

INTERNATIONAL  
JOURNAL OF CRIMINAL  
JURISPRUDENCE

VOLUME 1 AND ISSUE 1 OF 2023

INSTITUTE OF LEGAL EDUCATION





## International Journal of Criminal Jurisprudence

(Free Publication and Open Access Journal)

Journal's Home Page – <https://ijcj.iledu.in/>

Journal's Editorial Page – <https://ijcj.iledu.in/editorial-board/>

Volume 1 and Issue 1 (Access Full Issue on – <https://ijcj.iledu.in/category/p-volume-1-and-issue-1-of-2023/>)

### Publisher

Prasanna S,

Chairman of Institute of Legal Education (Established by I.L.E. Educational Trust)

No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

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## A LEGAL STUDY OF SURGE IN DOMESTIC VIOLENCE DURING COVID-19 IN INDIA

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**Best Citation** - Simandeep kaur & Aabha  
Gandhi, A LEGAL STUDY OF SURGE IN DOMESTIC  
VIOLENCE DURING COVID-19 IN INDIA,  
INTERNATIONAL JOURNAL OF CRIMINAL  
JURISPRUDENCE, 1 (1) of 2023, Pg. 1-6, ISBN (P) -  
978-81-960702-2-9.

### ABSTRACT

The Protection of Women from Domestic Violence Act, 2005 was the first act to use 'Domestic violence' in legal terms and had such a broad ambit that it included within itself not only physical violence but also mental, verbal and economic violence. The landmark judgment of S.R Batra case was the first prominent judgment with the purview of domestic violence law that protects the rights of women. Despite having such a broad ambit of domestic laws, the women's insecurity has increased drastically with passage of time and spiked during the lockdown phase. This leads the authors to check the efficacy of the legal framework of domestic violence especially during times of the pandemic situation. In this paper, the authors has analyzed measures that the government failed to take during the lockdown in context to Domestic violence act, 2005 which leads to worsen this situation even more . Various catalysts that surged domestic violence cases are researched and analyzed by the authors to better understand the situation and form recommendations and conclusions. Thus there is dire need to make certain changes in institutional mechanisms which can make it more functional and accessible to women. This study is purely doctrinal which involves the study of Journals, articles, case studies and surveys respectively. The Authors try to analyze

the reasons for increased reported cases as well as possibility of many unreported cases through primary and secondary sources of data available. This paper tries to go beyond to analyze domestic laws and legislations to find reasons and steps that should be taken in hardship times like COVID to help women to fight with this domestic violence.

**KEYWORDS**- COVID 19, Domestic violence, Efficacy, Insecurity, Lockdown.

### RESEARCH QUESTIONS.

- ▶ What were impacts of COVID-19 on Domestic violence and how it leads to challenge the efficacy of legal framework of Domestic violence present in India?
- ▶ To what extent, the Protection of Women from Domestic Violence Act,2005 and section 498A of Indian Penal code,1860 attained its objective to protect women and is considered efficient in nature?

### METHODOLOGY.

This paper examines the incidence of women insecurity and rise of domestic violence cases especially during unexpected situations like COVID 19 by examining the existing legal framework of India. The study is purely Doctrinal research which involves the study of Journals, articles, case studies, web search and surveys respectively. The research would be conceptual, grounded and phenomenological where, in various aspects would be broken down to have better understanding of issue related to said topic. Qualitative research is used to explore the concept and experiences, leading to flexibility and generation of new ideas. Quantitative research is used to deal with numbers and statistics used to show the rising cases of Domestic violence that allow author to systematically measure variables and test hypotheses.



## INTRODUCTION.

From many a centuries particular gender is victimized. This persecution took place inside as well as outside. When this is outside, it is in a visible form, but when it is inside the four walls it is oppressed. The abuse of power by an adult in a relationship to exert control over a partner is known as domestic violence. It may range from minor abuse to violent coercive form which may include physical or mental abuse. India declared a one-day nationwide lockdown on March 22, 2020. In declaration to stop the spread of COVID-19, this lockdown was then prolonged for a week, then for 21 days, and eventually until May 3rd, 2020. By adopting the concept of social distancing our nation confined ourself in lockdown where all of us are sitting in a home with a lot of stress for careers, jobs or other business. This led the inner evil out and target the weaker gender to be tortured. Safest place home is not safe now and duration of violence and trauma extended from hours to days. Owing to worldwide surge of this issue, United nation secretary general Mr. Antonio Guterres raised the issue of domestic violence in pandemic and named it "The shadow pandemic".<sup>1</sup> Thus, this article aims to analyze the impacts of COVID 19 on Domestic violence and check efficacy of legislative framework related to it.

### I. SITUATION IN LOCKDOWN.

Though, Lockdown was imposed of COVID-19, there was no lockdown of Domestic violence during the same. During this period, India witnessed an alarming rise in complaints registered against domestic violence which is the highest of the past 10 years of cases. The data has been consolidated from the women National Commission (NCW) and women's groups in their surveys, including those to the media due to absence of any aggregated data present on domestic violence.

Since the country was put on lockdown, the National Commission for Women (NCW), which collects reports of violence against women from all throughout the country, has seen a more than twofold rise in complaints. While a total of 116 complaints from women were received in the first week of March (March 2-8), the number increased to 257 in the last week of March post the declaration of the lockdown (March 23-April 1, 2020). Of the 257 complaints received by them, 69 were of domestic violence as compared to 30 cases of domestic violence of 116 complaints in first week which show more the double rise in cases.<sup>2</sup> [Shown in Fig.1]

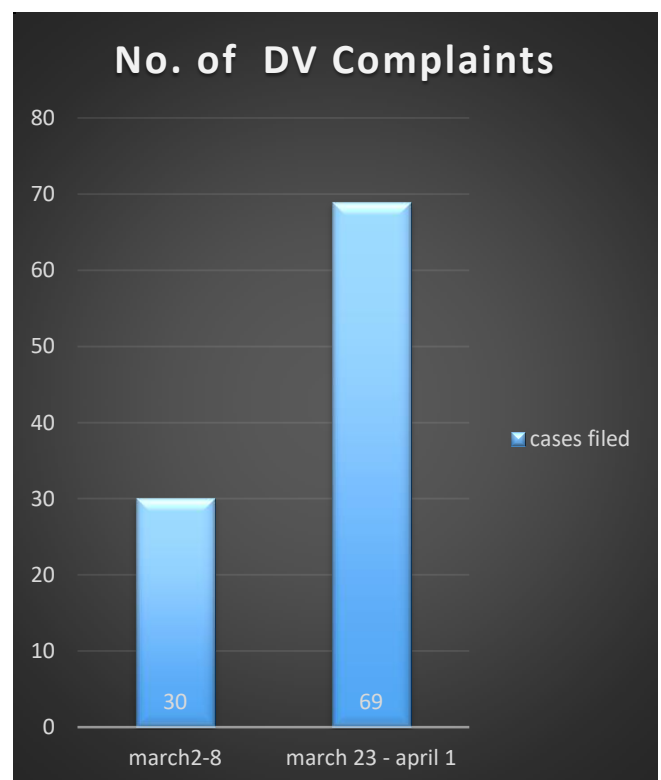


Fig. no.1

As per the World Economic Forum's Global Gender Gap Index 2019-2020 India stands at 112th rank out of 153 nations. This clearly shows how much India is lagging behind in terms of Gender Equality<sup>3</sup>. In such a scenario, cases of

<sup>1</sup> Special Correspondent, "With lockdown, gender violence is a shadow pandemic: UN Women", THE HINDU, <https://www.thehindu.com/news/national/with-lockdown-gender-violence-is-a-shadow-pandemic-un-women/article31282619> (last visited 16 Sept, 2022)

<sup>2</sup> The Hindu, <https://www.thehindu.com/news/national/covid-19-lockdown-spike-in-domestic-violencesays-ncw/article31238659.ece> (last visited 14 sept, 2022)

<sup>3</sup> Shambhavi Sinha, COVID-19 and Surge in Domestic Violence Cases, 3 INT'L J.L. MGMT. & HUMAN. 21 (2020).



domestic violence is bound to increase during lockdown due to coronavirus. These incidents may involve discrimination on the grounds of gender, class, caste, or any combination of the three. Throughout 22 different categories of crimes against women, NCW received a total of 3027 complaints between April and May, of which 1428 (47.2%) were domestic abuse and intimate partner violence. In comparison to data recorded for January to March 2020, there were 4233 complaints, of which 871 cases recorded were of domestic violence and intimate partner violence (20.6% of the total).<sup>4</sup> [Shown in Fig.

On one hand, the country is facing an increase in calls for domestic violence while at same time there is decline in other parts of the country. Various leading women's groups and other CSOs in

India, have a mixed set of data on VAWG during this period. Whereas a women's group in Kolkata, West Bengal noted a close to 33% increase in complaints received by them, a women's group in New Delhi shared that they had experienced a 50% decline in calls initially on their helpline. Another organization from Hyderabad, Andhra Pradesh received over 54 new cases since April 2020, but have not seen a sharp increase in number of complaints of VAWG. A women's group in Mumbai, reported receiving 5-7 cases per day, that included both domestic and public space violence.<sup>5</sup> However, it has also been noted that in some cases the calls may have dropped initially but have picked up subsequently.

In order to check the reasons for the subsequent changing ratio of cases across the country, Author has tried to analyze the laws for Domestic violence and highlighted reasons as to why instead of having such a wide legislative framework, women faced minimal amount of protection during lockdown.

## II. LEGISLATIVE FRAMEWORK IN INDIA.

Till the 19th century laws of India versus Island over issues like domestic violence but in the late 19th century we initiated against domestic violence. This issue is fought on two main fronts i.e., legislations and by institutional mechanism. For the elimination of the discrimination against women, a convention on the elimination of all forms of discrimination against women held in 1979, was one of the major sources that provided a way for elimination of domestic violence and India ratified this convention in 1980 that makes some major changes in our legal mechanism. The amendments of 1983 and 1986 in Indian penal code inserted some essential provisions like section 498a and 304b,

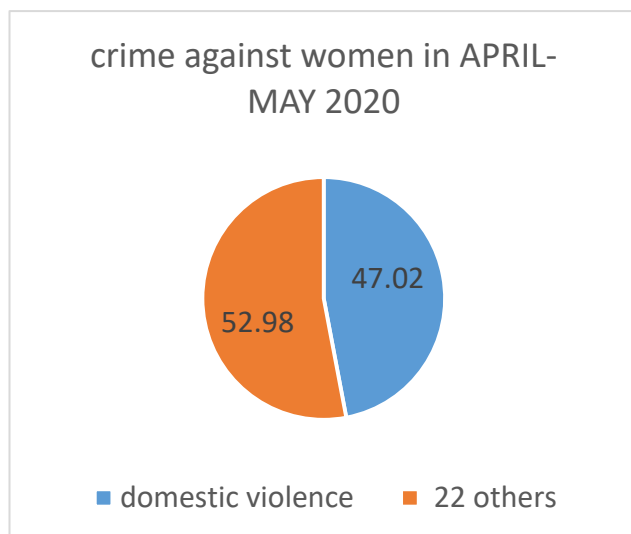
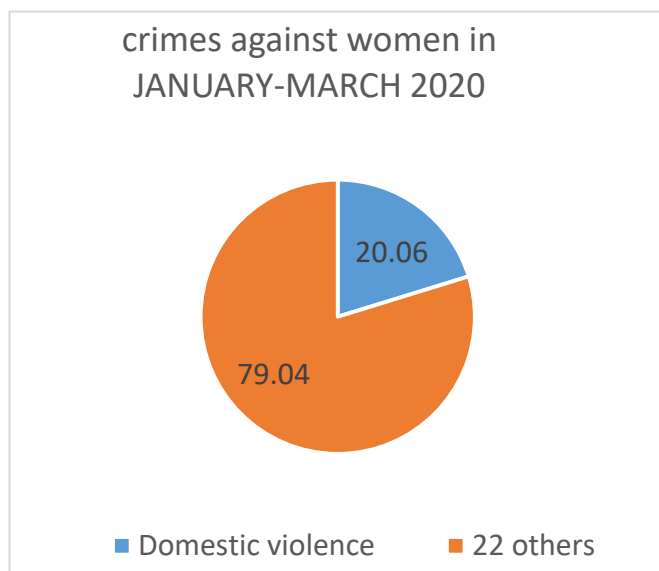


Fig. no.2

<sup>4</sup> National commission for women, Nature-wise Report of the complaints received by NCW in the year:2020 NCW::Report

<sup>5</sup> UN Women India Survey on COVID-19 and Violence Against Women, last visited 20 sept 2022



that made offence of domestic violence criminal in nature. Whereas, the protection of women from domestic violence act 2005 is civil approach. These both of legislation has two different approaches i.e., criminal and civil approach which are discussed as follow.<sup>6</sup>

### **i. CRUELTY AND SECTION 498A.**

For the purposes of this section, cruelty is defined as any intentional behavior that could lead a woman to commit suicide or put her life, limb, or health (whether physical or mental) in grave danger.<sup>7</sup> Harassment of a woman with the intent of coercing her or anyone associated with her to satisfy any unlawful demand for property or valuable protection, or because she or anyone associated with her has failed to meet such demand.<sup>8</sup> If the data depicting to the commission of the offence is shown to an officer-in-charge of a police station by the person aggrieved by the offence or by any individual connected to her by , marriage, blood, or adoption, or if there is no such relative, by any public sergeant, the offence under Section 498-A IPC is cognizable.

### **ii. THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT,2005.**

The protection of women from domestic violence act,2005<sup>9</sup> enacted on 26 October 2006, was primarily meant to protect women from domestic violence. The act for the first time defined "domestic violence" in Indian law. The act was such broad and inclusive ambit that it included within itself not only physical violence but also mental, verbal, economic violence.<sup>10</sup>The law also extends protection to other women in a household including sisters and mothers.<sup>11</sup> Dowry harassment can also be brought under section 3 of this act. As observed by National

commission for women,<sup>12</sup> the delayed system and ineffective mechanism to respond to such situations, are the main causes of the sharp increase in domestic violence cases in India. Since the act was implemented in 2005-06 , the judiciary interpreted the act many times in different cases. The S.R. Batra vs. Smt. Taruna Batra<sup>13</sup> being the first landmark judgement which came out in favour to protect women from domestic violence in which the court interpreted the meaning of 'shared household' provided in section 2(s) of the Act .These judgements that provide further interpretation or meaning to statute are aimed to clear ambiguity to preserve the object and reasons of the legislation. Each of those interpretation is targeted at the absolute goal of eradicating and curbing domestic violence <sup>14</sup>.

### **iii. ANALYSIS OF GOVERNMENT MEASURES DURING LOCKDOWN IN CONTEXT TO DVACT, 2005.**

The DV Act, 2005 mandates that the government must follow the approaches that have not been followed during lockdown. Section 11 of the DV Act of 2005 emphasises the responsibility of the government for regular publicity domestic violence matters in the media or print to increase awareness in society, however it is obvious that the government ignored this responsibility when it issued the lockdown order. Section 6 of the Domestic Violence Act of 2005, mandates that the state government create shelter homes in each district in which the government has failed or work has been done secretly without anyone's awareness. Additionally, these homes were turned into COVID patient breeding facilities. A Protection Officer has recently been appointed by the government in accordance with Sections 8 and 9 of the Domestic Violence Act, 2005. The government has been careless in delivering necessities, including sanitary products like tampons or napkins, which are a regular

<sup>6</sup> Law Commission of India, "243<sup>rd</sup> Report on section 498A of Indian Penal Code,1860"

<sup>7</sup> Indian Penal Code , s 498,cl. a , No. 45, Acts of parliament, 1860

<sup>8</sup> Id., at 1

<sup>9</sup> Protection of Women from Domestic Violence Act, 2005, No. 43, Acts of Parliament, 2005 (India).

<sup>10</sup> Id., at 9

<sup>11</sup> Protection of Women from Domestic Violence Act, 2005, S 2, cl. a, No. 43, Acts of Parliament, 2005 (India).

<sup>12</sup> Id., at 4

<sup>13</sup> S.R. Batra And Anr vs. Smt. Taruna Batra,(2007) 3 SCC 169 (India)

<sup>14</sup> Dr. Nandita Kaushik, Judicial Perspective on Protection of Women from Domestic Violence, Chandigarh Judicial Academy (2019).



necessity for all women, as stated in Section 7 of the Act.<sup>15</sup> In addition to them, the Ministry of Women and Child Development (MWCD) initiated for all One Stop Centres, the 181 Women Hotline, email and online complaint procedures, as well as a unique WhatsApp helpline number that was even started by individual states. The absence of response and redress services, particularly One Stop Centres, Women's Help Lines, Shelter Homes, and Women's Hostels, has come to light in reports by CSOs and research organisations.<sup>16</sup> Given that there was no transportation, even in areas where helplines were operational, the lockdown limited the organization's capacity to provide support.

### III. ANALYZING THE CATALYST FOR SURGE IN DOMESTIC VIOLENCE CASES.

The unpredictable strike of COVID-19 epidemic hit hard to countries around the globe who were not adequately prepared. Even in India situation got worse as nation failed to deal with domestic violence during disasters and humanitarian crises. Meanwhile in haphazard, India diverted all its resources and including human resources to deal with public emergence and health.

There was a complete limitation on mobility due to the unexpected enforcement of the lockdown, and women were not exempted. Women who were rudely humiliated in houses were not even able to go to their maternal homes as a result of the same. Additionally, it prevented women from accessing the justice system, legal services, or police authority. Also, homes used as shelters for women who are victims of domestic abuse were turned into COVID patient breeding centres. Data gathered from the ground level indicate that several state-specific helpline numbers were neither operational nor reachable.

<sup>15</sup> Simran Bhaskar, No Lockdown of Domestic Violence during COVID-19, 3 INT'L J.L. MGMT. & HUMAN. 638 (2020).

<sup>16</sup> Shrishti Mittal & Tuhina Das, The Surge in Domestic Violence during the Covid-19 Pandemic: Legal Remedies and Potential Solutions, 1 LEXFORTH LEGAL J. 25 (2019).

On the other hand, there are some places in the country where the decline in domestic violence cases has been noticed. There can be many reasons for the same, some of which are tried to be analysed by the author. According to the Mobile Gender Gap Report 2019 by GSMA, among adult women, 59% own a phone (as compared to 80% men), and only 16% adult women have access to the internet.<sup>17</sup> So, women have lack of access to cell phones and those who have access, they don't have money to recharge or privacy to make a call out of fear being caught. This can be one of the main reasons for declining reported cases as due to restrictions on mobility, women are not able to approach for help and inside home they don't have a source to call out for help. Thus, despite having such a broad ambit of domestic violence act which is enough in itself while covering the social issue of its roots<sup>18</sup>, when we focus on institutional mechanism, there is a huge scope of reformation that is required and still we have to struggle to fight with this problem.

### IV. RECOMMENDATIONS AND CONCLUSION.

Undoubtedly, India has a sufficient laws to safeguard women against domestic violence, but sadly, they have been proved not very effective in nature. The legislation framework related to domestic violence including both civil and criminal approach are comprehensive in nature and provide provisions not only to protect women but also directs government, the way to approach deprived women. Still these laws defeated to reach its efficacy because of lack of resources available and that too working in hasty and negligent manner. Therefore, stricter enforcement should be followed, and it should even be guaranteed that victims are fully informed of the options at their disposal when they encounter this kind of issue. Author hereby tried to put forth some of

<sup>17</sup> Shambhavi Sinha, COVID-19 and Surge in Domestic Violence Cases, 3 INT'L J.L. MGMT. & HUMAN. 21 (2020).

<sup>18</sup> Id., at 1



recommendations that can be adopted to grab the loosen grip of this issue. The government should expand the definition of a "essential service" to include persons who are victims of domestic abuse and enhance funding for the establishment of shelter homes. Similar to how the government has employed campaigns promoting physical distance and sanitization against the COVID-19 problem, a nationwide campaign is required to encourage awareness regarding domestic abuse and highlight the different ways in which complaints can be submitted. To ensure complete safety, also make an effort to connect with the women living in SHGs and panchayats who do not have access to a phone or the internet. Increase the number of protection officers and provide them all with emergency passes. Last but not least, a psychological concept known as Battered Woman Syndrome (or "BWS") can help us understand the emotional state of battered women who attack their abusers. India's criminal laws should be changed to be more gender-sensitive by including the "defense of battered women syndrome." The fundamental argument in favor of such a defense is that perpetrators of violence against women will be discouraged from doing so once they realize that the victim has a legal right to defend herself in court and that she can lawfully attack the perpetrator. In this way, even women would feel empowered to retaliate against their abusers fiercely.

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