



**THE PARALLEL PANDEMIC: A SOCIO-LEGAL ENQUIRY INTO CASES OF DOMESTIC VIOLENCE AMIDST COVID-19 AND ITS INTERNATIONAL RESPONSE WITH SPECIAL REFERENCE TO INDIA**

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*This article briefly attempts to look at the prevailing worldwide conditions relating to Domestic violence in COVID-19. It highlights major laws of various countries for the same, accompanied by the steps that have been taken by such countries to eradicate domestic violence. It further explores the psycho-social circumstances under which India finds itself and analyses how those circumstances could have been a contributing factor towards an upsurge of such cases. This article explores both the social as well as a legal scenario given this prevailing parallel pandemic. There has been a fair attempt to understand both the*

*sides of this issue-the social factors that lead to domestic violence and the legal scenario for the victim; to avoid undue bias. A special section is dedicated to recent government responses. Lastly, the author has suggested a few quick-fix ways through which this nation-wide problem could be handled. In this aspect, the essay makes three substantial contributions. First, it highlights the prevalent psycho-social factors in India. Secondly, it briefly touches upon the laws and the responses towards this violence on an international scale. Third, it explores Indian laws and recent steps taken by the government to mitigate this problem.*

1. INTRODUCTION

On 23 August 2005, The House of People (Lok Sabha) spent hours deliberating upon the “Protection from Domestic Violence Bill” of 2005<sup>1</sup>. Ironically, the cases of domestic violence have since increased<sup>2</sup>. It certainly doesn’t help to know that less and less number of women ended up seeking government assistance in this regard.<sup>3</sup> In all

<sup>1</sup> Former Central Minister, Mrs. Kanti Sinha, while introducing the “Protection of Women from Domestic Violence Bill, 2005”- hereinafter DV, Act) mentioned two main reasons-first, that societal lens looks at women in an extremely demeaning way. She spends all her life looking for her identity in phrases such as ‘Liability upon her father’ and ‘Child bearing object’. Second, Patriarchy had dug its way into Indian minds so profusely, that anyone or anything that stood up against it was thwarted by this orthodox society. It was amongst the worst forms of violence against a woman. Not only was it perpetrated by a woman’s own family member but it also brought with it, a higher degree of social stigma upon the women. According to Former Speaker, Mrs. Sumitra Mahajan, most of the laws eventually suggested divorce as the penultimate solution. Most of the women didn’t actually want a divorce. They also were reluctant towards the idea of their husbands going to jail. Instead, they just wanted the violence to end. See, Lok Sabha Debates (2005) <<http://164.100.47.194/debate/text/14/22-08-2005.pdf>> accessed 5 May 2020.

13 Years hence, the Supreme Court in “Indian Young Lawyers Association vs. The State of Kerala” also attacked patriarchy in following words-“to treat women as children of a lesser God is to blink at the Constitution itself” See, Poongkhulali B, 'Sabarimala Verdict: In Striking Down Patriarchal Tradition, SC Paves Way For Positive Interference In Religious Affairs' (First Post, 29 September 2020) <<https://www.firstpost.com/india/sabarimala-verdict-in-striking-down-patriarchal-tradition-sc-paves-way-for-positive-interference-in-religious-affairs-5284671.html>> accessed 5 May 2020.

<sup>2</sup> This also included Cruelty by husband or his relatives under (Section 498-A) and dowry demands and deaths. Domestic violence can be termed as a symptom of these crimes. See, Ministry of Home Affairs, 'Crimes In India - Statistics' (National Crime Records Bureau 2018) 195-294.

<sup>3</sup> As per NFHS-4 (National Family Health Survey) report of 2016, only 14% of women who ever



debates held for implementing this legislation, none focused upon the psychological factors or the social constructs under which domestic violence occurred. Why culprits of this offence behaved the way they did? What possible factors – social, psychological, emotional, could lead them to behave so irrationally.

14 years hence, we entered the year of 2020 with a major setback. As Covid-19 began taking lives, many people were forced to abandon public spaces and take refuge within their homes. However, this had an adverse impact upon the women surviving domestic violence<sup>4</sup>. Before, women had an option to step out of their houses and seek shelter/rehabilitation at a different place. The entire legal system was at their disposal. In cases of such violence, it is suggested that the best way to mitigate is to isolate oneself from the perpetrator and his/her social circle. But if your family is the perpetrator and you are unable to go out, what options do you have? COVID-19 has indeed led to the birth of another pandemic.

experienced Physical or sexual violence reported. This has sharply fallen from 24% in NFHS-3 report. To make matters worse, nearly 33% of woman had been experiencing domestic violence from a tender age of 15. It seems that Physical violence upon women only increased with age. For instance, it increased from 17% to 35 % from the age group of 15-19 to 40-49. In a sharp contrast, 4% women initiated physical violence against their husband/lover/spouse when they weren't hurting her. See, Ministry of Health and Family Welfare, 'National Family Health Survey 2015-16' (International Institute of Population Sciences 2017) 572.

<sup>4</sup> A data from United Nation's Population Fund revealed that domestic violence could increase up to 20% in average of three months of lockdown; this was for all 193 UN members. It further calculated that lack of access to contraceptives could lead millions of girls to undergo genital mutilation. The National Women Commission has registered a day by day increase of domestic violence complaints, with 69 being received

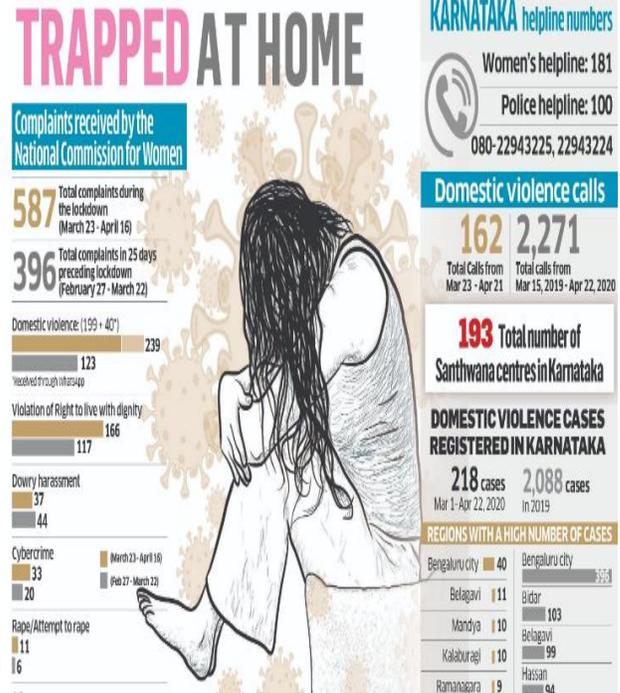


Figure 1: Depicting Calls received by NCW and a State Government's response to it<sup>5</sup>

Campaigns certainly don't help<sup>6</sup>. In fact, campaigning about this problem only puts the

on the very first day of lockdown. See, Author Unknown, 'Govt Helpline Receives 92,000 Calls on Abuse and Violence in 11 Days' (*Economic Times*, 8 April 2020) <<https://economictimes.indiatimes.com/news/politics-and-nation/govt-helpline-receives-92000-calls-on-abuse-and-violence-in-11-days/articleshow/75044722.cms?from=mdr>> accessed 8 May 2020.

<sup>5</sup> Shemin Joy, 'No Lockdown for Domestic Violence', (*Deccan Herald*, 26 April 2020) <<https://www.deccanherald.com/specials/insight/coronavirus-crisis-no-lockdown-for-domestic-violence-829941.html>> accessed on 15 May 2020

<sup>6</sup> Guest Writer, 'Covid-19: Problems with Campaigns against Domestic Violence' (*Feminista India*, 11 May 2020) <<https://feministaindia.com/2020/05/11/problems-campaigns-domestic-violence-covid-19/>> accessed 16 May 2020.



abuser at alert. Although NCW (National Commission for Woman) and various district authorities have formed rescue teams<sup>7</sup>, yet it is highly unlikely that helpline numbers and rescue teams would be able to reach the remotest corners of India. Moreover, many domestic violence victims could potentially be threatened and further tortured, to restrain them from contacting the authorities.

Moreover, India doesn't entirely reside in posh, well-connected urban and metropolitan areas where help teams are just a few kilometres away. It is also found in semi-urban and rural areas where help could be difficult to reach. The rural areas then become susceptible to this social evil, more so than the urban areas.<sup>8</sup> Hence, as a measure of foresightedness, we must first understand why domestic violence continues to be a menace and then perceive solutions that suit the Indian context.

## 2. PATRIARCHY IS NOT THE ONLY CAUSE

<sup>7</sup> PTI, 'Effective Steps Taken To Curb Domestic Violence During Lockdown, TN Tells Madras HC' (*The New Indian Express*, 25 April 2020) <<https://www.newindianexpress.com/states/tamil-nadu/2020/apr/25/effective-steps-taken-to-curb-domestic-violence-during-lockdown-tn-tells-madras-hc-2135296.html>> accessed 10 May 2020.

<sup>8</sup> Ministry of Health and Family Welfare (n-3) 569

<sup>9</sup> Many researchers deny the claims of curbing patriarchy. It is about resisting patriarchy and how women can help another woman in escaping its clutches. However, in many cases in India, it is the mother/step-mother who commits violence upon the daughter/daughter-in-law. The reasons for such battering may/may not be based upon patriarchy. Even basic misdemeanour can lead to battering. Sometimes, a girl/woman may be beaten for not studying or for not performing well in academics. To say that domestic violence has its roots in patriarchy is to include all such circumstances into its fold. Hence, patriarchy

To many researchers, the idea of 'patriarchy' as the root cause seems appealing. Take any women-centric problem in India and at least one of the many explanations would consist of 'patriarchy'. However, these simple explanations fall short of providing a practical solution. How does one curb patriarchy? An echoing solution comes in the form of women joining hands together and putting up a united front against orthodox men<sup>9</sup>. If the solution were to be that easy, we wouldn't be witnessing an increase in violence cases against women.

Hill mentions about the complexity of this problem and how multi-layered it is.<sup>10</sup> Most of the legislations hand-pick a single problem, isolate the victims of such problem from social parameters and then offer solutions in compensatory form. The idea of considering that a system is not different from its participant becomes a constraint in finding practical solutions.<sup>11</sup> In this way, men end up taking the blame, whether they contribute towards the tenets of patriarchy or not.

must be looked from gender-neutral lens. It is neither about men nor about women. It's about equality. For understanding why patriarchy is not about men, See, Miki Kashtan, 'Why Patriarchy Is Not About Men' (*Psychology Today* 'Psychology Today', August 2017) <<https://www.psychologytoday.com/us/blog/acquired-spontaneity/201708/why-patriarchy-is-not-about-men>> accessed 7 May 2020.

<sup>10</sup> Investigative Journalist Jess Hill mentions how easy it is to follow the feministic Model of Violence that asks 'Why do men beat their wives', but she argues that this is just one model that explains the outcomes. The psychopathology model doesn't take patriarchy into consideration. It asks 'Why did this Man beat his wife'. This Model is more popular in United States than in other parts of the World; See, Jess Hill, *See What You Made Me Do* (Black Inc Books 2019).

<sup>11</sup> Ibid.



The word patriarchy symbolises control and domination. It is our very nature to subdue our surroundings to our will to thrive. This aspect of our nature is gender-neutral. In the ancient era, women were subdued essentially to determine the paternity of the child they were carrying<sup>12</sup>. As years passed and this practice passed onto generations, it bore a more vicious character and led to a downright disregard of women. However, to say that men and patriarchy are the same is to blindside the plight of men who are trained to act more masculine to conform to the societal standards of patriarchal domination. Sometimes, women physically torture women. A woman may also mentally abuse another woman. Based upon all these observations, it is ludicrous to regard patriarchy as the sole cause behind any gender-based crime. Men and patriarchy cannot be placed upon the same pedestal. Therefore, we must examine the psychosocial factors responsible for a human's aggression and how lockdowns are contributing to the escalation of its symptoms. These observations are strictly limited to the Indian context.

## 2.1 ECONOMIC STRESS AND SOCIAL ISOLATION

<sup>12</sup> Katherine Anne Gabriel, 'Performing Femininity: Gender In Ancient Greek Myth' [2016] Bard Digital Commons. 16-18

<sup>13</sup> Ibid (n-3) 568-569

<sup>14</sup> Economic Stress and Joblessness are closely associated with a sense of powerlessness as per 'Masculinity' Norms. Even during Marriages, Indian parents often look at the Economic Status of a Man before giving away their daughter. Normalization of such norms lead to a pre-disposition towards feeling 'loss of power' whenever the financial crisis set in. See, Priya Nanda, Abhishekh Gautam, Ravi Verma,

Studies have shown that women in rural areas are comparatively more susceptible to spousal violence than their counterparts living in urban areas. This also has a direct correlation to the educational and financial status of a woman<sup>13</sup>. The more educationally qualified and financially independent a woman becomes, the less likely she is to become a victim of domestic violence. However, this lockdown has not only made it difficult to step out of one's house but also economically weakened many families. A domestic violence victim generally seeks familial support. However, given the economic conditions, sheltering another person may be financially draining. This could either force the victim (especially if she is financially dependent) to stay and survive the violence or be rendered homeless. Seen from a 'Masculine' point of view, men who undergo economic stress commit Intimate Partner violence (hereinafter IPV)<sup>14</sup>.

Adawi and Bahlani (2007) mention Social Isolation as classic perpetrator behaviour for IPV Abusers<sup>15</sup>. With lockdowns firmly in place, the victim might normalise threatening signals such as raising fists, shoving, pushing, name-calling, demeaning the victim as part and parcel of her/his daily life. This would not only induce the abuser to increase the intensity of his violence but would also damage the victim's self-esteem. As Sabri

Aarushi Khanna, Nizamuddin Khan, Brahme Dhanashri, Shobhana Boyle and Sanjay Kumar [2014] 'Study on Masculinity, Intimate Partner Violence and Son Preference in India' (New Delhi, International Centre for Research on Women) 36-37

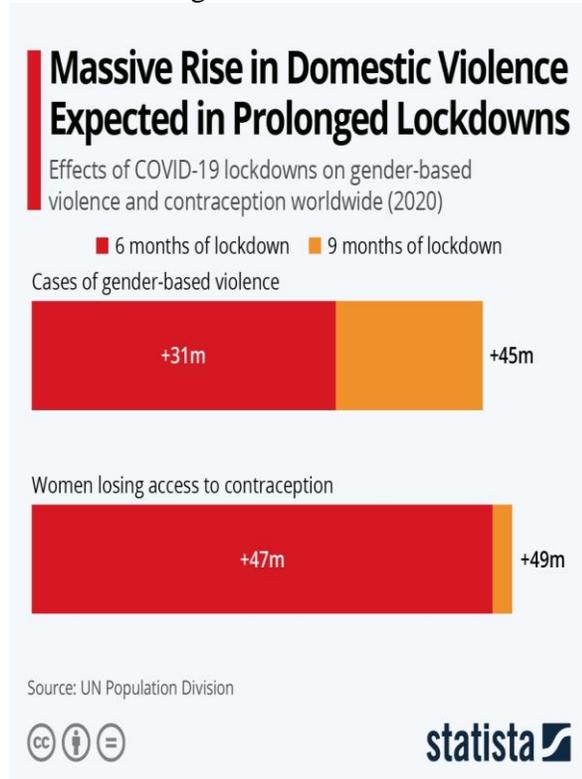
<sup>15</sup> Samir-Al Adawi and Sabah-Al Behlani, 'Domestic Violence "What's Love Got To Do With It?" (2007) 7 Sultan Qaboos University Medical Journal

<[https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3086419/?log\\$=activity](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3086419/?log$=activity)> accessed 10 May 2020



and Campbell (2015) rightly point out, women are lauded for suffering in silence and not abandoning their roles<sup>16</sup>

Figure 2: Depicting a proportional relationship between Social Isolation and cases of Domestic Violence.<sup>17</sup>



2.2 PSYCHOPATHOLOGY AND ALCOHOL CONSUMPTION

Despite plentiful research, biology has never been regarded while studying domestic violence perpetrators. Many researchers have found that excessive testosterone and abnormalities in serotonin levels can have a direct impact on a person’s behavioural patterns<sup>18</sup>. People with such abnormalities have a higher tendency to abuse their partners due to an increase in responsiveness to external stimuli. Domestic violence abusers were found to have borderline personality disorders, intermittent explosive disorder and a poor, impaired connection between their cortex (responsible for consciousness and problem-solving) and amygdala (processing of emotions).<sup>19</sup> This lockdown has not only brought with itself a pandemonium of domestic abuse but also of mental illness.

Hence, stress could contribute towards an

<sup>16</sup>“Indian women are exposed to intimate partner violence due to factors operating at multiple contextual levels in their lives. For instance, in India, factors such as cultural practice of dowry, growing up witnessing violence, presence of multiple children in the family, forced sex, partner’s threats of harm, jealousy and controlling behaviours and residence in areas with high murder rates have been found to be positively associated with intimate partner violence.” Jacquelyn C Campbell and Bushra Sabri, 'Intimate Partner Violence against Women in Slums in India' (2015) 141 Indian Journal of Medical Research <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4525400/>> accessed 10 May 2020.

<sup>17</sup> Katharina Buchholz, 'Massive Rise in Gender-Based Violence Expected in Prolonged Lockdowns', (Statista, 30 April 2020) <<https://www.statista.com/chart/21566/global-rise-in-gender-based-violence-covid-19/>> accessed on 3 June 2020

<sup>18</sup>“Biological correlates of IPV perpetration can be categorized into the following domains: head injury and neuropsychology; psychophysiology; neurochemistry, metabolism, and endocrinology; and genetics. Head injury rates among abusers have been consistently higher than those of the general population. Abusers have been distinguished from non-abusers on the basis of their performance on several neuropsychological measures, particularly those of verbal intellectual ability, executive functioning, and attention. Abusers’ poor performance on these measures reflects frontal lobe dysfunction, which head injury alone cannot fully explain”. Lavinia A. Pinto and others, 'Biological Correlates of Intimate Partner Violence Perpetration' (2010) 15 Aggression and Violent Behavior <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3564655/>> accessed 9 May 2020.

<sup>19</sup> Ibid.



escalation in the aggression of the perpetrator.

Berg and colleagues (2010) concluded that childhood exposure to domestic violence, alcohol consumption and frustration leads to the same repetitive behaviour in adulthood<sup>20</sup>. It not only puts family members in distress but also becomes contributory towards incurring financial debts and burdens. Work-related stress and alcohol consumption together become major factors in domestic violence. With the government opening liquor shops at select areas, the problem of domestic violence can be expected to increase by threefold.

### 2.3 SOCIAL STATUS

The rural population of India (as reported in 2018) was 65%<sup>21</sup>. As already stated above, women of rural areas are a greater target than the woman in urban areas. It has been reported that “Men living in rural areas are more prone to perpetrating IPV than men living in urban areas”<sup>22</sup>. This is also true for wealth. In India, nearly 75% of rural Indians survive on Rs.33 per day<sup>23</sup>. Given the standstill that has halted India, it is highly likely that it could also increase the pace of domestic violence. Another reason could also

be less exposure to quality education in rural areas. Hitting a woman is considered ‘normal’ in many villages. However, this problem has always managed to permeate all social boundaries. It does not discriminate between rich and poor now. The only difference lies in the underreporting of such incidents in rural areas (due to normalization) as compared to urban and semi-urban areas.

### 3. LEGAL SCENARIO

#### 3.1 INTERNATIONAL ASPECT

The first known use of this term was by Lord Ashley. While addressing the parliament in 1973, he stated that the term meant violence in the home. Since then, the UK model of law addressing domestic violence [Hereinafter DV] has evolved. Now, The Cross-Government departments across the UK define DV as –

Any incident of threatening behaviour, violence or abuse (psychological, physical, sexual, financial or emotional) between adults who are or have been intimate partners or family members, regardless of gender or sexuality<sup>24</sup>

<sup>20</sup> See, Marlene J. Berg and others, 'The Effects Of Husband's Alcohol Consumption On Married Women In Three Low-Income Areas Of Greater Mumbai' [2010] HHS Author Manuscripts - PMC <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2956186/>> accessed 10 May 2020.

<sup>21</sup> Author Unknown, 'India - Rural Population - 1960-2018 Data | 2020 Forecast' (Tradingeconomics.com, 2020) <<https://tradingeconomics.com/india/rural-population-percent-of-total-population-wb-data.html>> accessed 10 May 2020.

<sup>22</sup> More than two-fifths of men (42%) belonging to poorest wealth class reported perpetrating violence in

the past 12 months, whereas only a fourth of men amongst a higher strata of wealth reported doing so. Ibid.

<sup>23</sup> Saumya Tewari, '75 Percent Of Rural India Survives On Rs 33 Per Day' (*India Today*, 2015) <<https://www.indiatoday.in/india/story/india-rural-household-650-millions-live-on-rs-33-per-day-282195-2015-07-13>> accessed 12 May 2020.

<sup>24</sup> Home Office, 'Cross-Government Definition of Domestic Violence – A Consultation Summary' (2012) <[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/157800/domestic-violence-definition.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/157800/domestic-violence-definition.pdf)> accessed 1 June 2020



Furthermore, the “Domestic Violence, Crime and Victims Act 2004” especially deals in providing support and legal supervision to the victims of this crime. For the homeless, it means a “sub-category of violence as violence or threats of violence from a person associated with the victim”<sup>25</sup>. However, it was interpreted by the Supreme Court to mean “physical violence, threatening or intimidating behaviour and any other form of abuse which, directly or indirectly, may have caused harm to the other party or to the child or which may give rise to the risk of harm”<sup>26</sup>. The European Council, in 2002 had already adopted a recommendation (no. 5) for protecting women from cases of violence. A separate monitoring department was set up owing to such recommendations in 2005. Later, the Istanbul Convention of 2014 also helped in developing the roots of criminal jurisprudence against violence on women in all its forms. Recently, Home Secretary Patel further assured that Domestic violence helplines were operating and that women shelter homes would remain open during the lockdown.<sup>27</sup>

Despite many efforts, COVID-19 resulted in an upsurge of Domestic abuse cases by 20%. The local cops ended up arresting more than 100 people in a single day.<sup>28</sup> However, the National Centre for Domestic Violence assured that they were closely monitoring the situation. The perpetrators of such crimes were promptly being arrested.

### 3.2 UNITED STATES’ LAWS

The American congress of 1994 passed the “Violence against Women Act” which makes domestic violence a federal offence. According to the Act, it’s a federal crime to “cross state lines or enter or leave Indian country and physically injure an intimate partner; or Cross state lines to stalk or harass or to stalk or harass within the maritime or territorial lands of the United States (this includes military bases and Indian country), or to cross state lines to enter or leave Indian country and violate a qualifying Protection Order.”

Furthermore, the “Gun Control Act of 1968” makes it a crime – “to possess a firearm and/or ammunition while subject to a qualifying Protection Order; and to possess a firearm and/or ammunition after conviction of a qualifying misdemeanour crime of domestic violence.”

These Acts not only make sure that the perpetrator gets an adequate punishment but also provide for restitution. The damages can be covered to include psychological, medical and physical damages to body and property.

In *Giles vs. California*<sup>29</sup>, the Supreme Court of the United States suggested various ways through which this problem could be tackled-

<sup>25</sup> Housing Act, 1996, s.177 (1A)

<sup>26</sup> Family Division Practice Direction (Residence and Contact Orders: Domestic Violence and Harm) (No 2) [2009] 1 WLR 251

<sup>27</sup> Home Office, ‘Home Secretary’s statement on domestic abuse and coronavirus (COVID-19): 11 April 2020’ (*Gov.UK*, 11 April 2020) <<https://www.gov.uk/government/speeches/home-secretary-outlines-support-for-domestic-abuse-victims>> accessed on 25 May 2020

<sup>28</sup> Vikram Dodd, ‘Charges and cautions for domestic violence rise by 24% in London’ (*The Gaurdian*, 24 April 2020) <<https://www.theguardian.com/society/2020/apr/24/charges-and-cautions-for-domestic-violence-rise-by-24-in-london>> accessed on 1 June 2020

<sup>29</sup> [2008] 554 U.S 353



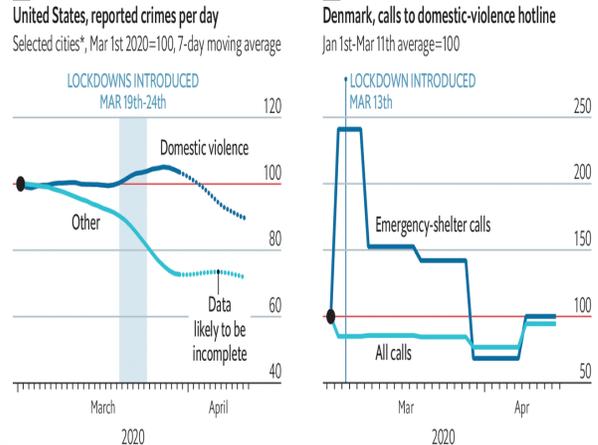
Domestic violence is an intolerable offence that legislatures may choose to combat through many means—from increasing criminal penalties to adding resources for investigation and prosecution to funding awareness and prevention campaigns.

Furthermore, the “Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (*Belem do Para Convention*)” of 1994 does not use the term in its texts but has been construed into the document by judicial interpretations. For instance, in the case of “*Maria da Penha Maia Fernandes v. Brazil*”<sup>30</sup>, Article 12 was utilized for filing a complaint to IACHR. Despite such well-meaning legislation and laws, many countries in the US saw an upsurge in Domestic violence cases since March. As per a report published by NBC News-

Houston police received about 300 more domestic violence calls in March than they did in February, a roughly 20 percent increase. Charlotte-Mecklenburg, North Carolina, police fielded 517 additional calls about domestic violence in March compared to the same month last year, an 18 percent jump, while Phoenix police received nearly 200 more calls, an increase of nearly 6 percent.<sup>31</sup>

<sup>30</sup> Rep. No. 54/01 of 2001  
<sup>31</sup> Tyler Kingkade, ‘Police see rise in Domestic Violence calls amid coronavirus lockdown’ (*NBC News*, 5 April 2020) <<https://www.nbcnews.com/news/us-news/police-see-rise-domestic-violence-calls-amid-coronavirus-lockdown-n1176151>> accessed on 1 June 2020

Too close for comfort



Sources: Police and municipal records; Danish National Domestic Violence Hotline (Lev Uden Vold) *The Economist* \*Chicago, Kansas City, Los Angeles, Memphis and New Orleans

Figure 3: Depicting the decline in crime reporting owing to the perpetrator being in the same vicinity as the abuser; however DV reports saw an increase.<sup>32</sup>

3.3 AFRICAN RESPONSE

Africa brought in “The Domestic Violence Act, 1998”. According to it, DV means and includes-

physical abuse; sexual abuse; emotional, verbal and psychological abuse; economic abuse; intimidation; harassment; stalking; damage to property; entry into the complainant’s residence without consent, where the parties do not share the same residence; or any other controlling or abusive behaviour towards a complainant, where

<sup>32</sup> Author Unknown, ‘Domestic Violence cases have increased during Coronavirus lockdowns’ (*The Economist*, 22 April 2020) <<https://www.economist.com/graphic-detail/2020/04/22/domestic-violence-has-increased-during-coronavirus-lockdowns>> accessed on 3 June 2020



such conduct harms, or may cause imminent harm to, the safety, health or wellbeing of the complainant.<sup>33</sup>

There have been many emblematic cases that have further helped in developing the African jurisprudence on Domestic violence. For instance, in *S vs. Bolayi*<sup>34</sup>, it was unanimously accepted that eradicating DV is a constitutional obligation that the government and the citizens ought to follow.

Also, the Protocol Of “African Charter on Human and Peoples’ Rights on the Rights of Women in Africa” (Maputo Protocol) in 2003 does not directly use the word “Domestic Violence”; but in the contextual capacity of its Article 1(b), it mentions “all acts perpetrated against women which cause or could cause them physical, sexual, psychological, and economic harm, including the threat to take such acts” However, fake news and wrongly reported cases have deterred many African women to seek help. Africa has already seen a massive surge of cases in 2019. Hence, data available for 2020, might be undermining.<sup>35</sup>

### 3.4 AUSTRALIAN LAWS

While there is no single accepted definition throughout the continent, the meaning and interpretation behind all such definitions are usually the same. A DV protection order can be obtained from one’s local court. For instance, the “Domestic and Family Violence Protection Act, 1989” defines it as-

An act [which includes]: – wilful injury; – wilful damage to the other person’s property (such as wilfully injuring a de facto’s pet); – intimidation or harassment; – indecent behaviour; – threatening to commit such acts; or – procuring someone else to commit such acts.<sup>36</sup>

In *R v. Wilkinson*<sup>37</sup>, the court took a liberal view for ascertaining the causes of DV to cover the maximum ground for domestic violence liability-

The causes of domestic violence are multiple. It has been recognised that relevant contributing factors include immaturity, mental illness, abnormal personality disorders, inhibition through drug abuse, poor anger management and lack of counselling and support. Courts have identified all of the above as common causative factors in modern times.

However, such measures have all fallen short of delivering justice in the times of COVID-19. Underreporting has taken this continent by the storm. Although there have been no signs of an upsurge in phone calls upon the helplines, the number of complaints that include domestic violence has increased rapidly. According to the Interim chief of DV New South Wales, COVID-19 has led to the perpetrator and the victim of such crimes living under the same roof. Hence, direct contact via phone calls could aggravate the abuse.<sup>38</sup>

<sup>33</sup> Domestic Violence Act 1998, s.1

<sup>34</sup> [2000] SA 425 (CC)

<sup>35</sup> Chandré Gould , ‘Gender-based violence during lockdown: Looking for answers’ (*Institute for Security Studies*, 11 May 2020) <<https://issafrica.org/iss-today/gender-based-violence-during-lockdown-looking-for-answers>>accessed on 25 May 2020

<sup>36</sup> s.11(2)

<sup>37</sup> [2008] SASC 172

<sup>38</sup> Australian Associated Press, ‘Alarming but not unexpected’: increase in domestic violence in NSW during Covid-19 crisis’ (*The Gaurdian*, 4 June 2020) <<https://www.theguardian.com/society/2020/jun/04/alarming-but-not-unexpected-increase-in-domestic-violence-in-nsw-during-covid-19-crisis>> accessed on 5 June 2020



### 3.5 INTERNATIONAL LAW INSTRUMENTS

Domestic violence/abuse was not recognised as a standalone offence or crime for quite some time. It was included in part as violence. There was a customary obligation that the basic norms of international law must be interpreted to encompass all human right violations. However, the phase of 1990s suddenly put a sharp focus upon this hidden evil. This began with Recommendation 19 of CEDAW<sup>39</sup> and the confirming DEVW of 1993.<sup>40</sup>

Later, the “*Special Rapporteur on Violence against Women*” in June of 2015 also contributed to developing a platform for the development of criminal jurisprudence upon the matter. A crux of the rights associated with various instruments can be summarised as follows.

It all began with UDHR.<sup>41</sup> Although legally not binding, it gradually gained a worldly status of a human rights Bible. All instruments followed suit. This declaration doesn't expressly bar domestic violence; however the same has been construed in customary practice. It states “Everyone has the right to life, liberty and security of person.” This also echoes in ECHR's Article 3 that states that every person has a right to be free from degrading, inhumane treatment.<sup>42</sup> This article has been extensively interpreted by ECHR to construe domestic

violence. For Instance, in “*Bevacqua and S v. Bulgaria*”<sup>43</sup>, “*A. v. Croatia*”<sup>44</sup> and “*Kalucza v. Hungary*”<sup>45</sup>, the court interpreted Article 3 to include domestic violence. Furthermore, ICCPR, 1996 also guards the life and liberty of a person. This also means protection from all such means that lead to an act of violence.<sup>46</sup> ICSECR also includes rights such as protection of law and maintenance of decent standards of living.<sup>47</sup> Ergo, member state parties have an implicit obligation to uphold such rights. Similarly, CEDAW, just like the rest of the instruments, does not expressly state domestic violence. However, its Recommendation No. 19 specifically prohibits DV acts- both publicly and privately.

The definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence.<sup>48</sup>

It further states-

Family violence is one of the most insidious forms of violence against women. It is prevalent in all societies. Within family

<sup>39</sup> Committee on the Elimination of all Forms of Discrimination Against Women, 1992

<sup>40</sup> Declaration of Elimination of Violence Against Women, 1993

<sup>41</sup> Universal Declaration of Human Rights 1948, art.3

<sup>42</sup> European Convention on Human Rights, 1953

<sup>43</sup> Appl. no. 71127/01, Judgment of 12 June 2008

<sup>44</sup> Appl. no. 55164/08, Judgment of 14 October 2010

<sup>45</sup> Appl. no. 57693/10, Judgment of 24 April 2012

<sup>46</sup> International Covenant on Civil and Political Rights 1966, art. 6 and art. 9

<sup>47</sup> International Covenant on Social, Economic, and Cultural Rights 1996

<sup>48</sup> Committee on the Elimination of Discrimination against Women, General Recommendation 19, Violence against women (Eleventh session, 1992), at ¶ 6



relationships women of all ages are subjected to violence of all kinds, including battering, rape, other forms of sexual assault, mental and other forms of violence, which are perpetuated by traditional attitudes. Lack of economic independence forces many women to stay in violent relationships. The abrogation of their family responsibilities by men can be a form of violence, and coercion. These forms of violence put women's health at risk and impair their ability to participate in family life and public life on a basis of equality.<sup>49</sup>

This recommendation mentions that DV is in contravention of “*right against torture and cruel, inhumane and degrading treatment*”; as enshrined under Article 5 of UDHR and Article 7 of ICCPR. This thought process is also backed by the Torture Convention which defines the word it as “any act which causes severe mental/physical pain and is intentionally inflicted”.<sup>50</sup>

#### 4. INDIAN SCENARIO

As mentioned earlier, DV cases in India have increased during the lockdown. In a study conducted by the Planning Commission, it was found that nearly 84% of all Indian women had been subject to violence within their homes.<sup>51</sup> To combat this evil, there are a few legislations that could be interpreted to include domestic violence within their ambit. However, this section will highlight the major Indian laws that could be brought forth while fighting against DV.

#### 4.1 THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT (2005)

This Act (Hereinafter DV Act) is the birth child of Article 15(3) of the Indian Constitution which empowers the government to make special laws for woman and children. Its uniqueness is reflected in the specific crime attribute assigned to the act. According to section DV Act, Section 3 -

Any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it 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 harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned; or otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

Although drafted with a narrow scope of application, this act has been interpreted widely to accommodate every facet of DV and/or its apprehension in physical, emotional, mental, sexual or even economic forms. The Act provides the victim with a right to share household space and its accompanying commodities. It further allows a victim to seek protection and request the court to grant protection or residence orders.

<sup>49</sup> Ibid. at ¶ 23

<sup>50</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1987, art. 1

<sup>51</sup> Indira Sharma, 'Violence against women: Where are the solutions?' (2015) 57(2) IJP <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4462781/>> accessed on 26 May 2020



Relief can be granted in the form of monetary or compensation orders. In cases where children are involved, interim custody can also be granted. By a judgement dated 8<sup>th</sup> September 2019, the Delhi HC increased the scope of this Act to provide interim maintenance even to those victims who had earning capacity and were qualified.<sup>52</sup>

In another judgement dated 5 June 2019, the SC held that the victim (wife) was eligible to not only file the case against the main perpetrator but also against the relatives of such person following Sec. 2 (q) of the DV Act.<sup>53</sup> In yet another judgement dated 20 May 2019, Delhi HC empathised with the victim's inability to sustain herself with the maintenance granted under Section 125 of Criminal procedure Code. Ergo, the court held that despite an earlier order for maintenance. The wife could approach another forum under the DV Act to request for maintenance. This maintenance under this Act, however, would be granted in adjustment to the earlier order for same.<sup>54</sup> However, in a scope-limiting judgment, Bombay HC stated that if the victim had already been divorced at the time of filing for a petition under DV Act, she would not be eligible to utilise any provisions of the said Act.<sup>55</sup> This was primarily because the DV Act requires the nature of an existing marriage (or its kind) between the complainant and abuser as a pre-requisite.

#### 4.2 SECTION 498 A OF INDIAN PENAL CODE

This Section indirectly punishes for committing domestic violence. Due to the existence of another special law in this

regard, there have been no changes in IPC to accommodate it. However, this section deals with cruelty in all its forms. The section reads-

Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

It is sometimes called a weapon and other times- a shield. It is not a stand-alone section. It has to be read with other laws to paint a complete picture. This section is usually read with section 304B of IPC; which empowers an executive magistrate to conduct an inquest in case a woman dies within first 7 years of marriage or commits suicide under circumstances that raise a “*reasonable suspicion*” that someone else has committed an offence. It is also read with Section 113B of the Indian Evidence Act, 1872 which empowers the court to presume that “if a woman was subjected to cruelty or harassment just before her death, it would amount to Dowry death”. As already mentioned in the meaning of “Domestic Violence”; dowry acts as one of the major reasons for the commission of this act. This is a crime punishable under “Dowry Prohibition Act, 1961”.Section 4 states-

If any person demands directly or indirectly, from the parents or other relatives or guardian of a bride or bridegroom as the case may be, any dowry, he shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to

<sup>52</sup>Binita Das v. Uttam Kumar [2019] Del 9666 (SCC OnLine)

<sup>53</sup> Ajay Kumar v. Lata Alias Sharuti [2019] SC 726 (SCC OnLine)

<sup>54</sup> Vikas Bhutani v. State and Anr. [2019]3 RCR 198 (CRI)

<sup>55</sup> Sadhana v. Hemant [2019] Bom 659 (SCC OnLine)



two years and with fine which may extend to ten thousand rupees: Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months.

Both sections- 498A and 4 have similar intentions. However, both these sections are mutually exclusive- meaning they do not lead to double jeopardy under Article 20(1) of Indian Constitution. A perpetrator committing domestic violence can be punished under both sections separately.<sup>56</sup> Cruelty and its sub-category of domestic violence have no local boundaries. In this way, a series of offences together connote this crime. It is a continuing offence.<sup>57</sup>

Despite the availability of every legal remedy, COVID-19 has rendered the victims of DV completely helpless. It is partially due to their inability to go out. Unlike the UK, there are few shelter homes available for women seeking protection against domestic violence. Most of these institutions are not well-maintained and could further pose a threat to the health of all those who seek refuge in these homes. With poor infrastructural capacity and lack of resources, no concrete response has been received to combat this social evil. In this regard, the next section will highlight the Indian government's response to domestic violence in COVID-19.

## 5. INDIAN RESPONSE

<sup>56</sup> *Inder Raj Malik v. Sunita Malik* [1986] Del 1510 (CrLJ)

<sup>57</sup> Criminal Appeal 917 of 2011

<sup>58</sup> Ashwani Deshpande, 'In lock down India, women fight coronavirus and domestic violence' (*Quartz*

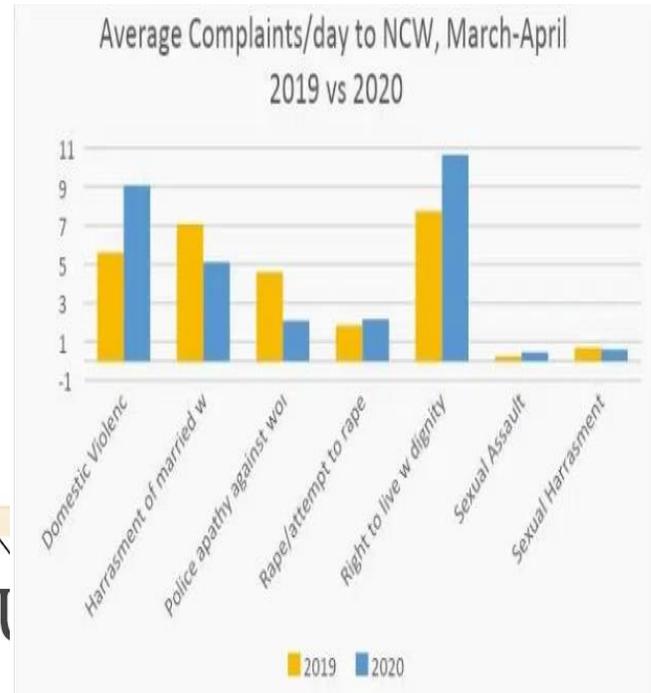


Figure 4: Depicting an increase in complaints related to domestic violence and other gender-based crimes.<sup>58</sup>

The Health Department of Tamil Nadu has been pro-active in ensuring that DV victims are taken care of. It has put up a response team in place which shall work with community women at the village and urban levels. The *Anganwadi* workers have consented to act as co-ordinators to such rescue teams. Women in certain communities were provided mobile phones so that they could stay in touch with such co-ordinators. Transport services and emergency passes

*India*, 16 April 2020) <<https://qz.com/india/1838351/indias-coronavirus-lockdown-leads-to-more-violence-against-women/>> accessed on 29 May 2020



were also provided to Protection Officers so that cases could be dealt expeditiously.<sup>59</sup>

Similarly, on April 18, 2020, the HC of Delhi directed the present ruling party in Delhi (AAP) to address the rise of DV cases amidst lockdown and explore possible options to mitigate this shadow pandemic. In reply, The Women and Child Department of Delhi informed the court that 24\*7 helplines were available and operating. Upon reception of a distress call, Quick actions were being taken immediately. Interestingly, The DCW had noticed no spike in calls related to DV. The Commission explained-

On the contrary, the number of cases reported to the helpline has decreased. While no definite conclusion can be drawn, this is probably due to the circumspection on the part of victims in reporting such incidents due to the presence of the perpetrators in the house and the fear of further violence if such attempts to report were made known to the perpetrator.<sup>60</sup>

Jammu and Kashmir HC, referring to the eye-opening data presented by National Commission of Women, took a suo-moto cognizance and issued the following directions (as an act of pro-activeness) on 18 April 2020-

1. Creation of dedicated funding to address issues of violence against women and girls as part of the COVID-19 response by the Union Territories of the Jammu and Kashmir and Ladakh;
  2. Increased availability of call-in services to facilitate discreet reporting of abuse;
  3. Increased telephone/online legal and counselling service for women and girls;
  4. Designated informal safe spaces for women, say grocery stores and pharmacies, where they can report domestic violence/abuse without alerting the perpetrators.
  5. 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.
  6. 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.
  7. Increasing awareness campaigns on all aspects of the issues.
- It further dedicated special funds and appointed local convenience stores where a DV victim could report sans the abuser in her vicinity.<sup>61</sup>

The Karnataka HC also issued various directions such as providing Legal Aid and

<sup>59</sup> Express News Service, 'Effective steps taken to curb domestic violence during lockdown, TN tells Madras HC' (*The New Indian Express*, 25 April 2020) < <https://www.newindianexpress.com/states/tamilnadu/2020/apr/25/effective-steps-taken-to-curb-domestic-violence-during-lockdown-tn-tells-madras-hc-2135296.html> > accessed on 4 June 2020

<sup>60</sup> Press Trust Of India, 'Sufficient measures taken to defend domestic violence victims amid lockdown, AAP tells Delhi HC' (*The Print*, 18 April 2020)

<<https://theprint.in/india/sufficient-measures-taken-to-defend-domestic-violence-victims-amid-lockdown-aap-tells-delhi-hc/404290/>> accessed on 1 June 2020

<sup>61</sup> Author Unknown, 'J & K HC takes suo-moto cognizance of increase in domestic violence cases amidst Lockdown' (*The Leaflet*, 18 April 2020) <<http://theleaflet.in/covid-19-jk-hc-takes-suo-moto-cognizance-of-increase-in-domestic-violence-cases-amidst-lockdown/>> accessed on 28 May 2020



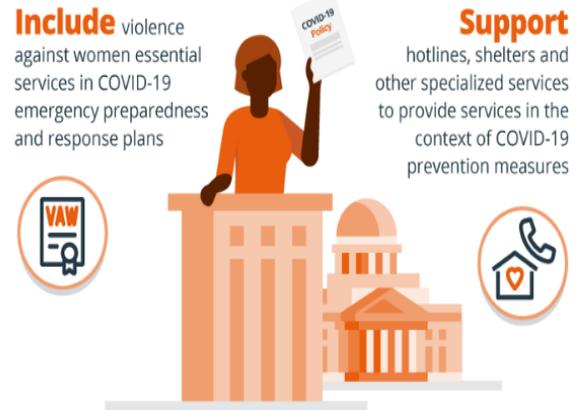
assistance to “One Stop Centres” via State Legal authorities. Two women lawyers were assigned to every District Legal Authority who shall not only provide legal aid but also counsel the victims at such centres.

Uttar Pradesh Police also launched a special helpline number to assist victims of DV. It further advertised another helpline number that could be used to report such cases. Upon reception of complaint, designated women police officials would be sent immediately to the provided address. Similarly, “Haryana State Women Commission” also launched a Whatsapp helpline number by the name “Ayog Sakhi” wherein women could report the abuse.<sup>62</sup>

Despite these measures, this issue has not been given the requisite attention it deserves. Till date, no National Advisory has been issued by the government in this regard. State governments have shown minimal effort in this regard. No importance has been laid to the multi-dimensional approach to mitigate, this issue. In this regard, the next suggestion shall attempt to suggest a few grass-root level steps for eradicating DV in this Lockdown.

## 6. WHAT CAN BE DONE?

## Governments can help protect women and their children from violence during COVID-19



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Figure 5: Depicting ways in which government could help women and children amidst lockdown.<sup>63</sup>

### 6.1 ONLINE COUNSELLING

Men/ Women who are perpetrating domestic violence must not only be reported via helplines but also counselled. Upon receiving a report, it should be made mandatory that the abuser would have to attend online counselling, failing which, he/she could attract severe penalties like confiscation of property. Basic Online Counselling (Discouraging patriarchy, embracing one’s emotions, ways to meditate and remain calm in Lockdown) could also be shared on a public video domain and made free of cost.

<sup>62</sup> Shubhra Pant, ‘78% rise in crimes against women in Haryana during lockdown’ (*Times Of India*, 4 May 2020)  
<<https://timesofindia.indiatimes.com/city/gurgaon/78-rise-in-crimes-against-women-during-lockdown/articleshow/75524329.cms>> accessed on 5 June 2020

<sup>63</sup> Human Reproduction Programme, ‘COVID-19 and violence against Women’ (*WHO*, 2020)  
<<https://www.who.int/reproductivehealth/publication/s/covid-19-vaw-infographics/en/>> accessed on 3 June 2020



The counselling could ideally be done telephonically or through video-conferencing, whichever is suitable in the abusers local/regional language. The abuser must be made aware of what the future holds if he continues down to his destructive path. This must not be construed as an alternative to sentencing, even for first-time offenders. Punishments of less than 5 years must be handed over to local and sub-local executive authorities so that they may take swiftest possible action.

Men should also be discouraged from Alcohol abuse. Separate online counselling could be set up for people struggling with alcohol abuse. To say that Alcohol could be sold “One per consumer” or “banned” is to invite bribery and black-marketing into an already crumbling system.

Moreover, it is also suggested that few interactive tutorials or videos that highlight the social evils of patriarchy could be introduced in school curriculums. Boys, from an early age, should be taught to accept their emotions and process them through healthier channels. Interactive Video Courses that discourage Gender-stereotypes must be made a part of school/college curriculums. We should keep trying prevention programs, study upon the ones which show positive results and then develop them further.

## 6.2 PROPER FUNDING

The funding and resources required to tackle domestic violence are low and minimal. NGO’s and other organizations depend solely on charities to help shelter women. This leads to their dismal conditions. Hence, whichever organisation seems promising should be funded by the government. In Fact, given the

present scenario, if airports could be opened and transport facilities resumed, government-funded shelter homes must also be opened for women, given that they take all precautionary steps to prevent the outbreak of Covid-19. For those women who are not able to report or seek help, this could go a long way in isolating them from their abusers.

An average amount of funding (based upon the standard of living in the state) could be given to those people who shelter such women, be it a family or next-door neighbours until proper help arrives. This could help the victim escape the clutches of his/her abuser even in remote corners of India. Precautionary measures such as penalty twice the grant, if found guilty of misuse, can also be placed. This would also ensure timely contact with authorities as more funds would outflow with the passage of time. Such funds could then be added to the compensation to be borne by the abuser, in addition to maintenance and other costs.

Tackling COVID-19 also requires Community policing. Growing insecurity and patriarchal pressure have led women to first few signs of an aggravating crime. In time, such ignorance could lead to physical injuries. Ergo, it is imperative to adopt community policing. The local Municipal Corporation could accord the task of community policing to honourable individuals. Such individuals would directly report under State Commissions monitoring domestic violence activities. The Criminal procedure Code already accords the power of citizen arrest.<sup>64</sup> This power could be extended to other social offences to monitor and eliminate the situation from the grass-root level. They could further work with NGO’s

<sup>64</sup> The Code of Criminal Procedure, 1973 § 43.



and other agencies to provide healthcare, food and shelter to women seeking refuge from such atrocities.

### 6.3 DISPENSE OF INFORMATION

As for dispense of information, we must first make sure that India has sound internet connectivity even in the farthest parts. Given that this pandemic may well take a year to properly take off from India, internet-connectivity must be made available to all sections of society. Based upon this pedestal, a website, solely dedicated to combating domestic violence with the state, district and sub-district based helpline numbers could be established. Procedures to file an E-Complaint in one's regional language or upload a scanned copy of it could be included upon the portal itself. Motivating tools and articles encouraging women to come out of their shells and embrace an abuse-free lifestyle, with links to government-backed portals for learning skills to become financially independent could also be included. This website could either be nationwide or state wise.

Given the current circumstances, all of these suggestions are remotely feasible and can be done in a way that utilises minimum human interaction.

### 7. CONCLUDING REMARKS

“What are you going to do? Are you going to live in the dark, locked in here? Afraid to look out, answer the door, leave? Yes, he's there, and he's clearly not going to leave you alone until one of three things happens: he hurts

you and gets arrested, or he makes a mistake and gets arrested, or you stop him.”<sup>65</sup>

Domestic violence, resolved from a purely legal perspective has not brought much success. This is evidently because violence, in general, is ingrained in human psyche from the time when all of us were Neanderthals<sup>66</sup>. As the society grew, women were left embracing their basic human traits of femininity while men were forced to abandon emotions and pursue a well-structured, dominating lifestyle. Witnessing a mother do home chores, getting beaten by one's father or any member in dominance, only cements the idea that women are weak and gullible. This idea needs to be uprooted, and all evils born out of this idea get uprooted too. Understanding the trigger factors of an abuser and placing checks upon them is possible with proper government support and funding. Overall, humanity should never bow down to accommodate the saving of humanity.

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<sup>65</sup> Hence, the phrase- Homo Humini Lupus (A man is a wolf to a man) ; Ibid (n-14)

<sup>66</sup> Rachel Caine, Fall Of Night (Penguin Random House 2013).