



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL
ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

WWW.WHITEBLACKLEGAL.CO.IN

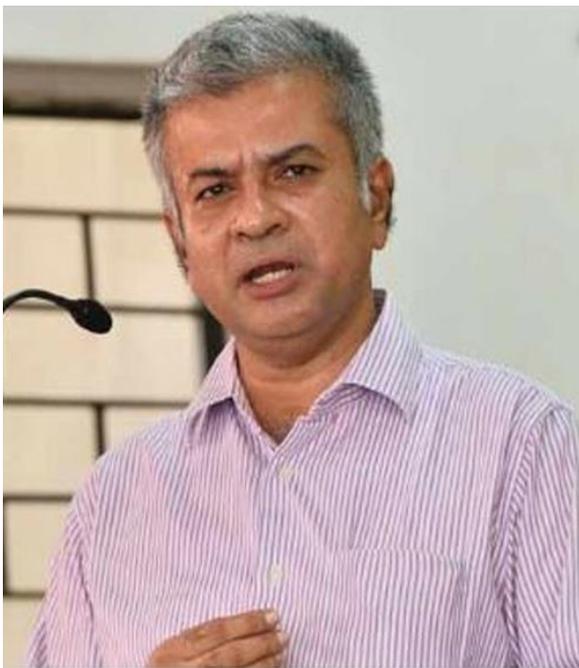
DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Editor-in-chief of White Black Legal – The Law Journal. The Editorial Team of White Black Legal holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of White Black Legal. Though all efforts are made to ensure the accuracy and correctness of the information published, White Black Legal shall not be responsible for any errors caused due to oversight or otherwise.

WHITE BLACK
LEGAL

EDITORIAL **TEAM**

Raju Narayana Swamy (IAS) Indian Administrative Service **officer**



Dr. Raju Narayana Swamy popularly known as Kerala's Anti Corruption Crusader is the All India Topper of the 1991 batch of the IAS and is currently posted as Principal Secretary to the Government of Kerala . He has earned many accolades as he hit against the political-bureaucrat corruption nexus in India. Dr Swamy holds a B.Tech in Computer Science and Engineering from the IIT Madras and a Ph. D. in Cyber Law from Gujarat National Law University . He also has an LLM (Pro) (with specialization in IPR) as well as three PG Diplomas from the National Law University, Delhi- one in Urban Environmental Management and Law, another in Environmental Law and Policy and a third one in Tourism and Environmental Law. He also holds a post-graduate diploma in IPR from the National Law School, Bengaluru

and a professional diploma in Public Procurement from the World Bank.

diploma in Public

Dr. R. K. Upadhyay

Dr. R. K. Upadhyay is Registrar, University of Kota (Raj.), Dr Upadhyay obtained LLB , LLM degrees from Banaras Hindu University & Phd from university of Kota.He has succesfully completed UGC sponsored M.R.P for the work in the ares of the various prisoners reforms in the state of the Rajasthan.



Senior Editor

Dr. Neha Mishra



Dr. Neha Mishra is Associate Professor & Associate Dean (Scholarships) in Jindal Global Law School, OP Jindal Global University. She was awarded both her PhD degree and Associate Professor & Associate Dean M.A.; LL.B. (University of Delhi); LL.M.; Ph.D. (NLSIU, Bangalore) LLM from National Law School of India University, Bengaluru; she did her LL.B. from Faculty of Law, Delhi University as well as M.A. and B.A. from Hindu College and DCAC from DU respectively. Neha has been a Visiting Fellow, School of Social Work, Michigan State University, 2016 and invited speaker Panelist at Global Conference, Whitney R. Harris World Law Institute, Washington University in St.Louis, 2015.

Ms. Sumiti Ahuja

Ms. Sumiti Ahuja, Assistant Professor, Faculty of Law, University of Delhi,

Ms. Sumiti Ahuja completed her LL.M. from the Indian Law Institute with specialization in Criminal Law and Corporate Law, and has over nine years of teaching experience. She has done her LL.B. from the Faculty of Law, University of Delhi. She is currently pursuing Ph.D. in the area of Forensics and Law. Prior to joining the teaching profession, she has worked as Research Assistant for projects funded by different agencies of Govt. of India. She has developed various audio-video teaching modules under UGC e-PG Pathshala programme in the area of Criminology, under the aegis of an MHRD Project. Her areas of interest are Criminal Law, Law of Evidence, Interpretation of Statutes, and Clinical Legal Education.



Dr. Navtika Singh Nautiyal

Dr. Navtika Singh Nautiyal presently working as an Assistant Professor in School of law, Forensic Justice and Policy studies at National Forensic Sciences University, Gandhinagar, Gujarat. She has 9 years of Teaching and Research Experience. She has completed her Philosophy of Doctorate in 'Intercountry adoption laws from Uttranchal University, Dehradun' and LLM from Indian Law Institute, New Delhi.



Dr. Rinu Saraswat

Associate Professor at School of Law, Apex University, Jaipur, M.A, LL.M, Ph.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

Dr. Nitesh Saraswat

E.MBA, LL.M, Ph.D, PGDSAPM

Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University.

More than 25 Publications in renowned National and International Journals and has authored a Text book on Cr.P.C and Juvenile Delinquency law.

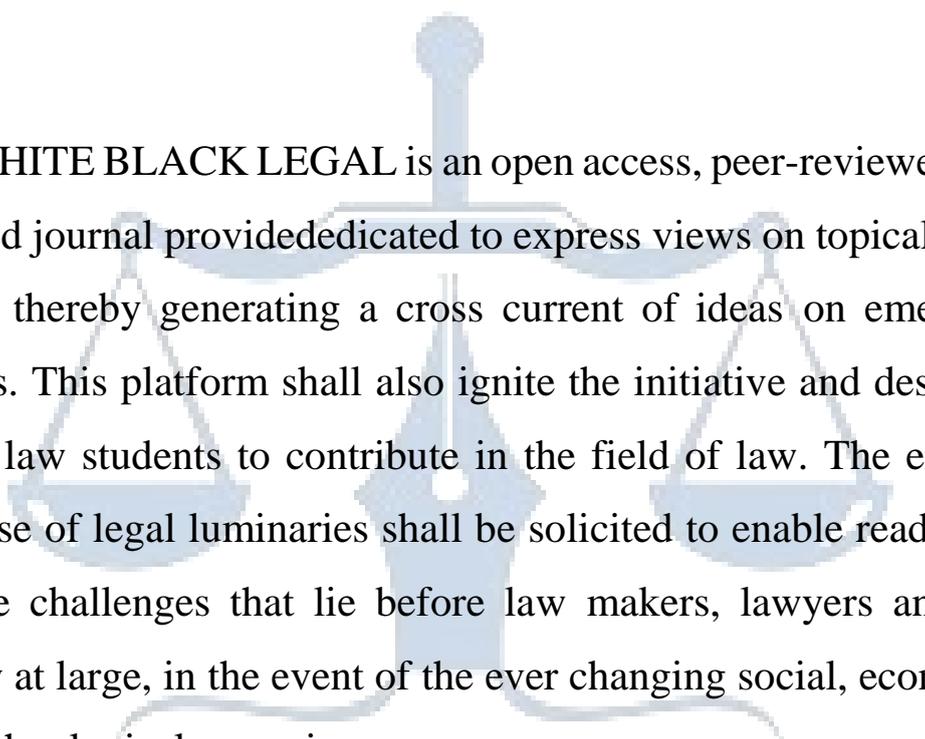


Subhrajit Chanda

BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

ABOUT US



WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you



THE SHADOW PANDEMIC OF BENGAL **DURING LOCKDOWN - AN EMPIRICAL STUDY**

AUTHORED BY - ANJALI KARMAKAR

Assistant Professor of Law,
Techno India University, Kolkata

LEARNING OBJECTIVES

This research paper has been designed to evaluate the major rise in domestic violence during the 2020 lockdown in the state of West Bengal. After studying the material in this research paper, the professional will be able to Understand the importance of identifying the lacunae in the research problem and assess the adequacy and appropriateness of a research data to answer particular research question(s).

Abstract

In a world ruled by men, the mothers and daughters of our society have been treated as a liability and 'the second gender'. In many years of struggle, women are still having to fight for societal representation, women-centric laws and compete for basic rights. On 24th March, 2020, the national lockdown declared by the Government of India to protect Indian citizens from Coronavirus fell heavy on the women as they became prey to a male dominated society. For many it became a battle to reach home, whereas, for some the phrase 'Stay Home: Stay Safe' became an irony. In this paper, I have brought out the difficulties faced by women in West Bengal, be it on road or be it at home which was visibly unheeded by the administration and society alike. In an era of digitization, where courts were conducted through video conferencing, India failed to defend and safeguard its own mothers and daughters. In this paper, I have critically analysed the legislative standpoint which are supposedly meant to safeguard interests of women, with a special mention on types of domestic violence which our law recognises. The judicial activism and several NGO's practical approaches to help women from their own family members in this shadow pandemic has also been acknowledged in this paper.

Keywords: Domestic Violence, Female, COVID-19, Lockdown, Violence, West Bengal, Perceptions

LIST OF ABRIEVIATIONS

AIR	All India Reporter
AD	Apex decision
AC	Appeal Cases
Art	Article
Bom. LR	Bombay Law Reporter
Cal.	Calcutta
Cal. LB	California Law Review
CAG	Controller and Auditor General
CILQ	Central India Law Quarterly
CJ	Chief Justice
C.P.C	Civil Procedure Code
Co. Rep.	Company Report
AD. CAD.	Constituent Assembly Debate
Cri.	Criminal
Cri. LJ	Criminal Law Journal
DULJ	Delhi University Law Journals
DB	Division Bench
Edn.	Edition
FB	Full Bench
Harvg. LR	Harvard Law Review
HC	High Court
Ibid	Ibidem (in the same place)
I.P.C	Indian Penal Code
J	Judge
LJ	Law Journal
Vis	Namely
NOC	Notes on Cases
Pp	Pages
P.I.L	Public Interest Litigation
SCC	Supreme Court Cases
SCJ	Supreme Court Journal
SCR	Supreme Court Reporter

SC	Supreme Court
i.e.	That is to say
UDHR	Universal Declaration of Human Rights
U.O.I	Union of India
US	United States
V.	Versus
Vol.	Volume
NCW	National Commission for Women
WB	West Bengal
UT	Union Territory
COVID	Coronavirus

Table of Cases

1. *Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan*
2. *D. Velusamy v D. Patchaiammal*
3. *Francis Coralie Mullin v Union Territory Administration (1981)*
4. *Indra Sarma v. V.K.V Sarma*
5. *Mohammed Arif Jameel v Union of India & Ors*
6. *Re: Contagion of COVID-19 Virus in Children Protection Homes v. State of West Bengal*
7. *Re: Problems and Miseries of Migrant Labourers v. Union of India*
8. *Smt Preeti Satija v. Smt. Raj Kumar and another*
9. *Sr. Batra and another v. Smt. Taruna Batra*

The Shadow Pandemic of Bengal: An Introduction

Despite the improvement achieved by gender equality movements in India, women living in modern India still face many issues of discrimination. India's male-controlled principles makes the process of gaining land-ownership privileges and entry to educational institutions challenging. In the past four decades, there has also emerged a trend of sex-selective abortion¹. To Indians fighting for gender equality, these are seen as injustices worth struggling against.

¹ Sen, Amartya. "The Many Faces of Gender Inequality." *The New Republic*, 17 September 2001; page 39.

However, in the first world countries, there has been mass criticism of feminist movements in India. They have been condemned for focusing too much on women who are already privileged. The real cause of the movement has shifted to a negative opinion which is ultimately overlooking of needs and representation of poorer or lower caste women. Eventually, in the past few years, the word feminism has become synonymous with the idea of ‘*man-hating*’ when in fact it only speaks of women’s rights on a large socio-economic scale. In this chapter, the focus has been brought to women who are neither privileged nor have the opportunity of being heard.

On 24th March, 2020, the national lockdown brought forth a plethora of difficulties on citizens of India. While the entire nation was locked at home, some of them were on the road trying to reach home by walking. However, the ones who were locked up at home were not safe either. *In Re: Contagion of COVID-19 Virus in Children Protection Homes v. State of West Bengal*², Calcutta High Court voiced concern over the possible increase in child trafficking cases that had followed the COVID-19 pandemic and lockdown, after examining a report filed by the West Bengal Commission for Protection of Child Rights Chairperson. *In Re: Problems and Miseries of Migrant Labourers v. Union of India*³, Court had stated that as the country continues to be in lockdown, the migrant workers need “succour and help by the concerned Governments”, and that “steps need to be taken by the Government of India, State Governments/Union Territories in this difficult situation to extend helping hand to these migrant labourers.”

With the above background, this study was undertaken with the following objectives:

1. To determine the prevalence, the number of domestic violence reported against adult and adolescent females during lockdown
2. To categorise domestic violence from registered complaints, as reported in Public Information Bureau
3. To find out the measures taken by authorities of West Bengal to cope with the act of violence and to overcome the situation.

² W.P. 5327 (W) of 2020

³ SUO MOTU WRIT PETITION (CIVIL) No(s). 6/2020

Stay Home: Stay Safe?

For many women, the two phrases, “home” and “safe” was not synonymous to each other. While India was preparing for a lockdown, guidelines for establishing work from home was being established and movement around the world was being stopped, there was no discussion on the everyday impact this would be having on the well-being of women. The concept that home is not a safe place for women has been recognised through years of research relating to domestic violence in India. For example, for many married women, especially for disabled women, words like “caged,” “trapped,” “confined,” and “control” have been synonymously used with the home.

The National Crime Records Bureau 2018 data has confirmed that domestic violence tops crimes against women, with the “majority of the cases being registered under 'cruelty by husband or his relatives' at 31.9%. This was followed by 'assault on women with intent to outrage her modesty' at 27.6%. The cases of the 'kidnapping and abduction of women stood at 22.5% and the rape cases comprised 10.3% of the overall crime figures”. Despite all of these widely available facts, there was no separate thought given to what impact a pandemic-induced forced lockdown could have on violence inside the home⁴.

The Karnataka Government on 25th April informed the High Court (in a written statement of *Mohammed Arif Jameel v Union of India & Ors*⁵) that during the lockdown period from March 24, the Santhwana centres received 315 calls which were all concerning to domestic violence. The National Commission for Women (“NCW”) reported an increase in domestic violence complaints. According to the first report dated 3 April 2020, the NCW had received 257 complaints between 23rd March and 1st April 2020, among which 69 were cases of domestic violence. Even though the NCW has identified the concern of domestic violence during the COVID-19 pandemic, and has been encouraging women to speak out, it has not been enough.

The Organizations dealing with such issues need to intensify their efforts and bring out the helplines. The “red dot” initiative by Women’s Entrepreneurs for Transformation (“WEFT”) has been a somewhat fruitful initiative. The Red Dot initiative was launched with a view to

⁴ Rukmini Sen, “Stay Home, Stay Safe: Interrogating Violence in the Domestic Sphere”, *EPW Engage*, available at <https://www.epw.in/engage/article/stay-home-stay-safe-interrogating-violence> 23rd June, 2020, last visited on 8th June, 2020

⁵ WP No. 6435 of 2020 & connected matters

identify a domestic violence victim by seeing a red dot on her palm and inform NGOs or authorities. The citizens who see the red dot on the palm can either get in touch with WEFT through social media or email weftinfo@gmail.com or they can also call 181 which is the toll-free number to get support⁶. One of the main reasons of increasing violence against women is the sense of weakness among men and the perception of reduced masculinity. It is probable that the economic recession and increasing unemployment levels resulted in higher levels of violence within the household and more commonly, against women in the society⁷.

Spike in domestic violence cases in West Bengal during lockdown:

Women's commission⁸

An article released by the Women's Commission stated that West Bengal is witnessing a rise in domestic violence cases during the ongoing lockdown period, the state women's commission said on Monday. Many women have been facing domestic violence and verbal and physical abuse even during normal times but the lockdown has aggravated the situation, commission chairperson Leena Gangopadhyay said. 70 cases of domestic violence have been reported to the commission since the imposition of the lockdown, she said, adding that the complaints were received from across the state, both rural and urban areas including Kolkata.

There have been fresh incidents of domestic violence while many of the complainants were being abused since long and were subjected to fresh physical and mental torture during the ongoing lockdown that most of the abused women are homemakers. The number of complaints received during this period was higher than what was reported in the months before the lockdown was imposed. The complaints were received over the phone, WhatsApp and email. All the cases will be followed up from Monday and the commission will provide counselling to the victims over the phone.

In several instances the neighbours of the abused women informed the commission but when they reached out to the victims, they were afraid to air their grievances. Sometimes, the victims

⁶ Girija Shivakumar, "While Battling COVID-19, We Can't Let the Pandemic of Domestic Violence Continue", *The Wire*, 16th April, 2020, available at <https://thewire.in/women/covid-19-lockdown-domestic-violence>, last visited on 8th June, 2020.

⁷ Hema Swaminathan, The COVID-19 Lockdown Will Ravage Prospects for India's Female Workforce, *The Wire*, 15th April, available at <https://thewire.in/women/coronavirus-women-economy>, last visited on 8th June, 2020

⁸ Outlook, Bengal witnessing spurt in domestic violence cases during lockdown: Women's commission; The Outlook, last visited on 10th January, 2021, available at <https://www.outlookindia.com/newscroll/bengal-witnessing-spurt-in-domestic-violence-cases-during-lockdown-womens-commission/1830527>

cannot reach out to the commission or NGOs as the perpetrators are always near them and also due to errant internet connection. The commission is also coordinating with women's NGOs like "Swayam" on the issue. Anuradha Kapoor of "Swayam" said they are getting several phone calls and emails from abused women but "there could be many more who are unable to reach out to us due to the lockdown".

West Bengal's month-wise data indicating number of complaints registered with National Commission of Women under the category "Protection of Women against domestic violence", received during the last six months, i.e. from March 2020 till 18th September, 2020⁹

State	March	April	May	June	July	August	September (till 20.09.2020)	Received through WhatsApp	Total
West Bengal	10	16	19	16	24	12	5	80	182

West Bengal's Month-wise data of complaints registered/ received by National Commission of Women since March 2020¹⁰

State	March	April	May	June	July	August	September (till 20.09.2020)	Received through WhatsApp	Total
West Bengal	24	36	47	43	55	41	18	80	342

Types of Domestic Violence recognised by the Protection of Women from Domestic Violence Act, 2005

1. 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 the aggrieved person and includes assault, criminal intimidation and criminal force;

⁹ Press Information Bureau; <https://pib.gov.in/PressReleaseDetailm.aspx?PRID=1657678>; last visited on 10th January, 2021. This information was given in a written reply by the Union Minister of Women and Child Development, Smt. Smriti Zubin Irani in Rajya Sabha on 22nd September, 2020

¹⁰ *Ibid*

2. Sexual Abuse includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;

What amounts to Economic Abuse?

Economic abuse encompasses:

- a. deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if 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 or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and
- c. prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.
- d. Verbal and Emotional Abuse comprises of insults, ridicule, humiliation, name calling and insults or ridicule especially with regard to not having a child or a male child; and repeated threats to cause physical pain to any person in whom the aggrieved person is interested.

Expert Measures to Prevent Domestic Violence in West Bengal:

An Analysis

National Commission for Women (NCW): From the beginning of lockdown due to COVID-19 pandemic, the National Commission for Women (NCW) launched an Ad campaign through electronic media and social media inviting women who have suffered any kind of violence to come forward and report it. Further, in addition to handling complaints received through regular modes, NCW has also launched a WhatsApp number 7217735372 on 10.04.2020 for reporting domestic violence cases. The additional modes provided by NCW facilitated reporting of cases, including from women who had been experiencing violence at home for

past several years. The complaints received by NCW are acted upon by coordinating with victims, police and other authorities to provide necessary assistance.

To keep a balance with Protection of Women from Domestic Violence Act, 2005¹¹, the administration around the country had attempted to challenge the issue. By providing an appropriate redressal mechanism, based on action taken up by NGOs if implemented with care, and help assuage the crisis may turn out to be effective to our country.

Pursuant to the Government initiated lockdown, a women's rights organization named Swayam remains closed. However, they issued a notice on their website stating their personal contact numbers, email ID via which the members can be reached¹².

The above measures which the administration and the NGOs have taken up devising strategies to protect women have been a minimum effort as laid out in the Protection of Women from Domestic Violence Act, 2005¹³. The sheer inability to provide protection and address the grievous issue concerning 'the other gender' in a time of pandemic is failure on part of the government. In the judgment of *Francis Coralie Mullin v Union Territory Administration (1981)*¹⁴, the Supreme Court had recognized the right to be free from physical violence. Moreover, in *Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan's case (2001)*¹⁵, it guaranteed right of a citizen against sexual and emotional abuse. In the absence of a definitive plan from the government several NGOs have stepped forward with their positive approaches. However, they find themselves facing a plethora of difficulties. Due to the ensuing lockdown, they are incapable of approaching the complainants beyond web counselling or telephonic conversations.

The COVID-19 lockdown has highlighted the inadequacies in the Protection against the Domestic Violence Law. Even education is futile unless it weakens old-school values and teaches young people modern ideals like gender equality and respect between spouses. It is important that law makers incorporate modern, feminist values into the law to stop the vicious

¹¹ Act No. 43 / 2006

¹² Further Information available at the NGO's Official Website: Swayam: <https://www.swayam.info/>; last visited on 8th June, 2020.

¹³ Supra Note 10

¹⁴ AIR 746, 1981 SCR (2) 516

¹⁵ 1 GLR 204

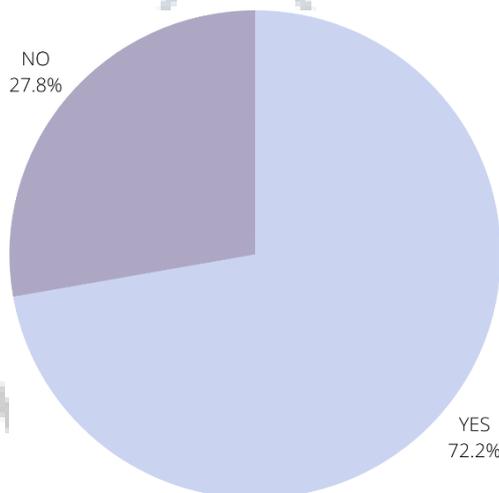
cycle of abuse during the ongoing epidemic.

INCIDENCE OF DOMESTIC VIOLENCE IN KOLKATA

A woman living in a high-profile high rise off Ballygunge Phari filed a FIR at Ballygunge police station on May 7, alleging torture and abuse by her husband¹⁶.

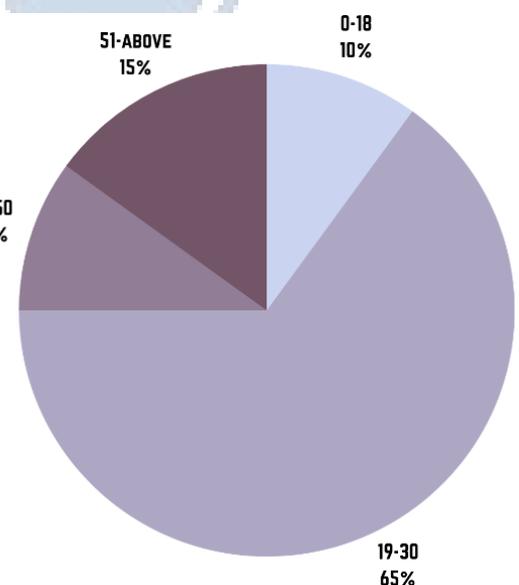
In another instance, a women's rights organisation called the police and rescued a woman who was being physically abused by her husband and relocated her to a friend's place.

A series questionnaire was created and permeated through google forms, where anonymous responses were received in terms of the age of victim both in terms of safeguarding the interests of women and betterment reform policies was carried out. The responses were captivating in nature.



Question 1: Have you ever been a victim of Domestic Violence?

Of all 10 responses, 72.2% have claimed to be a victim of domestic



violence, the remaining 27.8% have responded No to the question.

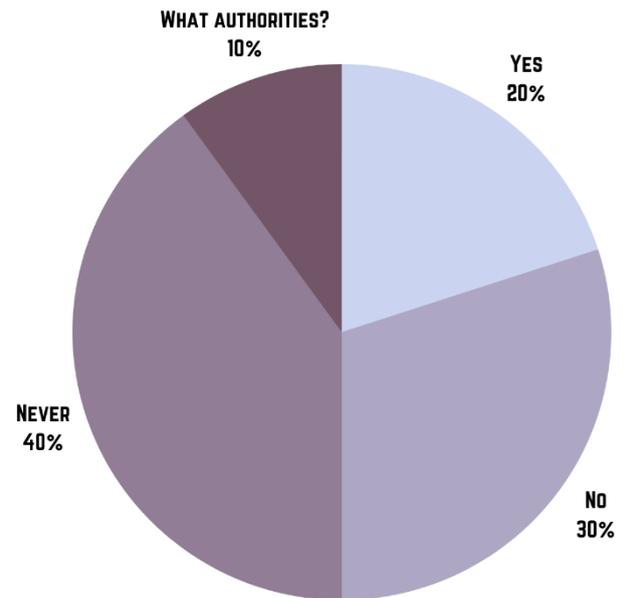
Question 2: At what age were you a victim of Domestic Violence?

Of all 10 responses, 72.2% have claimed to be a victim of domestic violence, the remaining 27.8% have responded No to the question.

¹⁶ Times of India, Domestic violence on the rise in Kolkata, women fail to reach out for help, May 10, 2020, available at <https://timesofindia.indiatimes.com/city/kolkata/domestic-violence-on-the-rise-as-women-fail-to-reach-out-for-help/articleshow/75652359.cms>

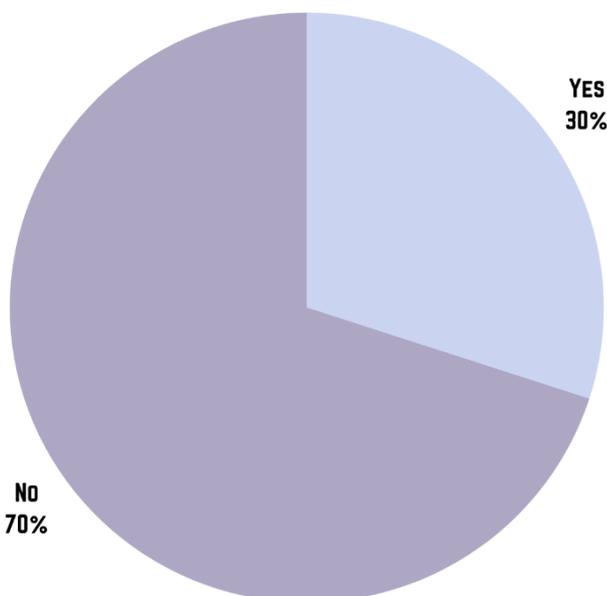
Question 3: Have you reached out to the authorities after the domestic violence?

Of all 10 responses, a shocking revelation was received where 40% of victims have claimed that they would never report such acts of violence to the authorities. While a mere 20% have seemingly reported, 30% have not reported and the remaining 10% have responded to what authorities.



Question 4: Have you received any help from the authorities after the complaint?

Of all 10 responses, another shocking revelation was received where the victim's in-laws were approached by the police commissioner to bribe the police where FIR was lodged with a hefty amount of ₹10,000 to make the case against the victim instead of the abuser.



What does the Indian Law say?

There are three laws in place in India that deal directly with domestic violence:

- The Protection of Women from Domestic Violence Act, 2005.
- The Dowry Prohibition Act, 1961.
- Section 498-A of the Indian Penal Code.

The Protection of Women from Domestic Violence Act, 2005.

The Vienna Accord of 1994 and the Beijing Declaration and the Platform for Action, 1995 have acknowledged that domestic violence is undoubtedly a human right issue. Prior to the enactment of Protection of Women from Domestic Violence Act, 2005, the victims of domestic violence could claim justice through criminal law; i.e., 498-A of Indian Penal Code, 1860. The

civil law, however, did not recognise any kind of violence occurring inside the family. This legislation was enacted after a ratification of the CEDAW (Convention on the Elimination of All forms of Discrimination Against Women). Everything you need to know about The Protection of Women from Domestic Violence Act, 2005:

Most Important Expressions of the Protection of Women from Domestic Violence Act, 2005:

- A. Domestic Violence – Any of the following acts (omission, commission or conduct) of the accused will constitute domestic violence in case it –
- 1) 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
 - 2) 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
 - 3) 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.
- B. Aggrieved Person means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent;
- C. Domestic Relationship means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by
- (a) related by consanguinity (blood-related)
 - (b) related by marriage,
 - (c) through a relationship in the nature of marriage
 - (d) Through adoption
 - (e) are family members who are living together as a joint family.
- D. Shared Household means a household where the victim lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the victim and the respondent, or owned or tenanted by either of them in respect of which either the victim or the respondent or both jointly or singly have any right, title, interest or equity and includes such a

household which may belong to the joint family of which the respondent is a member (irrespective of whether the accused or the victim has any right, title or interest in the shared household).

- E. Monetary Relief means the compensation which the Magistrate may order the respondent to pay to the aggrieved person, at any stage during the hearing of an application seeking any relief under this Act, to meet the expenses incurred and the losses suffered by the aggrieved person as a result of the domestic violence.

Important Case Laws:

Sr. Batra and another v. Smt. Taruna Batra¹⁷: *“Shared Home” – Wife is only entitled to claim a right to residence belonging to husband.*

The Supreme Court, in this case, ruled that the wife is only entitled to claim a right to residence in the shared household and the shared household would only mean the house belonging to or taken on rent by the husband house which belongs to the joint family of which the husband is a member. The property in question in the present case neither belonged to ‘A’ nor it was taken on rent by him nor is it a joint family property of which the husband “A” is a member. It is an exclusive property of the mother of “A”. Hence it could not be called a shared household.

1. **D. Velusamy v D. Patchaiammal**¹⁸: *“Live-in Relationship in the nature of Marriage”*

The judgment determined certain pre-requisites for a live-in relationship to be considered binding. The court stated that the couple must hold themselves out to society as being akin to spouses and must be of legal age to marry or qualified to enter into a legal marriage. It was stated that the couple must have cohabited in their own accord and held themselves out to the world as being akin to being spouses for a substantial period of time. The court also held that not all relationships will amount to a relationship in the nature of marriage and get the benefit of the PWDV Act. It further explained that, if a man keeps women as a servant and maintains her financially and uses mainly for sexual purposes, such relationship would not be considered as marriage in the court of law. Therefore, to get such benefit the conditions mentioned by the Court must be satisfied, and has to be proved by evidence. Here, the court relied on the concept of

¹⁷ AIR 2007 SC 1118

¹⁸ AIR 2010 SCC 469

‘palimony’¹⁹ which was used in the USA for grant of maintenance in live in relationships. The concept of palimony was derived in the case of *Marvin vs. Marvin*, a landmark judgment of the California Superior Court.

2. **Indra Sarma v. V.K.V Sarma**²⁰ - “*Relationship in nature of Marriage*”²¹.

The Supreme Court in this case has drawn a distinction between ‘live in relationship’ and ‘relationship in nature of marriage’²². The court disseminated some aspects to look into for testing under what circumstances a live-in relationship must fall within the expression “relationship in the nature of marriage” under Section 2(f)²³ of the PWDV Act. The guidelines, of course, are not exhaustive, but will definitely give some insight to such relationship. Women in live in relationship, as it was decided, are not covered under the definition and thus not entitle to any reliefs under the Act.

3. **Smt Preeti Satija v. Smt. Raj Kumar and another**²⁴: *Daughter-in-law entitled to live in shared household in case family disowned her husband.*

The division bench of Delhi High Court observed that the word respondent in Section 2(q) includes female relatives of husband, thus relationship between daughter-in-law and mother-in-law would be domestic relationship. House claimed by mother-in-law to be in her absolute ownership in a shared household. Here, daughter-in-law is entitled to stay in a shared household.

Conclusion:

The reasons of violence are various factors such as power, employment and education level. Domestic violence is associated with illiteracy of the females. Most of the females are not aware of their rights. They tend to accept violence as something normal. This might be related to the fact that men culturally possess women; that manhood is associated with violence and that violence is widely accepted as a form of behaviour. Husbands justify this act that they have

¹⁹ Cambridge defines Palimony as an amount of money that a court of law orders a person to pay to his or her partner after they end their relationship, when they were not married.

²⁰ 2014 (1) RCR (Crl) 179 (SC)

²¹ (Arora, 2015)

²² Section 2(f) of the PWDV Act defines "domestic relationship" as a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family.

²³ *ibid*

²⁴ AIR 2014 Del. 46 (DB)

all rights to beat his wife. And, it is told to the girl before marriage that she should adjust to whatever happens after marriage²⁵.

The Indian culture, which prescribes obedience for women, may also contribute to this, since women consider opposing their husband as a sin. Besides that, domestic affairs are something that is usually kept a secret. The mind set of projecting husbands as the sole authority of the household needs to be changed and this is to be more emphasized by the parents. The measures which the administration and the NGOs have taken up devising strategies to protect women have been a minimum effort as laid out in the Protection of Women from Domestic Violence Act, 2005²⁶. The sheer inability to provide protection and address the grievous issue concerning 'the other gender' in a time of pandemic is failure on part of the government. In the judgment of *Francis Coralie Mullin v Union Territory Administration (1981)*²⁷, the Supreme Court had recognized the right to be free from physical violence. Moreover, in *Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan's case (2001)*²⁸, it guaranteed right of a citizen against sexual and emotional abuse. In the absence of a definitive plan from the government several NGOs have stepped forward with their positive approaches. However, they find themselves facing a plethora of difficulties.

Due to the ensuing lockdown, they are incapable of approaching the complainants beyond web counselling or telephonic conversations. The COVID-19 lockdown has highlighted the inadequacies in the Protection against the Domestic Violence Law. Even education is futile unless it weakens old-school values and teaches young people modern ideals like gender equality and respect between spouses. It is important that law makers incorporate modern, feminist values into the law to stop the vicious cycle of abuse during the ongoing epidemic.

Bibliography

1. Chakraborty, N.K (1994), "The Position of Women in the Indian Society and the Role of Police" in O.C Sharma (Ed.) Crime Against Women, Ashish Publishing House, New Delhi.

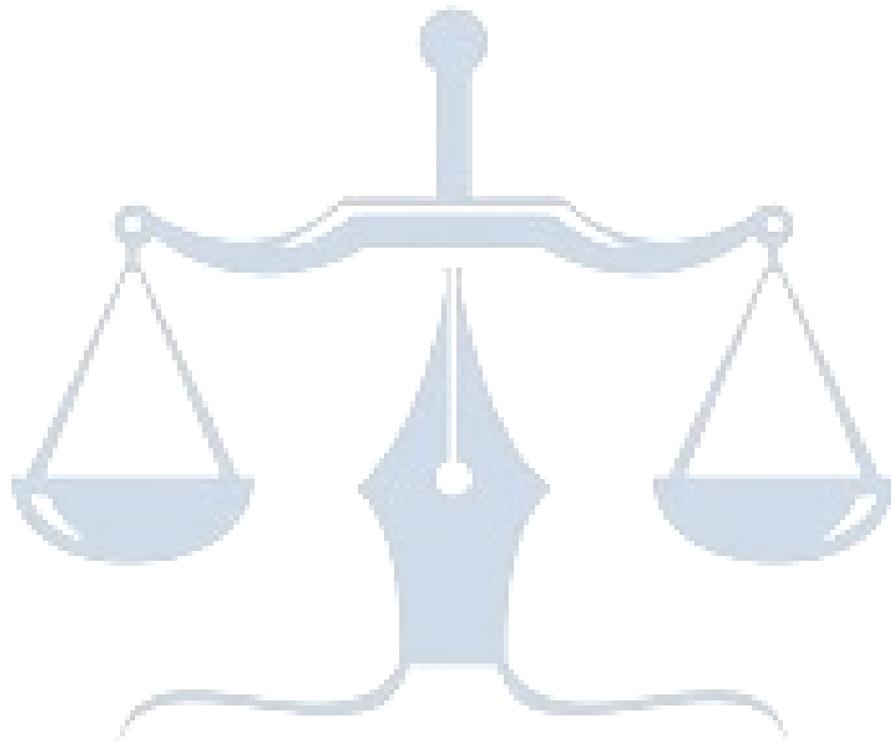
²⁵ Violence against women: A priority health issue. WHO/FRH/WHD/97.8. Geneva: World Health Organization; 1997. World Health Organization. [[Google Scholar](#)]

²⁶ Supra Note 10

²⁷ AIR 746, 1981 SCR (2) 516

²⁸ 1 GLR 204

2. Nagala, B.K (1994). 'Violence in India. A Sociological Analysis'. Paper presented in 23rd Conference of Society of Criminology at New Delhi.
3. Mishra, R.C (2000) Crime – Impacting the New Millenium.
4. David James R. (1982) Help Me, I'm Hurt, Kendal/Hunt Pub. Co. Iowa.
5. The Outlook
6. The Times of India
7. The Statesman



WHITE BLACK
LEGAL