights of women? What is the effect of lockdown upon violence against women within the domestic relationship? Whether remedies which are provided in the Act feasible for the victim of domestic violence? All these questions will be discussed in the context of the lockdown imposed in India because of COVID 19 pandemic. The main objectives of the present paper are to analyze the concept of domestic violence, examine the impacts of lockdown upon domestic violence and to explore the mechanism that would protect the interest of women during the situation like the present COVID 19 pandemic. The source of information for the present paper is based on the literature obtained from the primary and secondary sources. The scope is limited to discuss the rise of domestic violence cases against women and children. There may be domestic violence cases against men during the lockdown crisis itself but such cases are excluded from the purview of the discussion. The suggestion and conclusion drawn in the paper will be useful to legislative and executive authorities to amend the relevant legislation and implement the same more effectively and efficaciously with a view to protect women from domestic violence.

Declaration of Lockdown

In view of the spread of COVID 19 in and around the world, and to contain the spread of Corona Virus as it continue to raise day by day, our Hon'ble Prime Minister under the power conferred by the Epidemic Diseases Act 1897 and the Disaster Management Act 2005 announced the first lockdown for three weeks on 24.03.2020. This lockdown had been extended four times on 14.04.2020, 01.05.2020 and 17.05.2020 and 31.05.2020 which is still in force. The measures include shutting of all non essential government establishments, industries, transport by air, rail and road, hospitality services, educational institutions, places of worship, political gathering etc., with little exceptions.¹

The lockdown provides for imposing strict curfew, which is in force even today in some parts of the country. It prohibits senior citizens or elder persons above the age of 65 years from going out of the houses and prevents the people of the country not to move out of their houses except during specific times and for specific purposes like buying medicine and essentials for life. However, the lockdown is the only option left to the Government to combat deadly Corona Virus.

The Protection of Women from Domestic Violence Act 2005

The Protection of Women from Domestic Violence Act 2005 was enacted to provide for more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family. The intention of the legislature is to provide more protection to women.²

Definition of Domestic Violence

Section 3 of the PWDV Act deals with what constitutes domestic violence that includes physical or mental injury or causing physical abuse,³ sexual abuse,⁴ verbal and emotional abuse,⁵ economic abuse,⁶ or unlawful demand for dowry or other property or valuable

¹ www.livelaw.com visited 04/06/2020.

² Shyamlal Devda and others v. Parimala (Cr. A. No. 141/202, dated 22/1/2020) www.mainsci.gov.in visited on 13/6/2020.

³ Section 3 (d) (i) "physical abuse" means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of aggrieved person and includes assault, criminal intimidation and criminal force;

⁴ Section 3 (d) (ii) "sexual abuse" includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;

⁵ Section 3 (d) (iii) "verbal and emotional abuse" includes-

(a) Insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and

(b) Repeated threats to cause physical pain to any person in whom the aggrieved person is interested.

⁶ Section 3 (d) (iv) "economic abuse" includes (a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom or under an order of a court or any stridhan, property jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance; (b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like; (c) prohibition or restriction to continued access to resources or facilities

security⁷. Beside this, as the Court observed in Amit Agarval and others v. Sanjay Agarval there should be a 'domestic relationship' between two persons such as an aggrieved woman and respondent.⁸ Wife cannot file a complaint when the relationship has come to an end with a decree of divorce.

The Supreme Court in Kailash Chandra Agarval & Another v. State of UP and others held that in order to constitute domestic violence, it should attribute specific role to the relatives of the husband or else, complaint would not be maintainable.⁹ In Kamlesh Devi v. Jaipal and others (2019 SC), mere vague allegation of violence against the respondent and his family members does not constitute complaint. If no violence is alleged within the share household, the complaint is not maintainable.¹⁰

Who can give information about Domestic Violence?

Any person has reason to believe that act an act of domestic violence has been, or is being or is likely to be committed, may give information about it to the protection officer concerned.¹¹ In Ajay Kumar v. Latha alias Sharuthi, the Supreme Court held that the aggrieved wife or a female living in relationship in the nature of marriage can give complaint of domestic violence.¹² In D. Veluswamy v. Patchiammal, the Apex Court observed that the word 'aggrieved person' includes even woman in live in relationship and therefore, entitled to lodge complaint of domestic violence.¹³

When it is informed so, it is the duty of the protection officer, service provider, magistrate who has obtained information or complaint of domestic violence, to make an application for obtained relief by way of protection order¹⁴ etc., or, for shelter home¹⁵, medical

which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

⁷ Section 3. Definition domestic violence.- for the purpose of this Act any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it-

- (a) harms or injures or endangers the health, safety, life, limb, or well being, whether mental or physical of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or
- (b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other related to her to meet any unlawful demand for any dowry or other property or valuable security; or
- (c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or
- (d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person. Explanation 1.- for the purposes of this section,-
 - (i)

⁸ CrI. Misc. No. M-36736, High Court of Punjab and Haryana dated 31/05/2016, www.lawyerservices.in visited on 13/06'2020

⁹ 2014 (4) R.C.R (Criminal) 439: 2014 AIR (SCW) 412.

¹⁰ S.L.P. No. 34053/2019, dated 04/10/2019 www.latestlaws.com latestnews/domestic-violence-mere-allegation-does-not-constitute-complaint.

¹¹ Section 4 of the Protection of Women from Domestic Violence Act 2005.

¹² CrI. A. No. 617 of 2019, SC, dated 08/04/2019 www.indiankanoon.com.

¹³ (2010) 10 SCC 469.

¹⁴ See Section 5 of the Protection of Women from Domestic Violence Act 2005.

facilities.¹⁶ The Act provides for duties and functions of protection officers, service providers and government to take measures to ensure that a wide publicity is given through various media and create sensitization and awareness training on the issues addressed by the Act.

Procedure for obtaining reliefs

The Act lays down procedure for obtaining orders of reliefs by filing an application before the Magistrate who shall take into the consideration any domestic incident report submitted to him by the protection officer or service provider. The Magistrate, thereafter, shall fix the first date of hearing within 3 days from the date of receipt of the application by him and dispose of such application within a period of 60 days from the date of first hearing.¹⁷

There is no bar for the magistrate to direct the aggrieved or the respondent to attend counselling with any member service provider who has experience in counselling. If the magistrate has issued direction to the parties to attend counseling, the magistrate shall fix the next date of hearing of the case within a period not exceeding two months.¹⁸ It is the discretion of the magistrate to conduct in camera proceedings.¹⁹

After giving the aggrieved person and the respondent an opportunity of being heard and on being prima facie satisfied that domestic violence has taken place or is likely to take place, may pass a protection order²⁰ or residence order²¹ in favor of the aggrieved person or direct the respondent to pay monetary relief²² as the case may be. According to the Supreme Court ruling in Lalita Toppo v. State of Jharkhand and another, an estranged wife or live in partner is entitled to seek maintenance under the Domestic Violence Act.²³

Surge in domestic Violence during the COVID 19 pandemic

Global lockdown: Domestic violence is perpetuated all over the world as a result of global lockdown. It is not only limited to India. According to WHO's Regional Office, there has been sharp rise in domestic violence related distress calls to support helplines and response

¹⁵ See Section 6 of the Protection of Women from Domestic Violence Act 2005.

¹⁶ See Section 7 of the Protection of Women from Domestic Violence Act 2005.

¹⁷ Section 12 of PWDV Act 2005 application to Magistrate.

¹⁸ Section 14 of the Protection of Women from Domestic Violence Act 2005.

¹⁹ Section 16 of the Protection of Women from Domestic Violence Act 2005.

²⁰ Section 18 provides for a protection order in favour of the aggrieved person and prohibit the respondent from committing any act of domestic violence; aiding or abetting in the commission of acts of domestic violence; entering the place of employment of the aggrieved person or if the person aggrieved is child, its school or any other place frequented by the aggrieved person; alienating any assets, operating bank lockers or bank accounts used or held or enjoyed by both the parties, jointly by the aggrieved person and the respondent ..

²¹ Section 19 restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, directing the respondent to remove himself from the shared household..

²² Section 20 provides that the magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence taking into account loss of earnings; medical expenses; loss caused due to the destruction, damage or removal any property from the control of the aggrieved person...

²³ www.vakino1.com visited 14/06/2020.

shelters after the lockdown across the globe. Several countries have reported that up to 60% increase in domestic violence related cases in April 2020.²⁴ Domestic violence increased in time of crisis due to restriction and containment measures enforced to limit the spread of the COVID 19.

Spain received 18% more calls relating to domestic violence in the first two weeks of lockdown. **France** reported a nationwide spike of about 36% in domestic violence cases and the French Minister stated that the risk increased due to lockdown. Since lockdown, **UK** witnessed up to 65% rise in calls to the national abuse hotline.²⁵ In **Italy**, the government has launched an App. that enables domestic violence victims to seek without making calls.

In the Hubei in Wuhan, **China** which is the heart of the first outbreak of the Corona virus, domestic violence reports to the police tripled during the February lockdown period and rose to 162 from 47 in 2019. Official reports suggest that according to data collected from five big **American cities** indicates that although most types of crime have indeed fallen but report of domestic violence have increased. More than 1 lakh cases have been reported to police departments in Chicago, Kansas, Los Angeles, Memphis and New Orleans between March and April (the Economist). **European countries** report 20 -30% increases in calls to domestic violence helplines from Catalonia to Cyprus.²⁶

The United Nations sexual and reproductive health agency (United Nations Population Fund (**UNFPA**) has estimated that there would be 31 million more cases of domestic violence worldwide if lockdown continued for another 6 months.²⁷

Rise in domestic violence cases during lockdown in India

The National Commission for Women received a significant number of complaints from women seeking protection from domestic violence. A month wise statistics shows the rise of DV complaints. These complaints accounted for 51.45% (514 of the 999 complaints made to NCW) in April. In May, complaints of DV accounted for 54.07% (914 of the total 2028 complaints).

When compared the pre-lockdown period, in January DV complaints accounted for 18.54% (271 of the 1462 complaints) the percentage of DV complaints was 21.21% (302 of 1424) in February and 22.21% (298 of 1347) in March.²⁸ In Karnataka from March 1 to April 2020, 218 domestic cases were registered. The National Federation of Indian Women says the government has not considered the impact of families when it decided to impose lockdown. As the families are run in a feudal and patriarchal way, work done by women inside houses are

²⁴ www.thehindu.com visited 07/06/2020.

²⁵ www.indianexpress.com/article/opinion/web-edits-not-all-homes-are-safe-during-lockdown-the-never-ending-taleOf-violence-against-women visited on 07/06/2020.

²⁶ Ibid.

²⁷ www.thehindu.com/news/international/coronavirus-lowwww.indianexpress.com/article/opinion/web-edits-not-all-homes-are-safe-during-lockdown-the-never-ending-taleOf-violence-against-women visited on 07/06/2020. lockdown-surge-in-domestic-violence-says-who/article visited on 07/06/2020

²⁸ www.thetimesofindia.com

never discussed in monetary terms. That leads to her subjugation and this further onceses in a situation like lockdown.²⁹

Under the Protection of Women from Domestic Violence Act (PWDVA), police are not the first responder for woman who is subjected to domestic violence. The counselling centres are supposed to reach out to the complainants. During the lockdown, these centre are also shutdown, as a result, the services from the counseling centres are not accessible and available to women in distress.

Now, the vital question for consideration is what kind of punishment may be imposed on the perpetrator of domestic violence during lockdown. If punitive action is proposed, the situation may turn into worst and may lead to commit homicide by intimate partner. It is not feasible to shift victim to safe homes or direct aggressor to leave home.

Remedies provided in the existing law for the aggrieved

Sn. 498-A of IPC recognizes domestic violence as a criminal offence (cruelty by husband or his family towards a married woman) and prescribes imprisonment up to 3 years or fine.³⁰ It is very difficult to invoke Sn. 498-A during lockdown. Police won't be available or reluctant to take up investigation as they are engaged with enforcing lockdown guidelines issued by the government.

Harassment for dowry or unlawful demand for property or valuable security comes within the purview of Sn. 304-B of IPC³¹ or the provisions of the Dowry Prohibition Act 1961 may also be invoked. However, a formal complaint with police is necessary. The remedy provided by the IPC or the Dowry Prohibition Act is not feasible because of lockdown.

Sn 125 of the Code of Criminal Procedure, 1973, that provides for maintenance to wives and children, are applicable to all dependent persons irrespective of religion. The Magistrate or family court has jurisdiction to pass maintenance to the petitioner. But it is long process and consumes time to get relief. Strict proof of marriage and dependency are required to be proved. The execution proceedings take a long time. It is very difficult to get quick remedy.

Apart from the above two legal remedies, the Protection of Women from Domestic Violence Act is another Act that provides remedy for the victim of domestic violence. In absence any evidence or materials on record the grant compensatin cannot justified under

²⁹ Deccan Herald, April 26, 2020 p 4.

³⁰ Section 498-A of the Indian Penal Code: 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 punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

³¹ Section 304-B of the Indian Penal Code: where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death, she was subjected to cruelty or harassment by her husband or any relative of her husband for or in connection with any demand for dowry such death shall be called "dowry death" and such husband or relative shall be deemed to have caused her death.

section 22 of the Domestic Violence Act.³² It is open left for the wife/aggrieved person to take recourse to any other remedy as may be available under law.³³

Conclusion and Suggestions

From the above discourse, it is very obvious that during lockdown, women are more vulnerable to domestic violence by their intimate partners in India and all over world. The United Nations Secretary General has called upon all governments to think about the issue of domestic violence when they issue guidelines for the enforcement of lockdown. In India the Government needs to address this issue, besides containing COVID 19 and consider domestic violence against women *as priority*. The Domestic Violence Act is sufficient to prevent domestic violence during the normal time, but now as the Nation is witnessing pandemic and women are compelled to stay indoors, the Protection of Women from Domestic Violence Act need to be implemented more effectively. For this purpose, the government has to take a measure to consider helpline or distress calls from women as “*essential services*” that should be in force during lockdown. This is the only mechanism to protect women from domestic violence during lockdown period.

³² Haimante mal v. State of West Bengal C.R.R. No. 3907/2019 dated 09/07/2019 www.latestlaws.com latest-news-domestic-violence-act-determination-of-compensation-has-t0-be-rational.

³³ Vijayanand Dattaram Naik v. Vishranti Vijayanand Naik 2019 SCC online Bom 314.