

When knowing your rights isn't enough in the face of legal and institutional violence: Learning from the reality of immigrant women

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The Icelandic Foreign Nationals Act No. 80/2016 is currently under review in parliament for proposed changes. The changes, put forward by the Minister of Justice Jón Gunnarsson, further limit the freedom of immigrants in Iceland and are an example of legal violence. The amendments, if passed, will limit an immigrant's right to appeal, give the Directorate of Immigration control over certain immigrants' legal representation, and, most alarmingly, allow the Directorate direct access to medical records and to force immigrants to undergo medical testing and procedures. The change is so sweeping, that they legalise the use of police force if an immigrant refuses medical testing or procedures. Kvennrétindafélag submitted a public comment on the amendments speaking out against them. In a memorandum submitted with the proposed amendments, the Minister of Justice claims that the changes will not disparately impact different genders and is in line with gender equality.

As Kvennrétindafélag pointed out, the law will, indeed, impact immigrant women differently than men. As can be seen from the 2018 #metoo narratives from immigrant women, the current Foreign Nationals Act already puts immigrant women into a network of legal and institutional violence that will only be exacerbated by the proposed changes. The narratives, published in whole in Kjarninn along with a statement demanding equal treatment, tell stories of how immigration and other laws limit the freedom of women who are trying to get help in situations of intimate partner violence (IPV).

In the stories and in the reaction to them in Icelandic society, we can see examples of legal violence – where the law itself is a locus of violence and is used to justify further violence by society. The Foreign Nationals Act creates a tiered system of immigration, with Nordic citizens at the top, followed closely by citizens of the Schengen area and then all others. This creates a society where rights are based on the accident of where you were born. When the right to reside in Iceland is tied to Icelandic citizenship, in the case of families, or Icelandic companies, in the case of employees, that right can be terminated at the will of the person or entity that is lucky enough to be Icelandic. The law, then, is used to give a certain class of person or entity power over another class of people. This is an example of the legal violence that is inherent in the law as it stands.

The concept of legal violence also encompasses the fact that members of the dominant group, Icelandic citizens and entities, can use the law to justify the violence they perpetrate on immigrants. The group discussed above, immigrants whose right to reside and work in Iceland is

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dependent on an Icelandic citizen or company, are at particular risk of experiencing all forms of violence at the hands of the dominant group. This can be clearly seen in the 2018 narratives where immigrant women share stories of their partners and employers using immigration laws against them or as ways of controlling them. A particularly egregious example is of a supervisor seemingly selling his immigrant employee to another man who rapes her. The supervisor tells the employee that she cannot go to the police because she will be deported since she has been working under the table.

Much of Icelandic society responded to the 2018 #metoo narratives with a unified chorus of “immigrant women must know their rights better.” This is a problematic response that has been repeated in the years following #metoo. There are narratives showing that women who did know their rights and asserted them were either ignored or told that that was not the way things were done in Iceland. Beyond individual narratives, the call for immigrant women to know their rights puts the responsibility for righting the wrongs the women are experiencing in Iceland on their shoulders – shoulders that are already weighted down by violence. It relieves Icelandic society of its responsibility to meet the needs of all women who experience violence by only requiring baseline educational outreach to the community of immigrant women.

This understanding of the Icelandic responsibility is mirrored in service providers’ responses from interviews collected as part of the project Immigrant Women’s Experiences of Intimate Partner (IPV) and Employment-based (EBV) Violence in Iceland – IWEV. The research team, made up of immigrant and native Icelanders, interviewed several service providers from organisations that typically support women in violent situations and civil servants who are involved with either immigration or IPV. A total of 14 service providers were interviewed, seven within and seven outside the capital area, between September 2020 and April 2021. The responses to the interview questions give valuable insight into how providers view and respond to the increasing diversity in Icelandic society and in their client group.

The main challenges they described in the interviews when working with immigrant women are the language barrier, cultural differences, different understandings of violence and the lack of knowledge of their rights. Many service providers talked about the need to educate immigrant women as the focus of their work with this group because of these challenges. Ása⁴ said in the interview how she was surprised when she realised that immigrant women do not know about their legal options: “I saw uuh a discussion on a report on mbl this fall I think it was uuh and it’s kind of struck me why wow they don’t know that this is an option for them”.

The providers described the power that Icelandic citizens have over their immigrant partners as a structural issue that adds to the problem of the immigrant woman not knowing their rights. According to the interviewees, the partners of immigrant women lie to them and give wrong information. Bryndís said: “So many women think that the law in Iceland states that upon divorce the husband gets the children and the husband gets all the property because they don't

⁴ All names of interviewees have been changed to protect their identity.

really know, and I think this is a a very important thing to keep in mind that the women they don't know Icelandic society they don't know their rights they don't know the law environment and they're being told all sorts of lies. All sorts of untruths and they are kept isolated, and they don't really know what their rights are.”

Similar to the 2018 #metoo narratives where immigrant woman shared their experiences of institutional discrimination and violence, Bryndís related a story from one of her clients, an immigrant woman. The client was divorced from her Icelandic partner and wanted to spend more time with their children. She told Bryndís that the District Commissioner who worked her case ignored her and only listened to the Icelandic father. Bryndís called the District Commissioner to ask about the case and was informed that they were told by the Icelandic father that the woman was lying so they decided to not listen to her. Bryndís concluded the story: “I would think at least it would be a very good thing to educate let's say like staff working for the social services child welfare services, for the district commissioner and other[s] on well on cultural differences and also how to conduct interviews with people who do not speak Icelandic and and já and well raise awareness because I think prejudice is definitely present”.

An uncritical understanding of rights in Iceland ignores the diversity within the group of immigrant women. Some interviewees talked about wanting additional diversity training, but being met with the response of “[n]o. (*she laughs*) it’s a state funded [institution] so they don’t have money to do anything and I mean uhh our bosses are very yeah ‘you are the specialists who knows more than you do’ like yeah great, thanks (*she laughs*) but no we just we try to learn from each other I mean we all have different kinds of education and different kinds of experiences so that has always been good it’s like this peer uhm training”. Several other interviewees echo this realisation that more knowledge about immigrant women and their situations would help them in their work. For most of them, though, this is hindered by institutional apathy and lack of funding.

A core component of the IWEV project is to draw on the experiences and voices of women with immigrant backgrounds to develop an educative approach to ensure their rights are respected. Informed by the United Nations definition of learning about, through and for human rights, Human Rights Education (HRE) offers an important accountability framework aimed at protecting against and preventing IPV. Accountability in the context of this paper refers to developing critical and informed responsibility to ensure human rights. We suggest that narrow interventions limited to women “knowing their rights” can act as forms of legal violence because they neglect the inherent tension between having knowledge about one’s rights and systemic and legal norms that render this knowledge ineffective. This tension raises the important questions, what type of education is needed to protect against and prevent IPV, and who should be the recipient of this education?

HRE is a broad and interdisciplinary field of education that has been adopted as a form of resistance by human rights activists to raise awareness of, challenge and address social, economic, cultural, political and civil human rights violations globally. The overall goal of HRE is

to prevent human rights violations, such as IPV, acting as a tool to address institutional and legal violence. Service providers working with immigrant women who have been affected by IPV receive some training. Yet as the interviews indicate, this training is limited, and not contextualised in the reality of legal violence faced by many immigrant women.

The accountability HRE model emphasises influencing professionals' knowledge, attitudes and actions to respect and promote human rights standards in their work. This implies that the quality of the HRE learning and the disposition of the learner to apply the goals of HRE within specific roles and responsibilities, are essential. The accountability model has been applied in the context of training for law enforcement officials. Results of the training in Australia have shown that HRE training and knowledge of human rights can increase accountability amongst officials to ensure the rights of minority groups. For service providers in Iceland, this human rights knowledge should include the legal and institutional violence faced by immigrant women caught up in a tiered system of immigration.

Analysis of the legal context, narratives of immigrant women and responses of interviewees suggest that the missing element in responding to immigrant women who have experienced IPV is working with their lived reality. While we agree that knowing your rights is important given that you cannot fight for your rights if you do not know what they are, we also stress the importance of knowing the rights of others and understanding systemic constraints that can violate these. Contextualised knowledge drawn from research such as IWEV is essential to develop the accountability needed to protect against and prevent IPV. The data show an alarming number of examples where violators use their rights to protect against being charged for a human rights violation. Developing critical and informed responsibility to collectively address IPV should be a core dimension of any training programme for service providers in Iceland. Knowing our rights is important. But more important is knowledge about the legal and institutional reality that negates these rights. Accountability thus becomes the responsibility of Icelandic society and its institutions and not only the community of immigrant women.