

**Submission
No 43**

COERCIVE CONTROL IN DOMESTIC RELATIONSHIPS

Name: Name suppressed

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Partially
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Crimes (Domestic and Personal Violence) Amendment (Coercive Control— Preethi's Law) Bill 2020

This legislation is not the way to address coercive control in domestic relationships, is unworkable, and should be abandoned.

I write to object to the proposed coercive control legislation as someone who has experienced it these last several years from a verbally and emotionally abusive partner I am in the process of leaving. I know intimately the sorts of behaviours this legislation seeks to criminalise and the harm such behaviours can do to those of us who have suffered them. Coercive controllers are almost invariably people with serious, chronic personality disorders like narcissistic personality disorder. Passing a law will not change or stop their dysfunctional behaviours. You cannot legislate a narcissist to respect others. Nor will it help the people whose misfortune it is to get into relationships with them.

The proposed legislation is unworkable in practice as it criminalises a range of behaviours considered normal in loving, parenting and caring relationships. The behaviours it seeks to criminalise are also very vague, for example, restricting another person's freedom of action. What actual behaviour might be considered restrictive? It is walking on eggshells legislation. Almost anything is an offence, unless you can prove it was reasonable under the circumstances.

Cases under the proposed law will be plagued a paucity of corroborating evidence making criminal convictions difficult to secure, and the case load also will be become bloated by false allegations. That will tie up police and court resources.

The proposed legislation will also make it risky to have a domestic relationship at all. Seek to set boundaries on their freedom of action, and you could face 5 years in prison for it. No thanks, I'll live alone.

Broadness of domestic relationship and scope of behaviours

The proposed coercive control offence covers a potentially wide range of relationships well beyond what is conventionally understood by the term 'domestic relationship' as someone you are now living with under the same roof. For example, you would technically be in a domestic relationship with someone you only just met if they turn out to be a relative of someone you once shared a house with years ago.

The proposed coercive control offence covers a broad scope of behaviours, including restricting another person's freedom of action. Yet all relationships involve compromise and limits on each other's behaviours. What actual behaviour might be considered restrictive? When does asking someone to do, or not to do, something become a restriction on their behaviour? Does the crime of "restricting another person's freedom of action" need to involve physical force, or the threat of it, or the imposition of a consequence if a request is not complied with, or what level or severity of consequence? Is the crime committed if the other person feels thwarted, doesn't get their own way, or if they feel they can't do whatever they like? The proposed legislation makes any attempt to set boundaries in a

domestic relationship an offence, subject only to the defence that it was reasonable under the circumstances. It is walking on eggshells legislation – almost anything is an offence, unless you can prove it was reasonable.

Presumption of psychological functional adults

The proposed coercive control offence appears to presume that the people involved in the domestic relation are psychologically functional adults. Yet this is not the case in a wide variety of domestic relationship situations. This includes those involving children and whose parents do, and are expected to, bring them up. It includes situations where the domestic relationship involves people with mental illness such as schizophrenia or bipolar disorder or who have debilitating conditions or diseases such as autism, Alzheimer's and dementia. It includes situations when the domestic relationship involves someone who has, or comes to have, an addiction such as to drugs, alcohol, or gambling. It includes situations in which the domestic relationship involves someone who has, or comes to have, a serious psychological issue such as depression, post-traumatic stress disorder, paranoia, anxiety, agoraphobia, and so on.

In these kinds of relationships, one person may be a psychologically functional adult and typically takes a degree of responsibility for the other person who is not and monitors and regulates their activities and exercises a degree of control over them. Society in fact expects this of the psychologically functional adult. Yet the proposed legislation criminalises controlling, regulating or monitoring the other person's day-to-day activities and indeed criminalises behaviour that limits another person's freedom of action, subject only to the defence of it being reasonable under the circumstances.

In short, the legislation does not appear to allow for the possibility that monitoring, regulation and control may be exercised in a loving way for a parenting, caring or therapeutic purpose.

Normal relationship behaviours defined as coercive control

In any relationship, but particularly in a domestic relationship, the people involved have to get along with one another and this can involve tensions, arguments, perhaps heated at times, and hopefully a satisfactory resolution. This can involve actions that seek to limit another person's behaviour. We don't just let other people we live with do whatever they like. And they don't just let us do whatever we like. We may ask each other to do things, or not to do things. And maybe there are consequences. This is particularly true of parent-child relationships. But also for adults. Consider, for example, a spouse who finds out their partner is having an affair. The spouse insists the affair must end, that the partner not see that person anymore, or divorce will be the consequence. The proposed coercive control legislation criminalises such behaviour by the spouse as it is seeking limit another person's freedom of action to continue the affair.

Normal parenting behaviours defined as coercive control

It is a normal expectation that parents living with their children socialise them as they grow up, teaching and modelling good behaviour, and pointing out and correcting poor behaviour, including, for example violent behaviour such as sibling fighting. Parents are expected to control, regulate and monitor their children's day-to-day activities. Parents are

routinely asking their children to do this or telling them not to do that. Getting them ready for school, making them clean their teeth, not shout inside, go to the dentist, do their homework, and a myriad of other things. Yet the proposed coercive control offence criminalises controlling, regulating, or monitoring another person's day-to-day activities and criminalises limiting another person's freedom of action. What is a parent to do with one of more of their own children behaving badly? Call the police and prosecute? Or is the parent to rely on the defence that their behaviour to control their unruly child was reasonable in the circumstances? In what circumstances is it reasonable to control regulate, monitor or limit your children's behaviour?

The proposed coercive control offence criminalises actions parents often use. For example, sending a child to their room or grounding a teenager or confiscating their phone might be considered isolating them and punishing them. It is certainly limiting their freedom of action. As are limiting a child's screen time, insisting on a specific bedtime, or insisting on their not having screens/devices in their bedrooms after a certain time, etc.

Reverses the onus of proof

The proposed coercive control legislation criminalises behaviours, subject to the defence of those behaviours being reasonable under the circumstances. This appears to make the action – for example, limiting someone else's freedom of action – a crime for which the accused has to demonstrate that it was reasonable under the circumstances. Instead, the onus should be on the prosecution to prove that the action was unreasonably coercive and controlling.

Likelihood of vexatious or false claims

The actions listed in the coercive control legislation are highly likely to lead to a large number of vexatious or false claims for a variety of reasons. It is important to remember that a person saying they are the victim of coercive control may not be a psychologically functional adult. They may, for example, be a gambling addict whose partner has sought to limit their access to money and who retaliates with an accusation of coercive control. They may be a narcissist who accuses their partner, projecting onto them their own controlling behaviour. An accusation of coercive control may be an act of revenge or spite. Indeed, the threat of a coercive control accusation could be used as part of a controlling partner's arsenal. A victim of coercive control could even be accused of coercive control by their controller if they seek to limit their freedom of action to control them!

This will tie up a lot of police and court resources and cause a lot of harm to people falsely accused.

Likely lack of corroborating evidence

Coercive control is almost invariably exercised in private, when the controller and their victim are alone and there are no witnesses. Verbal and emotional abuse leave no tangible corroborating evidence. Control actions involving violence are already crimes. It is likely that many, or nearly all, coercive control cases will involve only the competing testimony of the participants. It will be difficult to secure criminal convictions. This too will tie up a lot of police and court resources.