



Thinking, Framing and Litigation Around Psychological Violence

Webinar Notes – 13.10.2022



Moderator:

Purna Sen

Purna is consulting with the Centre for Women's Justice on the establishment of the new International Feminist Lawyer Network. She is a Visiting Professor at the Child and Woman Abuse Studies Unit at London Metropolitan University and for almost four decades, Prof. Sen has worked in the United Kingdom and internationally on gender equality, violence against women, sexual harassment, social development, and human rights.

Speaker:

Denise Wilson

Denise is Professor Māori Health and Associate Dean at Auckland University of Technology Māori Advancement and Co-Director of AUT Taupua Waiora Māori Research Centre. In her role as Professor of Māori Health, Denise undertakes research in areas focusing on Māori/indigenous family violence, health and health service engagement, cultural responsiveness, and workforce development. Denise recently led a Marsden funded research project, E Tū Wāhine, E Tū Whānau – Māori women keeping safe in unsafe relationships, which contributed new perspectives to working with Māori women affected by violence.

Denise currently serves as the Deputy Chair of Family Violence Prevention Expert Advisory Group; and is a member of the Royal Commission of Inquiry into Abuse in Care's Research and Ethics Approval Panel (REAP). She is also a member of the Health Quality & Safety Commission's Roopū Māori and has recently been appointed to the Ara Poutama (Department for Corrections) Governance Board.

Speaker:

Julia Tolmie

Julia is a Criminal Law Professor at the University of Auckland in New Zealand and researches criminal law, family law and feminist legal jurisprudence. Professor Julia Tolmie currently teaches Criminal Law, Criminal Law and Policy, Women and the Law and Advanced Criminal Law at The University of Auckland. Prior to her appointment at the University of Auckland in 1999 she lectured in the Faculty of Law at the University of Sydney for ten years. A theme throughout her research has been how the law understands, constructs and responds to precarity - particularly in the lives of women. Her research won the Auckland District Law Society Writing Prize for NZWLJ (2019), the Non-Traditional Research Category at the inaugural Australian Legal Research Awards (2020), a Faculty Senior Research Prize (2020) and an Auckland University Cable Research Impact Award (2021). She was the lead author in the recently published text: Tolmie, Gledhill, Te Aho and Quince, *Criminal Law in Aotearoa New Zealand*. She served as chair of the New Zealand Family Violence Death Review Committee



from December 2011-2016, deputy chair in 2017, and as a member of the New Zealand Government's Expert Advisory Group on Family Violence in 2013. She was the academic member of the District Court Judges Education Committee in 2015-2017. She served on the expert panel for several references of the New Zealand Law Commission in 2015 and has provided peer review on multiple reports for government and non-government organisations on matters relating to criminal law and family violence over the years.

Speaker:

Sudha Ramalingam

Sudha is a Senior Advocate who has been working for several decades around issues of family violence in Chennai, India. She specialises in supporting women from marginalised communities, ensuring that they get access to justice.

Speaker:

Harriet Wistrich

Harriet is the founder and director of the Centre of Women's Justice from which this initiative of the IFLN comes, and has worked for many years as a solicitor. She is particularly interested in working on holding the state to account concerning violence against women and girls. She is a solicitor of 25 years experience who worked for many years with renowned civil liberties firm, Birnberg Pierce Ltd. She is the winner of the Liberty Human Rights Lawyer of the Year award 2014, Legal Aid Lawyer of the Year 2018 for public law and Law Society Gazette personality of the year 2019. She has acted in many high profile cases around violence against women including on behalf of women who challenged the police and parole board in the John Worboys case, women deceived in relationships by undercover police officers and on behalf of women appealing murder convictions for killing abusive partners, most recently Sally Challen. She is also founder member of the campaign group, [Justice for Women](#) and trustee of the charity, the Emma Humphreys Memorial Prize.



Introduction

The International Feminist Legal Network (IFLN) is a brand-new initiative created by Harriet Wistrich at the Centre for Women's Justice to connect lawyers and legally-focused NGOs in work around ending violence against women.

Its purpose is to connect lawyers and legally-focused NGOs in their work to learn and to share from each other around efforts to end violence against women, to build an evidence-base on policies, initiatives and litigation towards strengthening this work in different jurisdictions round the world, to build state accountability, and to explore defences that have been or can be used by women around these areas of work.

There is a special interest in psychological violence which is the subject with which we begin the webinar series today.

Intimate partner violence (IPV): Entrapment

Professors Denise Wilson, Julia Tolmie and Rachel Smith sat on the New Zealand Family Violence Death Review Committee looking at the agency records for every family member in the lead up to homicides as far back as possible. From this they thought about how the systemic safety response to Family Violence could be improved.

Traditional ways of thinking about intimate partner violence do not capture the ways in which victim survivors respond to the violence that they were experiencing from their partners, but also the very neglectful and harmful responses from agencies and other people from which they were seeking help. Therefore, an entrapment framework was developed to make this aspect of victim survivors' experiences visible.

Empirical work was carried out interviewing Māori women (indigenous to New Zealand) who were in unsafe relationships, and their experiences of systemic entrapment were documented. From here, evidence of **intimate partner violence as entrapment was introduced through expert testimony in cases where women were being prosecuted for criminal offending in response to intimate partner violence victimisation.**

The concept of IPV as entrapment is used to understand the abuse tactics of the person who is using violence as a form of coercive control, whilst also investigating the social context in which that violence occurs. The dimensions of entrapment can be separated into three dimensions however in reality they are not separate:

- 1. The social isolation, fear and coercion his behaviour creates for the victim: coercive control**
- 2. The limitations of the systemic safety response to IPV and the community's response**
- 3. How structural inequities associated with gender, class, race, disability and other intersectionalities exacerbate the two other dimensions**



Entrapment broadens our perspective of IPV in several key ways. Firstly, it requires a realistic consideration of the safety responses available to the victim survivor. Also requires an informed understanding of how the intersection of inequalities associated with class, race, sex, gender and other forms of oppression in the victim-survivor's life, mediate their experiences both of their partners coercive control and the safety responses available to them. This plays out in different ways depending on the particular positionality and life experiences of the woman and of her communities. Indigenous women for example are not just dealing with an inadequate family violence safety system, but are also dealing with a family violence safety system that uses the very tools that are part of the violence that their community has experienced for generations in the process of Colonisation.

Entrapment in this context does not refer to entrapment in the relationship, but rather entrapment in the patterns of harm in systems of abuse which can continue after people have separated from their partner who is using violence against them. We include in the concept of abuse and harm, state neglect of violence towards victim survivors of IPV families in communities.

N.B: Abusive behaviour involves a range of strategies an abusive partner uses such as physical, psychological, emotional, sexual, financial, cyber-tactics used in varying ways to threaten, manipulate, stalk, restrict, isolate and coerce the victim.

Pertaining to the first two dimensions, when Evan Stark was developing the concept of coercive control he used a limited entrapment framework, and talked about the manner in which tactics of coercive control utilise heterosexual gender-norms and the broader social and systemic forces that support gender and equality. However, we cannot assume that these norms operate in a Eurocentric or non-intersectional manner. They are very culture specific and are influenced and play out in the shared history and circumstances of particular communities.

The second dimension of entrapment requires a realistic understanding of the safety responses that are available to the victim survivor and the responses of the community to those of her abusive partner and the inequities that shape those responses.

- Victims/survivors are navigating both the coercive control of their partner and the systemic safety options available to them.
- if the social responses of those around them support his violence, are inadequate to address the violence or exacerbate the victim's/survivor's experiences of violence by depleting their resources and/or making her less safe, then that is relevant.
- Because coercive control is a pattern of retaliatory harm, unhelpful responses are potentially dangerous responses.



The traditional Western toolkit for responding to IPV is built on an understanding of IPV as discrete acts of physical violence; they tend to be reactive responses to one particular event. Responses that must be initiated by the victim-survivors and are considered a Criminal Justice response, and not a Family Violence safety response. This is because it relies on proving that something has happened in the past to a very high standard of proof. The response to this is sentencing which often does not prioritise or consider the victim in the process.

Indigenous women in poverty are dealing with multiple systems of harm and cannot rely on getting an appropriate police response. Either the police take days to arrive, if at all, and in some cases armed police treat the victim as the offender. This makes them feel vulnerable in asking for help and keeps women experiencing entrapment. P 35 of the case of [Wilson et al, E Tū Wāhine, E Tū Whānau: Wāhine Māori Keeping Safe in Unsafe Relationships, 2019](#) highlights this.

IPV entrapment has some similarities to how we understand coercive control such as the way in which it plays out in a cumulative manner over time. However, these two concepts are different. IPV entrapment can be experienced individually or collectively and has a systemic dimension for some women.

Introducing Entrapment at Trial

Introducing evidence of entrapment in cases where women have been experiencing IPV, and respond by offending is crucial. This is because historically, defendants in criminal trials are usually looked on unfavourably by the criminal justice system. It is assumed they are responding to the physical abuse at the time they offend and does not consider or understand the concept of IPV nor the limitations women experience in accessing safety. This also undercuts women's access to the criminal defences because she is blamed for ending up in the situation in which she finds herself. The best the Criminal Justice System has been able to do is excuse the defendant by focusing on her poor mental health and using this as an explanation for her poor choices resulting in her being in the situation.

By introducing IPV as entrapment, it is hoped to expand the group of experts from whom evidence can be accepted in court, and to provide a more accurate picture of the context in which the victim-survivor was responding.

Litigating psychological violence against women in India

In Indian law, psychological violence is not an area of interest on its own. It is a part of other violence and is brought in under matrimonial law using the terminology of 'mental cruelty'. This is grounds for divorce in personal laws in India which vary by religion. The standards of which are different for women and men and highlight the gender inequality in the system. When a woman speaks of psychological violence, it is trivialised because the social expectations of what women should be doing in matrimony apply much more strongly to the



woman than the man. Women are expected to endure abuse and not bring issues outside of the marriage.

Even amongst judges, there is the belief that women nowadays are intolerable as they are educated and earning and are not fit to be in matrimony. This is a pervasive narrative across Indian society which makes it difficult to prove and get a sympathetic response from the courts and reliefs. These include divorce, alimony, judicial separation and child custody. Divorce is only considered as a mutual consent petition.

Physical violence is already difficult to prove in court, and psychological violence is even more so due to the lack of empathy. India experiences many suicides of women who are unable to cope with pressure and expectations of the culture.

Psychological violence as a criminal offence is contained in the Indian Penal Code. *Section 498A*: “Harassment of a woman which causes grave injury to her life or health, or drives her to commit suicide” carries a punishment of up to 3 years imprisonment. *Section 306*: “Abetment to commission of suicide” carries punishment of up to 10 years imprisonment. Legislations including *Tamil Nadu Prohibition of Harassment of Woman Act 1988*: “any act by a man which causes intimidation, fear, shame or embarrassment..” carries a punishment of three years imprisonment.

In practice however, women are rarely getting these remedies as the police are not receptive to receiving women’s complaints in the first instance. The priority is to ensure that the family unit survives, and no credence is given to the woman who is suffering. Therefore, it is incredibly difficult to register a complaint as the process is convoluted and judges discourage arrests of the offending parties. As a result, women are dejected and are afraid to make a complaint and face the wrath of the police, their families and the community. The woman is considered to be responsible for the violence itself.

The Indian Criminal Justice System has civil remedies for psychological violence because the criminal justice system did not give a complete remedy. This is found in the *Protection of Women from Domestic Violence Act (DV Act) 2005* which is largely seen as a criminal act even though it is not.

Appealing convictions using psychological abuse: Sally Challen case litigated by Harriet Wistrich

In February 2019, Sally Challen won her appeal against the conviction for the murder of her husband Richard which took place nine years prior. She was painted by the media as a jealous and obsessive woman who spied on her partner and killed him after seeing him with another woman.



After meeting her husband at 16, she was subjected to constant abuse and gaslighted and made to submit to him. This culminated in her striking him with a hammer, killing him forty years later.

In a letter to Harriet in 2012, Sally took full responsibility for the murder however also explained how "I was not in my right mind at the time...having been stretched to my absolute limit over decades". The overturning of this murder conviction was considered a historic victory and gave hope to many women convicted for killing their abusive partners. The extensive media coverage of the case creates greater awareness of coercive control and allowed many victims to connect with their own experiences.

This case had few features of physical violence, however there were many instances of psychological violence and coercive control. Harriet used as a tool the [Duluth power and control wheel](#) to explore and understand the dynamics of an abusive relationship.

At the original trial, Sally's lawyers put forth the partial defence of diminished responsibility per *S2 Homicide Act 1957* which if successful would have reduced her murder conviction to that of manslaughter. The jury ultimately rejected this defence. The test the Court of Appeal requires is fresh evidence to undermine the safety of a conviction with a reasonable explanation as to why such evidence was not advanced at the original trial.

Sally was assessed by a new psychiatrist and was diagnosed as having bi-polar disorder and a dependent personality disorder. This new evidence along with the use of the new law of coercive control (an offence under *s76 Serious Crime Act 2015*) was used by Harriet in Sally's appeal, which she won.

Since founding the campaign group Justice for Women in the 1990s, Harriet has advised over a dozen women seeking to overturn their murder convictions and has supported campaigns around many more. The women, from varying racial backgrounds, social classes and ages, all had experienced male violence however, and lived in a misogynistic, patriarchal culture where victims are blamed. These myths are even repeated by judges such as "she is not a typical battered woman".

For women to succeed in these appeal cases they must often rely on psychiatric evidence to show they are "mad" to avoid the label of "bad". In actual fact, these women have suffered extensive mental turmoil as a result of their abusive partners. Overturning a murder conviction in the UK requires overcoming numerous hurdles and there are many stages of a criminal appeal. However, this case shows how one case can have a huge impact.



Discussion and Q&A's

The long-term work of bringing feminist thinking and analysis of social issues into the structures of our legal systems is an ongoing challenge as demonstrated in our discussion today. These discussions seek to address and uncover through the formal system the harms we know about, and issues of unmasking inequalities of power when it comes to psychological violence and coercive control.

The challenges in getting legal systems to recognise this is particularly significant. Bringing activist work into the confines of legal practice has been highlighted and so the potential for cross-disciplinary work to advance this is something to explore. Ultimately, the narrow thinking of patriarchal systems and legal systems are pervasive across our jurisdictions and there is an urgent need for them to understand the contexts and cases with which they deal.

Q: Which other experts can we utilise to capture controlling and coercive behaviour and have it understood by the legal system?

Sudha: There are protection officers appointed by the state in every district in India who do help. We also have service providers in the form of NGOs and volunteers to help victims.

Juliet: Service providers are the perfect people to help in court as experts as they understand the system and how to navigate legal systems especially concerning women's safety.

Q: Is entrapment a new analysis in IPV or inherent in all IPV?

Harriet: Judges often look at the psychology of the defendant and not the perpetrator, nor the wider context. The entrapment model is brilliant, but we need to be able to convert that into the courts. Using the media and campaigning makes this context more widely available to the judges.

Further links of research and data below:

[Wilson et al \(2021\) 36\(19-20\) Journal of Interpersonal Violence 9808. Aroha and manaakitanga as central cultural values for Indigenous women in Aotearoa New Zealand](#)

[Douglas et al \(2020\) 32\(4\) Current Issues in Criminal Justice 488](#)

[Douglas \(Women, Intimate Partner Violence and the Law, 2021\): "legal systems abuse"](#)

Entrapment: R v Ruddelle (2020) NZHC 1983, R v Chen (2022), R v W (2021)