

A REVIEW OF THE LEGAL FRAMEWORK GOVERNING DOMESTIC VIOLENCE IN THE ERA OF COVID-19

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ABSTRACT

Governments across the globe have imposed movement restrictions in the form of curfews and lockdowns to curb the outbreak of the Covid-19 pandemic. While these restrictions are necessary measures aimed at fighting the pandemic, they have resulted, inter alia, in a sharp increase in incidents involving domestic violence. This phenomenon has aggravated to such an extent that the United Nations Secretary Antonio Guterres recently issued a statement urging “all governments to put women’s safety first as they respond to the pandemic”.

India has been no exception to this phenomenon, as instances of all kinds of crimes against women, including domestic violence have risen exponentially. More so, it is pertinent to highlight that data furnished to show this rise is generated by relying on instances that have been reported. It follows that the real picture is grave as most instances of domestic violence go unreported. Such atrocities against women transcend borders and a comparative analysis of the situation in developed countries like USA and developing countries like China vis-à-vis our nation shall also be presented.

Considering the potential domestic violence holds to increase further, keeping in mind uncertainty looming over the duration of movement restrictions, the government must put in place an appropriate legal mechanism to curb such domestic violence.

INTRODUCTION

The outbreak of the Covid-19 pandemic has startled governments across the globe with its highly contagious nature, sending healthcare systems into a tizzy. To tackle the virus' increasing rate of infections, governments across the globe have imposed movement restrictions in the form of curfews and lockdowns.ⁱ While Covid-19 has caused major loss to lives and economies, lockdown measures have bought time for governments or done what has been termed as “flattening the curve”.ⁱⁱ

These restrictions are necessary measures aimed at fighting the pandemic but they have also resulted, inter alia, in a sharp increase in incidents involving domestic violence. This phenomenon has aggravated to such an extent that the United Nations Secretary Antonio Guterres recently issued a statement urging “all governments to put women's safety first as they respond to the pandemic”.

India has been no exception to this phenomenon, as instances of all kinds of crimes against women, including domestic violence have risen exponentially. More so, it is pertinent to highlight that data furnished to show this rise is generated by relying on instances that have been reported. It follows that the real picture is grave as most instances of domestic violence go unreported. Evidence suggests that in India, reported cases are much less in proportion to actual incidences as women are much less likely to complain at the first place.

Considering the potential, domestic violence holds, to increase further keeping in mind uncertainty looming over the duration of movement restrictions, the government must put in place an appropriate legal mechanism to curb such domestic violence.

This paper is divided into five sections. The first section is an introduction that gives context of the issue. The second section relies on secondary data to illustrate the rise in domestic violence cases. The third section will draw a comparative analysis by making an inquiry into the response measures adopted by other governments across the world whereas the fourth section will elaborate upon a course of action suitable to the needs of the Indian government, such that implementation of existing legal mechanism is improved. The fifth section concludes the paper.

CONTROLLING THE HAVOC: COVID-19 AND RESPONSE MEASURES

Covid-19 has infection close to 2.7 million people and claimed approximately 200,000 casualties and the numbers are increasing in both respects, daily.ⁱⁱⁱ The only effective measure that governments can take right now for its prevention is enforce social distancing and reduce the marginal rate of infections as time passes.

Different countries have responded with a host of measures depending upon the severity of the situation on ground in their respective jurisdictions. In Europe, Italy and Spain, the worst affected nations are under a complete lockdown. In Spain, only construction and manufacturing sectors have returned to work in April, but the nation still remains under confinement and is likely to remain in confinement till May, at least.^{iv}

France and Britain have expressed their intention to extend their lockdown measures with France planning a phased reopening of businesses from mid-May onwards. As per President Emmanuel Macron, schools and shops would reopen while restaurants, hotels, cafes and cinemas would remain shut for longer.^v Germany has responded to the crises adeptly. It is relaxing its lockdown measures to allow stores of up to 800 square metres (8,611 square feet), car dealers and bike shops, to reopen from April 20 while schools will reopen on May 4.^{vi} In its neighboring Austria, the government has reopened non-essential shops of up to 400 square metres (4,306 square feet), DIY shops and garden centres reopen on April 14. In the next phase, Austria plans to open shopping malls, hairdressers and larger stores from May 1, unless infections accelerate. Restaurants and hotels could reopen in stages from mid-May.^{vii} Meanwhile, Poland, which is scheduled to have a presidential election on May 10, will gradually lift lockdown measures from April 19. The easing will include shops but borders will remain closed until May 3.^{viii} Denmark, one of the first European countries to shut down, reopened care centres and schools for children in first to fifth grade on April 15. All other curbs apply at least until May 10.^{ix}

In Asia, Pakistan extended its lockdown by two more weeks after but gave mandate for reopening economic activities gradually, with a green light given to construction and export

industries to make sure the economy keeps earning.^x India is under a lockdown until May 3 but certain industries such as farming and construction in rural areas, and government offices have reopened in April.^{xi} In Japan, a month-long state of emergency is in force in cities since April 7, but the government has refrained from nationwide business closures for fear of damaging the economy.

In the Americas, Canada has decided that it will keep non-essential businesses shut for several more weeks as per the statement of Prime Minister Justin Trudeau on April 14. Meanwhile the nation's most populous province Ontario, extended for another 28 days, its shutdown that was due to expire on April 23.^{xii} Lockdowns are set to continue in Brazil's largest cities and most states, with Sao Paulo extending its social distancing measures until April 22 and Rio de Janeiro until April 30, despite the health ministry's suggestion that states with less than 50% of occupancy in health systems could loosen rules.^{xiii} Argentina's lockdown has been extended until April 26, but the government is considering widening the list of essential services to allow some businesses back. Mexico, bracing for the spread of the coronavirus to accelerate, is widely expected to extend the shutdown of schools and non-essential businesses beyond April 30.^{xiv}

DOMESTIC VIOLENCE IN THE COVID-19 ERA

A general analysis of the aforementioned discussion is that Europe, which was hit very bad, has somehow managed to flatten the curve and is reopening economic activities more than its Asian counterparts and American counterparts. However, the fact of the matter remains, that restrictions on regular civilian movements will subside only with time, globally (including Europe). Even then, social distancing norms will compel people to spend majority of their time indoors.

In this context, violence against women is a great cause of concern. In the aftermath of the outbreak of the Covid-19 pandemic, countries such as Australia, Brazil, China and the United States started suggesting an increase in violence against women, as early as March 2020. In China, in the Jiani County of the central Hubei province, the police reported receiving 162 reports of intimate partner violence in February, which was thrice the number reported in

February 2019.^{xv} As per a local Wan Fei, who is the founder of an NGO in the area of intimate violence against women, “90 percent of the[se] cases of violence are related to the COVID-19 epidemic.”

In the United States, the National Domestic Violence hotline issued a statement in early March 2020 on “Staying Safe” during COVID-19, including anecdotal evidence of how perpetrators were using the virus as a scare tactic to threaten or isolate victims, and urging those at risk to make a safety plan, practice self-care and reach out for help.^{xvi} In Australia, a survey of 400 frontline workers indicated that 40 percent reported an increase in “pleas for help” and 70 percent indicated an increase in complexity of cases.^{xvii}

In India itself, the National Commission for Women (NCW), which receives complaints of domestic violence from across the country, has recorded more than twofold rise in gender-based violence in the national Coronavirus lockdown period. The total complaints from women rose from 116 in the first week of March (March 2-8), to 257 in the final week (March 23-April 1).^{xviii}

More importantly, as the United Nations has rightly recognized, new challenges have propped up in the domestic violence dynamics that make it harder for the evil to be curtailed. Apart from the increase in numbers, a new aspect has emerged. With exposure to Covid-19 being a threat, “abusers are exploiting the inability of women to call for help or escape; women risk being thrown out on the street with nowhere to go”.^{xix}

At the other end of the spectrum, efficiency of support services and legal mechanisms has inevitably decreased owing movement restrictions. Judicial, police and health services that are the first responders for women are overwhelmed, have shifted priorities, or are otherwise unable to help.^{xx} Civil society groups are affected by lockdown or reallocation of resources. Some domestic violence shelters are full; others have had to close or have been repurposed as health centres.^{xxi}

MEASURES TAKEN IN OTHER JURISDICTIONS

Jurisdictions, both first world and third world, have responded immediately to the phenomenon of growing domestic violence in the light of Covid-19. To facilitate an easier comprehension, it is befitting to first, identify a broad measure and then specify states which have implemented that measure, rather than listing down all measures taken country wise.

A. Pharmacies and groceries as safe spaces to report abuse

Many countries have effectively turned essential service outlets such as pharmacies and groceries into safe spaces to report abuse. The Argentine government has declared pharmacies as safe spaces to report abuse.^{xxii} In France, not only have pharmacies been declared a safe space to report abuse, victims have also been given code words such as ‘mask 19’ in case they are accompanied by abusers. Moreover, the French government has also made provisions for pop-up counselling services in grocery stores.^{xxiii}

B. Modifications to legal frameworks

Australia has led the way in making quick modifications to its family law framework in order to allow law enforcement and the justice system to respond better to cases during the lockdown. Its modifications are three-fold. First, Australia has allowed courts to impose electronic monitoring requirements for bail and conditionally suspend imprisonment orders. Second, it has enabled online filing of restraining orders. Third, it has created a new offence, increased fine, and extended limitation period for restraining orders.^{xxiv}

In Spain, where lockdown rules are extremely strict, and many people are being fined for breaking them, the government has told women they will not be fined if they leave home to report abuse.^{xxv}

C. Special online services for victims

Another class of measures being taken by administrations are creating easily accessible online services. For example, in Columbia, the government has guaranteed continued access to virtual gender-based violence services, including legal advice, psychosocial advice, police and justice

services, including hearings. In Antigua and Barbuda, online and mobile service providers are taking steps to deliver support such as free calls to helplines.^{xxvi}

The Government in Wales has declared its ‘Live Fear Free’ helpline will remain open 24/7 and reminded people that if someone is in immediate danger, they should contact ‘999’. All lead domestic abuse service providers and charities in Wales are ensuring that support is available for people at risk, survivors and their families.^{xxvii}

D. Provision of separate premises for victim

Another effective step taken by the French government is that it has recently announced that it had reserved 20,000 hotel rooms for victims of domestic violence.^{xxviii}

In the UK, Mandu Reid, leader of the Women’s Equality Party, has called for special police powers to evict perpetrators from homes for the duration of the lockdown, and for authorities to waive court fees for the protection orders. A prosecutor in Trento, Italy, has ruled that in situation of domestic violence the abuser must leave the family home and not the victim, a decision hailed as “fundamental” by the trade union CGIL. Germany and Austria, have both witnessed similar ruling by their respective courts, requiring the abuser to be evicted from shared premises on report of abuse.

E. Efforts of the civil society

In China, the hashtag #AntiDomesticViolence during Epidemic has taken off as part of advocacy with links to online resources helping to break the silence and expose violence as a risk during lockdown. Similarly, in Greece, officials said they were stepping up a campaign to help women deal with problems clearly emerging from the issue of confinement.

F. Limiting risk factors

There is evidence, although limited, to show that alcohol abuse and problematic drinking is linked to severe violent episodes.^{xxix} As a result, many countries have banned alcohol sales or limited them. Greenland and South Africa have taken these measures.^{xxx}

SITUATING INDIA IN THE EFFORTS AGAINST DOMESTIC VIOLENCE

A. 16 April order of the J&K High Court

At the outset of this discussion, it is pertinent to highlight a recent development that has taken place in India. The Jammu & Kashmir High Court took suo-moto cognizance of a rise in domestic violence cases and passed an order directing authorities to make certain arrangements.^{xxxix} Salient directions of the Court were inspired from a comparative analysis with efforts of other jurisdictions. These were;

- (i) Creation of dedicated funding to address issues of violence against women by the UTs of J&K and Ladakh.
- (ii) increased availability of call in services to facilitate discreet reporting of abuse
- (iii) Increased tele/online legal and counselling service for women and girls;
- (iv) Designated informal safe spaces for women, say grocery stores and pharmacies, where they can report domestic violence/abuse without alerting the perpetrators.
- (v) Immediate designation of safe spaces (say for instance empty hotels/education institutions etc.) as shelters for women who are compelled to leave their domestic situation. These shelters must be treated as accessible shelters.
- (vi) Giving urgent publicity to information regarding all of the above measures as also the availability of the facilities for seeking relief and redressal against the issues of domestic violence.
- (vii) Increasing awareness campaigns on all aspects of the issues.

B. Immediate course of action

The order of the J&K High Court is questionable for a possible encroachment of policy issues. Commenting on the Court's actions in that regard is beyond the scope of this paper. The directions given by the Court (viewed in isolation of its power to do so) are commendable.

The most suitable course of action hereafter, may be, for the government to formulate rules as per the power vested to it under Section 37 of the Domestic Violence Act for the whole country. These rules can be applicable specifically to the lockdown period and take into consideration all measures recommended by the division bench of the J&K High Court in the aforementioned order.

The government may further, under Section 11(a) of the enactment, take all measures to give wide publicity to the provisions of the law through public media including the electronic and the print media.

In addition, civil society should take a proactive online role and becoming reporting mechanisms and the bridge between victims of abuse and the government and law enforcement. The government should also make arrangements for victims to live separately in case of reporting of a case.

CONCLUSION

The Covid-19 pandemic has caused lockdown measures to continue for another month globally and signs of respite are only foreseeable in a limited number of countries. Based on the discussion in this paper, there is a recorded increase in domestic violence cases and there is no reason to believe that it is going to subside. The United Nations has categorically urged the international community to take action on this issue within their respective jurisdictions. Many countries have responded with a variety of measures. India on the other hand has not been as swift in its response. In this light, the order of the J&K High Court taking *suo-moto* cognizance of the matter can serve as a guiding light for the government to bring about much needed measures, while also using print and electronic media to publicize and spread awareness about domestic violence regulatory mechanisms throughout the country. Mistreatment of women in any form and manner is unacceptable and affects them even more in a society like India where they are not financially independent or emancipated. In this context, the Covid-19 pandemic has the potential to make life worse for them. As the government in a constitutional democracy, the government must look out for its women as soon and effectively as possible.

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