

“The PWDV Act: An Unfit Legislative Shield?”

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Abstract

This article throws light on the factors accelerating Domestic Violence (DV) during the lockdown. The authors attempt to critically analyse the PWDV Act, examine the current DV cases with state response towards it, and suggest measures for improvisation. More specifically, authors have essayed to answer whether the act can provide sufficient support structure to curb the social menace.

Introduction: Many Shades of Domestic Violence

COVID-19, has impacted the entire globe at once, creating ripple effects in all sectors. From losing an online game in Ludo and causing spinal injury to his wife¹ to a girl beaten up by her own brother,² certain groups have been more severely affected than others. Some are victims of the disease; others are victims of the lockdown. This is a result of pre-existing inequalities that the ongoing global crisis only exacerbates.

It is statistically proven that LGBTQ fall victim to sexual and DV at equal or higher rates than their heterosexual counterparts.³ Yet, the act, the government and the DV awareness movements have failed to consider the vulnerability of the members of LGBTQ Community.

Furthermore, the absence of emergency provisions in the act, make it fit for the pre and post pandemic period but not for the ongoing crisis. When the government decided to impose a complete lockdown, the impact on families characterised by a traditional patriarchal structure, prone to DV, was not considered. The state is giving priority to economic ramifications, leading to inadequate action towards this ‘Shadow Pandemic’.⁴

¹“Man Beats Wife After Losing To Her In Online Ludo, Injures Spine: Police”, NDTV, at <https://www.ndtv.com/india-news/coronavirus-lockdown-gujarat-man-injures-wifes-spine-after-losing-in-online-ludo-game-2219742?amp=1&akamai-rum=off#referrer=https://www.google.com> (Last updated April 28, 2020).

² *Id.*

³“Domestic Violence and the LGBTQ Community”, NCADV, at <https://ncadv.org/blog/posts/domestic-violence-and-the-lgbtq-community> (Last updated June 6, 2018).

⁴ “Violence against women and girls: the shadow pandemic”, UN WOMEN, at <https://www.unwomen.org/en/statement-ed-phumzile-violence-against-women-during-pandemic> (Last accessed 3rd May, 2020).

LGBTQ Community: An Unacknowledged Victim

Before the introduction of the Act, section 498A⁵ of the IPC, defining ‘cruelty’, was the sole recourse available to domestic violence victims. The primary objective of the DV Act is protection of wives, sisters, widows or female live-in partners from violence or any form of abuse at the hands of the male counterparts or relatives. The Act fails to recognise the rights of third gender, i.e. LGBTQ.

NALSA Judgement of 2014⁶, declared transgender people to be a ‘third gender,’ affirmed that the Fundamental Rights given under India’s Constitution should extend equally to transgender people and gave them the right to self-identity. The Act was amended in 2016, still no provisions were introduced for the members of the abovementioned community, neither were they included under the definition of an ‘aggrieved person’, as under Section 2(a) of the Act.

Appositely, “*Navtej Singh Johar & Ors. v UOI*”⁷, legalised same sex marriages in India. However, the definition of spouse as per Section 3(b) of the act, recognises just the ‘opposite gender’ spouses, ignoring homosexual marriages. No amendment has been passed with regards to the same either. Each subset of the group, namely the youth, middle aged and the LGBTQ parents is distinctively affected.

1. **Youth:** “*Do not contact us. You’re dead to us.*” said the parents of a lesbian daughter when they left her outside the house.⁸ LGBTQ youth, due to the stay at home instructions, may be confined in hostile environment, if their family doesn’t accept their preferences.
2. **Middle-Age Members:** They are being pressurised through domestic abuse for going back to their parents, decades after leaving those places due to anti-LGBT hostility. Certain members are resorting to risky practises like ‘survival sex’⁹ for escaping hatred at home, which involves meeting people on apps like ‘Grindr’, willing to let them live for the night, in return for sex — given the current social distancing orders.
3. **LGBTQ Parents:** “People are reporting familial abuse, that they don’t realise, can count as abuse”¹⁰. A completely unpredictable practice, is the abuse of LGBTQ parents by their own children, often verbally, involving high homophobic abuses.

⁵ Indian Penal Code, 1860, No. 45, Acts of Parliament, 1860 (India), Sec. 498A.

⁶ National Legal Services Authority v. Union of India, AIR 2014 SC 1863.

⁷ Navtej Singh Johar & Ors. v Union of India, Writ Petition (Cri.) No. 76 OF 2016.

⁸ “Under Lockdown, Parents Are Discovering Their Children Are LGBT And Dumping Them On The Street”, BUZZFEED, at <https://www.buzzfeed.com/lockdown-lgbt-domestic-abuse-teens>.

⁹ Annie Banerjee, “India’s ‘invisible’ trans community struggles as coronavirus shuts life down”, REUTERS, at <https://www.reuters.com/article/us-health-coronavirus-lgbt-india/indias-invisible-trans-community-1C098> (Last accessed 23rd April, 2020)

¹⁰ “Under Lockdown, Parents Are Discovering Their Children Are LGBT And Dumping Them On The Street”, BUZZFEED, at <https://www.buzzfeed.com/lockdown-lgbt-domestic-abuse-teens>.

Health issues, domestic abuse, and substance abuse constitute the ‘toxic trio’¹¹, that prevails in the community, has chances of disseminating further due to the widespread homophobic attitude in India.

Lessons not Learnt: Forgetting the Unforgettable

Unforgettable pandemics and crisis like the Great Depression¹², Ebola¹³ etc. have demonstrated that multiple forms of violence, including aggravated sexual and domestic violence. Furthermore, there has been destructive effects of economic hardships, lost income and unemployment on domestic conflict and child well-being¹⁴. Covid 19, is set to follow the same path.

Hence, it wasn’t unforeseeable that as the world’s largest coronavirus lockdown extends, the number of cases will shoot up. It is but natural that, in emergency situations, there will be no arrangements to follow elaborate procedures listed in section 28¹⁵ of the act. Therefore, no introduction of emergency provisions further diminishes the utility of the act during the ongoing pandemic.

Unveiling Answers to Fundamental Curiosities

In Kolkata, a woman residing in a high-profile area filed a FIR on May 7, alleging abuse and torture by husband¹⁶. An organisation rescued a woman who faced physical abuse from her husband, and relocated her to her friend’s place.¹⁷ Similarly, a woman is forced to reside with her tormentor because she cannot return to her maternal house due to the lockdown.¹⁸

The current statistics about the crime rate is perplexing, and raises fundamental questions like why did the overall crime rate unexpectedly fall but increase for some particular crimes? how has the lockdown affected a specific group more? With reference to the practise of domestic violence, the answer lies in the theories of ‘victimology’¹⁹ i.e. process of understanding relationship between the accused and victim and psychological and sociological effects of the crime.

¹¹ Mark Willis, “Part One: Chief Executive of Willis Palmer on the impact of Covid-19 on the "toxic trio", THE PARLIAMENTARY REVIEW, at <https://www.theparliamentaryreview.co.uk/the-impact-of-covid-19-on-the-toxic-trio> (Last accessed 7th May, 2020).

¹² “Covid-19 lockdown & domestic violence”, FEMINISM INDIA, at <https://feminisminindia.com/covid-19-lockdown-domestic-violence-linked/>(Last updated 23rd April, 2020).

¹³ *Supra* Note 9

¹⁴ *Supra* Note 12

¹⁵ The Protection of Women from Domestic Violence Act, 2005, No. 43, Acts of Parliament, 2005 (India), Sec. 28.

¹⁶ “Domestic violence on the rise as women fail to reach out for help”, TIMES OF INDIA, at https://m.timesofindia.com/city/kolkata/domestic-violence-on-the-rise-as-women-fail-to-reach-out-for-help/amp_articleshow/75652359.cms (Last accessed April 27, 2020).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ “Introduction to Victimology”, SAGE, at https://uk.sagepub.com/sites/-binaries/83271_Chapter_1.pdf (last accessed 6th May, 2020).

In the Indian context, routine activity theory best describes why women fall prey to certain crimes more. It enlists three kinds of victimisation situations, all of which are applicable to the Indian domestic setup.

1. *Suitable target*: Women have always been portrayed as docile beings, with too many duties and too less decision-making authority.
2. *Absence of guardians*: In Indian families, in-laws not only fail to prevent violence, at instances, they themselves cause it too.
3. *Motivated offender*: Due to the persisting patriarchal traditions, men are raised with a delusion of them being superior and having full control over the woman they marry.

In rural India, a lot of DV isn't even looked upon as violence, the victims just accept it ineluctably.²⁰ Majority of Indian families run in a feudal and patriarchal manner. Women's work inside houses is rarely addressed in monetary terms. Which leads to her subjugation and in a situation like lockdown, this increases further.

Surprisingly, even women of urban and educated households are being subjected to such maltreatment. Victims there have been sceptical in seeking help from outside as cultural norms have generated a certain hesitance in subjecting the families and their intimate relationships to public scrutiny.

State Response: The Saviour's Inaction

As her husband began beating her, Parvathi ran into the narrow lanes outside her house, calling for help from neighbours. Her sole remedy was out of question due to the barricades everywhere. After gathering massive courage, she approached the barricade for help 'sort it out, the police and courts are shut', said the police officer.²¹

As per section 5²² of the act, the police officer on receiving the information about a case of DV needs to inform the victim about her rights and recourse available. However, this duty is being breached on the pretext of social distancing or police/courts not functioning due to the lockdown.

As the virus roils consecutively in various parts of the country, the societal inequalities rise as much as the disease's economic ramification. Relevantly, section 11²³ of the act obligates the government to raise awareness about the provisions of the act amongst the masses through

²⁰ "Domestic violence cases registered during lockdown in Punjab", THE WEEK, at <https://www.theweek.in/news/india/registered-during-lockdown-in-punjab.html> (last updated 23rd April, 2020).

²¹ "Locked abusers – India domestic violence surge", at <https://www.aljazeera.com/news/2020/04/locked-abusers-india-domestic-violence-surge-200415.html> (last accessed April 30, 2020).

²² The Protection of Women from Domestic Violence Act, 2005, No. 43, Acts of Parliament, 2005 (India), Sec. 5.

²³ The Protection of Women from Domestic Violence Act, 2005, No. 43, Acts of Parliament, 2005 (India), Sec. 11.

public media, sensitise and train police officers periodically and ensure cooperation and periodical review of services with regards to domestic violence.

The prevailing circumstances explicitly demonstrate that no awareness campaigns or training programs have been organised for the government officers or the civil society. With expansion of cyberspace and availability of inappropriate sexual content online has somehow contributed in the surge of sex related offences. After the resumption of alcohol sales, there's a high probability of cases further rising.

Conclusion and Suggestions

Ironically, the act that claims to be a legislative shield against DV, proves to be unfit for crisis situations, the time period when it is needed the most. This is because neither an emergency provision nor the rights of LGBTQ community, have been included in the act. Moreover the state has also failed to take necessary measures to curb this issue. Hence bimodal changes, in civil society and government are suggested, in order to improvise the present status quo.

1. Government

- The first move is for government officials and law enforcement agencies to understand the severity of the issue, to believe victims. Reaching out to victims in distress must be classified as an essential service.
- Helpline Numbers and Counselling: Proper training of the staff is essential as there's a probability that they themselves might be subjected to DV. Moreover, the Indian culture still hasn't accepted the third gender with open arms, hence unbiased attitude needs to be ensured amongst the staff in case of LGBTQ specific, or general helplines.
- The most basic, yet incidental solution is spreading awareness through public forums about the recourse available and the punishment given, as perpetrators tend to think that nothing will happen to them.
- The country is divided into Red, Green and Orange zones. Police officers and advocates in each zone shall be assigned the protection officers and tailor suited plans should be curated for each zone according to its requirement and condition.

2. Civil Society

- Frontline health workers in rural areas need to be the first point of contact for abused women, with panchayats and women's self-help organisations working together to ensure women's protection, counselling and security.
- Learning from France: Since going to grocery shopping and pharmacies is one of the few "escape routes" for victims, the workers at these places can be

informed about the victim's issues through secret codes, and they can further inform the authorities.²⁴

- Similarly, neighbourhoods may also be incentivised to report suspicions, thereby reducing Domestic abuse.

²⁴ "COVID-19 and Essential Services Provision for Women and Girls", UN WOMEN, at <https://www.unwomen.org/-/media/headquarters/attachments/sectionsbrief-covid-19-and-essential-services-provision-for-survivors-of-violence-against-women-and-girls-en> (Last accessed 2nd May, 2020).