



Research Paper

Protection of Women from Domestic Violence Act, 2005: A Critical Overview

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I. Introduction

Domestic violence against women is an age old phenomenon, manifested from the perception that women are weak and in a position to be exploited. The root cause of domestic violence is unequal gender relations, which is often exacerbated by economic, social and cultural factors. Economic dependence has been found to be the primary reason. Without the ability to sustain themselves economically, women are forced to stay in abusive relationships and are not able to be free from violence. Due to deep-rooted values and culture, women do not prefer to adopt the option of separation or divorce. These factors make it imperative to understand the key issues that were stressed by women's rights groups, international development agencies, civil society and policymakers prior to the adoption of this legislation. Moreover, the 2005 Act was the first legislation on the issue of

'domestic violence'. It is therefore vital to examine the underlying reasons behind the adoption of a specific legislation on the subject. The first section of this report hence explores the historical background of the Act. This section will also outline the contribution of key agents and the general parliamentary process followed for adoption of the legislation.

However, merely viewing the legislation in terms of its provisions would be insufficient. It has been more than 7 years since the Act has been brought into effect. It is hence necessary to examine if the Act has sufficiently addressed the problem of domestic violence. The second section of this report analyses the provisions of the law in terms of its merits and demerits, identifies critical areas regarding implementation, scenario pre and post adoption of the Act in order to understand if there is a need for a new or improved legislation. Based on insights derived from the previous sections, the report also puts forward few policy recommendations for consideration.

This report aims to provide the reader with a holistic view with respect to the 'Protection of Women from Domestic Violence Act, 2005' and its significance in dealing with the problem of domestic violence. Hence the report has been split into 3 parts: history & background, an overview of the legislation and the analysis of the legislation.

Section I: History & Background

I. Domestic Violence in India: What does it constitute?

In the context of violence against women, 2 terms are constantly used: Domestic Violence (DV) or more specifically intimate partner violence (IPV). Domestic violence can be described as the power misused by one adult in a relationship to control another. It is the establishment of control and fear in a relationship through violence and other forms of abuse. It is a wider term that includes all physical abuse within a house, not limited to abuse to a woman from her partner, but could include abuse from in-laws, abuse of the elderly or children in the house. Intimate Partner Violence is what the man unleashes on the woman. Such DV or IPV violence can take the form of physical assault, psychological abuse, social abuse, financial abuse, or sexual assault. The frequency of the violence can be on and off, occasional or chronic. Like other countries such forms of violence exist in India. However as per crime reports, forms of violence such as forced abortion, widow burning, rape, dowry deaths are highly prevalent in India. Moreover, domestic violence in India is traditionally seen in the context of marriage. The National Family Health Survey-2005, indicated that 37.2% of women "experienced either physical or sexual violence" after marriage. However, the usual context in which such violence occurs

also needs to be explored.

Most cases of domestic violence in India have seen to exhibit the theme of 'patriarchal ideology'. The patriarchal structure of the Indian household is seen to affect the women's agency either through marriage, active discrimination by means of abuse and diminished women's agency through limited economic opportunity. Most violence in the patriarchal Indian home is attributed to patriarchal beliefs and the manifestations of a culture that is tolerant of violence. Bhatti 1990 study, reported that most of the respondents agreed that men beat women because they have to be controlled and kept in their place. As per a recent report by UNICEF, 57% of boys and 53% of girls in India think a husband is justified in hitting or beating his wife. This portrays that not only adults but also adolescents harbor patriarchal beliefs. The problem with violence within the Indian home is also the consideration that it is a 'private matter'.

In India, domestic violence often happens as a result of dowry demands. Dowry can be seen as a manifestation of the patriarchal structure in India. Dowry is exchanged in a majority of Indian weddings. Although its practice became illegal post Dowry Prohibition Act 1961, dowry flourishes among most social classes. Families of the bride and groom negotiate transfer of assets to the groom and his family in exchange for marrying the bride, often within the context of an arranged marriage. Dissatisfaction with the amount of dowry may result in abuse of the bride. Researchers have also documented this link. A 2005 study by Srinivasan published in *World Development*, found that domestic violence is lower among women who bring larger dowries. A study by Mahek Singh in Family Counseling Centers (FCCs) in Chandigarh showed that dowry is a significant factor for marital discord, where around 36.2% of the married women who approached the FCCs complained of dowry-related violence. In extreme cases "dowry deaths" or the murder of the bride by her husband and his family takes place. Numerous incidents of bride burning, harassment and physical torture of newly-wed women and various kinds of pressure tactics are adopted by the husbands/in-laws pressurizing them for more dowry. In 2011 alone, the National Crime Records Bureau reported 8,618 dowry harassment deaths.

Another common factor associated with the high prevalence of domestic in India relates to socio-economic status of women. The lack of financial independence and the stigma associated with divorce acts as a deterrent to women in India and forces them to stay with their husbands. Research in India has documented that women from lower socio economic status experience more physical violence than women from higher economic status (Bhatti 1990; Visaria 1999). While non physical forms of abuse are prevalent in higher socio economic categories, reports of physical assault are substantially higher in the lower classes.

II. The need for legislation on domestic violence: Lacunae in Previous Provisions

Of all forms of criminal behaviour, domestic violence is among the most prevalent and among the least reported. One reason for this anomaly is that till DV Act 2005, remedies available to a victim of domestic violence in the civil courts (divorce) and criminal courts (vide Sections in Indian Penal Code) were limited. Few provisions existed for the married woman to address issues of domestic violence. The existing personal laws (Hindu, Christian, Muslim) and few secular ones like the Special marriage Act deal only with marriage and the breakdown of marriage. None of these offered any safeguard or right for the woman to live in peace in the matrimonial home. This omission makes it easy to throw a woman out on the street with or without the dowry she brought with her and to coerce her into divorce or a maintenance settlement. Also, to continue receiving such settlement, the divorcee has to remain chaste and not remarry. In many cases, a woman does not opt for a divorce, as she fears losing custody of her children considering the fact that the father is considered the natural guardian of the child. Though the Dowry Prohibition Act was introduced in 1961, it did not bring much succor. Initially, the offences under the Act were made non cognizable, bailable and non compoundable. The Act has failed in its operation because of this.

For another twenty years, there was a hiatus. In the 1980s, two important provisions that brought domestic violence out of the private closet into the public domain were enacted. The first of these was the introduction of Section 498A of the Indian Penal Code brought in through Criminal Law (Amendment) Act, 1983, which criminalized violence in marriage, both physical and mental, inflicted on women. All violence faced by women within home was usually attributed to dowry. Section 498A, IPC was hence brought to address dowry related violence. Fortunately, although conceived as a protection against dowry harassment, the text of Sec 498A was wide enough to apply to other situations of domestic violence. Section 498A laid down that a "*husband or relative of husband of a woman subjecting a woman to cruelty*". The second were the new provisions of Section 304B, Indian Penal Code and Dowry Prohibition (Amendment) Act, 1986 read with Section 113B of the Indian Evidence Act, 1872 creating a new offence of dowry death. Both the 1983 & 1986 amendments have amended the CRPC and Evidence Act., However, Section 498A, IPC had limitations as it did not take into account day to day violence in the household and delegitimized the violence faced by married women at the hands of other relatives. Also, mental harassment is open to subjective interpretation and as far as physical cruelty is concerned, visible evidence is preferred. Hence, in the absence of any bruising or marks, it became impossible to lodge a complaint². Also, this provision dealt with abuse of persons within the institution of marriage.

1- Misra, Kamal, Recent studies on Indian Women (2007)

2- Misra, Preeti: "Domestic Violence Against Women- Legal Control and Judicial Response (2007)

These issues depict that there was lacuna in the legal system. With the ongoing provisions, there was no emergency relief available to the victim; the remedies that were available were linked to matrimonial proceedings; and the court proceedings were always protracted, during which period the victim was invariably at the mercy of the abuser. Also relationships outside marriage were not recognized. This set of circumstances ensured that a majority of women preferred to suffer in silence. It is essentially to address these anomalies that the Protection of Women from Domestic Violence Act 2005 was passed.

It is also important to note that the government was over-eager to pass laws even when there were adequate provisions within the IPC for crimes such as sati, obscenity and procuring minors for prostitution, in case of domestic violence instead of a new legislation, the government was content to amend the provisions of the Criminal Acts.

III. Evolution of the Act: The Women's movement

Protection of Women from Domestic Violence Act (PWDVA) was a part of a longer history of feminist engagement with violence against women. It is hence imperative to explore the history of the campaign.

Beginning in 1970's, feminists came together in what were later termed as 'autonomous woman organizations'. These groups were independent of party affiliation although individual members often had party links. Between 1975 and 1980, the movement focused largely on economic and demographic issues. Issues of violence were given scant attention. However, in 1979-1980, the movement shifted gears. The women's movement led by autonomous women's organizations brought issues of sexual violence to the forefront of the feminist agenda. This broadening of feminist agenda was catalyzed by political mobilization around the Mathura case. Women activists undertook to organize campaigns around other key issues of gender violence – dowry deaths, rape, wife beating, female foeticide & sati. The anti rape protests were followed by anti dowry campaigns. There were accounts of what the women's movement termed ' bride burning' or dowry deaths. The agitations by feminist groups across the country were able to attract the attention of the State to the growing incidents of the so called death-by-fire. The campaign highlighted the difficulties in invoking the law in cases of dowry related violence, for a range of reasons. For instance, dying declarations by women were seldom treated as evidence against the husband and in-laws; and even cases that were registered on the basis of dying declarations were later dismissed by the courts on the ground of inadequacy of evidence. Thus, charges of murder, abetment to suicide could not be successfully invoked. Similarly, police would be reluctant to intervene, arguing that it was not the task of the police to intervene in "family quarrels".

The women's movement campaign led to the reforms in rape law via the Criminal Law Amendment Act 1980, Criminal Law (Second Amendment) Act in 1983, which introduced Section 498A in the Indian Penal Code (IPC).

Many western countries passed laws against domestic violence in the 70s. Unfortunately, in India, the women's movement had not raised the demand for a similar law at that stage. However, it was only after the new provisions were sought to be activated in the courts, that the women's movement realized that the focus on dowry related violence and death had been rather narrow, for it ended up distracting attention from the other numerous instances of violence that women were faced with in the home, which were not necessarily dowry related. While it was still possible to bring cases of everyday violence against women in the home within the scope of Section 498A, it was not possible to use 304B, if the violence and the eventual death were not linked with dowry. There were other limitations noted in these provisions. There was also the notion that relying on criminal law remedies alone to address domestic violence does not fully recognize the responsibility of the State towards the victims of violence. On the other hand, existing civil law remedies were unable to provide effective and timely reliefs to women facing violence. A persistent problem in cases of domestic violence is that women are thrown out of their homes. Such considerations made it imperative to conceptualize a law on domestic violence that would be a combination of both civil and criminal law elements.

The involvement of Lawyers Collective (LC) comprising a group of lawyers and activists, with the process of formulating a law on domestic violence began when the National Commission for Women (NCW) requested them to prepare a draft bill on domestic violence in 1993. The first draft for a civil law on domestic violence was prepared and presented to the NCW in 1994. But, amore focused campaign for the law began only in 1998. It was realized that the first step should be to give greater visibility to the issue of domestic violence and introduce the legal community to the issues at stake. This led to a national-level colloquium on domestic violence, involving lawyers, academics, activists, and most importantly, the appellate judges. The colloquium entitled "Empowerment through Law" was an important milestone. The bill drafted by LC was extensively discussed at the colloquium and given a more concrete shape. Between 1998 and 2001, LC began a dialogue

within the women's movement on the draft proposal. In 2001, the Lawyers' Collective Women Rights Initiative formulated the 'Domestic Violence against Women (Prevention) Bill'. It took into consideration several prevalent forms of violence against women (sexual, verbal, physical, mental, or economic) and proposed a mechanism for women to approach the court for a protection order to prevent further violence and to ensure that they do not have to leave their home. The Lawyers' Collective laid a lot of emphasis on the need to give women the right to a shared household and the appointment of Special Protection Officers to counsel women and to offer them necessary assistance in distress. After going through a series of consultations and meetings, the final version of the bill was submitted to the National Commission for Women, the department of women and child development and other government agencies for consideration. However on March 8, 2002, the National Democratic Alliance (NDA) government, introduced a separate bill entitled, "Protection from Domestic Violence Bill, 2001" (hereinafter, GOI Bill) in the Lok Sabha.

The scope of the GOI Bill was much narrower than the LC Bill, in terms of categories of aggrieved persons and limited with respect to the nature of reliefs available. person. As per the Bill, the respondent was required to be a "relative" of the aggrieved person, the term "relative" defined as persons related by blood, marriage or adoption. The implication of this was that women who were in relationships other than legally valid marriage were excluded from the purview of the law. Section 4(2) of the GOI bill allowed the respondent to take the plea of self- defense in cases of domestic violence. The GOI Bill also had a provision requiring mandatory counseling for the aggrieved person and the alleged abuser. This was unacceptable as it put the abuser and the victim on the same plane. The definition of domestic violence in the GOI Bill, among other things required the conduct/assault of the respondent to be "habitual" or what made the "life of the aggrieved person miserable by cruelty".

Moreover few other provisions were found to be vague. Hence, in terms of content, the GOI Bill not only fell short of what the women's movement had been asking for, but it was feared that if enacted, it might have dangerous implications for women facing domestic violence³. After having lobbied for a bill to check domestic violence, proponents felt cheated by the government. Government on the other hand argued that they cannot take an extreme feminist position and will have to keep in mind the social context of India.

IV. Key Reports: Parliamentary Standing Committee

In response to the outrage expressed by women's groups against the GOI Bill, it was referred to the Parliamentary Standing Committee on Human Resource Development to examine the provisions of the bill. Between May and December 2002, the committee heard the views of the department of women and child development, invited memoranda from individuals and organizations and also received oral evidence and presentations by different women's groups such as the Lawyer Collective Women Rights Initiative, NCW, Sankalp, etc. Key flaws and omissions in the GOI Bill were pointed out. It was impressed upon the committee that arriving at settlements and salvaging marriages should not be the function of a law on domestic violence. Comprehensive modifications were suggested therein to integrate various forms and manifestations of domestic violence and to enlarge the protection, reaffirming standards of the human rights of women, as defined by the international human rights instruments to provide effective protection to women from domestic violence in the national law as well as in the national practice.

The Report of the Committee was presented to both the Houses of the Parliament- Lok Sabha and Rajya Sabha on December 12th, 2002. The report reflected that most of the suggestions made by LC were accepted by the committee. On the issue of not including women falling outside the narrow scope of the term "relative" within the ambit of the Act, the response of the State was that "such women as have been living in relationship akin to marriage without legal marriages were not included simply because the prevailing cultural ethos of the nation did not encourage such relationship". The committee in its report stated that there were, in fact, numerous cases of men and women living together without valid marriages and yet having social sanction. Besides, the primary issue in providing relief to women faced with domestic violence was the recognition of the woman's human right to a dignified life and not the propriety of the relationship she was in.

Thus, it was concluded that providing relief under the bill to a woman whose marriage is not legally valid will not be in conflict with the existing laws and will not give any legal sanction to illegal marriages³.

3- Jaising, Indira , "Bringing Rights Home: Review of the Campaign for a Law on Domestic Violence", EPW (2009)

V. Legislative Process: Introduction & Passage of the PWDVA 2005

The NDA Government had introduced the first draft bill on domestic violence in the 13th Lok Sabha on 8th March 2002. The bill was referred by the 13th Lok Sabha to the Department Related Standing Committee on HRD. Thereafter the Standing Committee sought comments and suggestions from individuals and institutions

and on the basis of these suggestions, the committee made several recommendations for modifications in the bill. The dissolution of the 13th Lok Sabha in February 2004 made an inroad for accepting the recommendations of the Standing Committee.

As soon as the UPA government assumed office, the Department of Women and Child Development reexamined the provisions of the said bill under the directions of the Minister of HRD and while drafting the bill, concerns of women right groups were taken into consideration. The Government of India introduced a new bill in the 14th Lok Sabha on 22 August 2005. The Bill was passed by Lok Sabha on 24th August and by Rajya Sabha on 29th August. It received the assent of the President on 13th September. However, it came into effect from October 26, 2006. The Act extends to whole of India except the State of Jammu & Kashmir. The new Act ensures that a hearing would be held within 3 days and the case would be disposed off within 60 days, The new Act contains five chapters and thirty seven sections.

Section II: An Overview of the Protection of Women from Domestic Violence Act, 2005

I. What is Domestic Violence under PWDVA?

Section 3 defines the term Domestic Violence. It stated that any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it-

- 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
- 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
- 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
- Otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

In the context of this section, following abuses are further explained:

- 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;
- Sexual abuse includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman
- Verbal and emotional abuse includes- (a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and
(b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested.
- Economic abuse includes-
(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 (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.

II. Key definitions:

This Act has defined around 20 terms. Below are few definitions that form the basis of this Act from Section 2 & other provisions. Definitions relating to the *types of order* have been covered later.

- **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
- **Magistrate:** means the Judicial Magistrate of the first class, or as the case may be, the Metropolitan Magistrate, exercising jurisdiction under the Code of Criminal Procedure, 1973 (2 of 1974) in the area where the aggrieved person resides temporarily or otherwise or the respondent resides or the domestic violence is

alleged to have taken place

- **Domestic incident report:** Means a report made in the prescribed form on receipt of a complaint of domestic violence from an aggrieved person

- **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 consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family

- **Dowry:** It shall have the same meaning as assigned to it in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961)

- **Respondent:** means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act: Provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner;

- **Service provider:** Any voluntary association registered under the Societies Registration Act, 1860 (21 of 1860) or a company registered under the Companies Act, 1956 (1 of 1956) or any other law for the time being in force with the objective of protecting the rights and interests of women by any lawful means including providing of legal aid, medical, financial or other assistance shall register itself with the State Government as a service provider for the purposes of this Act.

- **Shared household:** means a household where the person aggrieved 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 aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person 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 respondent or the aggrieved person has any right, title or interest in the shared household

- **Shelter home:** means any shelter home as may be notified by the State Government to be a shelter home for the purposes of this Act

III. What is the objective of the Act?

According to the Preamble of this Act, The Protection of Women from Domestic Violence Act, 2005 has been constituted “to provide for more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto”.

IV. Key Provisions of the Act:

Protection Officers: Appointment & Duties (Section 4-9): Any person who has reason to believe that an act of domestic violence has been, or is being, or is likely to be committed, may give information about it to the concerned ‘Protection Officer’. Duties of protection officer after receiving such a complaint have been covered under Section 5. If a Protection Officer or a service provider, on behalf of aggrieved person, requests the person in charge of a shelter home to provide shelter to her, such person in charge of the shelter home has to provide shelter to the aggrieved person in the shelter home. The same process would be repeated in case of requests to the person in charge of a medical facility for medical aid.

Section 8 of the Act enumerates the appointment of Protection Officers. It states that the State Government shall, by notification, appoint such number of Protection Officers in each district as it may consider necessary and shall also notify the area or areas within which a Protection Officer shall exercise the powers and perform the duties conferred on him by or under this Act. The Protection Officers shall as far as possible be women and shall possess such qualifications and experience as may be prescribed. The terms and conditions of service of the Protection Officer and the other officers subordinate to him shall be such as may be prescribed.

Duties and functions of Protection Officers has been listed under *Section 9* of the Act.

- To assist the Magistrate in the discharge of his functions under this Act
- To make a domestic incident report to the Magistrate, in such form and in such manner as may be prescribed, upon receipt of a complaint of domestic violence and forward copies thereof to the police officer in charge of the police station within the local limits of whose jurisdiction domestic violence is alleged to have been committed and to the service providers in that area
- To make an application in such form and in such manner as may be prescribed to the Magistrate, if the

aggrieved person so desires, claiming relief for issuance of a protection order

- To ensure that the aggrieved person is provided legal aid under the Legal Services Authorities Act, 1987 (39 of 1987) and make available free of cost the prescribed form in which a complaint is to be made
- To maintain a list of all service providers providing legal aid or counselling, shelter homes and medical facilities in a local area within the jurisdiction of the Magistrate;
- To make available a safe shelter home, if the aggrieved person so requires and forward a copy of his report of having lodged the aggrieved person in a shelter home to the police station and the Magistrate having jurisdiction in the area where the shelter home is situated
- To get the aggrieved person medically examined, if she has sustained bodily injuries and forward a copy of the medical report to the police station and the Magistrate having jurisdiction in the area where the domestic violence is alleged to have been taken place
- To ensure that the order for monetary relief under section 20 is complied with and executed, in accordance with the procedure prescribed under the Code of Criminal Procedure, 1973 (2 of 1974)
- To perform such other duties as may be prescribed.

Duties of police officers/service providers/ Magistrate post receipt of DV complaint (Section 5): - A police officer, Protection Officer, service provider or Magistrate who has received a complaint of domestic violence or is otherwise present at the place of an incident of domestic violence or when the incident of domestic violence is reported to him, shall inform the aggrieved person of the following:

- Of her right to make an application for obtaining a relief by way of a protection order, an order for monetary relief, a custody order, a residence order, a compensation order or more than one such order under this Act;
- Of the availability of services of service providers;
- Of the availability of services of the Protection Officers;
- Of her right to free legal services under the Legal Services Authorities Act, 1987 (39 of 1987);
- Of her right to file a complaint under section 498A of the Indian Penal Code (45 of 1860), wherever relevant: Provided that nothing in this Act shall be construed in any manner as to relieve a police officer from his duty to proceed in accordance with law upon receipt of information as to the commission of a cognizable offence.

Service Providers: Powers & Privilege (Section 10): Under Section 10 (2), a service provider shall have the power to-

- Record the domestic incident report in the prescribed form if the aggrieved person so desires and forward a copy thereof to the Magistrate and the Protection Officer having jurisdiction in the area where the domestic violence took place;
- Get the aggrieved person medically examined and forward a copy of the medical report to the Protection Officer and the police station within the local limits of which the domestic violence took place;
- Ensure that the aggrieved person is provided shelter in a shelter home, if she so requires and forward a report of the lodging of the aggrieved person in the shelter home to the police station within the local limits of which the domestic violence took place.

Under Section 10 (3), no suit, prosecution or other legal proceeding shall lie against any service provider or any member of the service provider who is, or who is deemed to be, acting or purporting to act under this Act, for anything which is in good faith done or intended to be done in the exercise of powers or discharge of functions under this Act towards the prevention of the commission of domestic violence.

Application to Magistrate (Section 12): An aggrieved person or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under this Act:

1. May include a relief for issuance of an order for payment of compensation or damages without prejudice to the right of such person to institute a suit for compensation or damages for the injuries caused by the acts of domestic violence committed by the respondent: Provided that where a decree for any amount as compensation or damages has been passed by any court in favour of the aggrieved person, the amount, if any, paid or payable in pursuance of the order made by the Magistrate under this Act shall be set off against the amount payable under such decree and the decree shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or any other law for the time being in force, be executable for the balance amount, if any, left after such set off.
2. Every application under sub- section (1) shall be in such form and contain such particulars as may be prescribed or as nearly as possible thereto.
3. The Magistrate shall fix the first date of hearing, which shall not ordinarily be beyond three days from the date of receipt of the application by the court.
4. The Magistrate shall endeavour to dispose of every application made under sub-section (1) within a period of sixty days from the date of its first hearing.

Assistance to aggrieved person in Proceedings:

- Under Section 14**, the Magistrate may, at any stage of the proceedings under this Act, direct the respondent or the aggrieved person, either singly or jointly, to undergo counseling

- Under Section 15**, the Magistrate may secure the services of such person, preferably a woman, whether related to the aggrieved person or not, including a person engaged in promoting family welfare as he thinks fit, for the purpose of assisting him in discharging his functions.

- Under Section 16**, if the Magistrate considers that the circumstances of the case so warrant, and if either party to the proceedings so desires, he may conduct the proceedings under this Act in camera.

Right to reside in a shared household (Section 17): Every woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same. The aggrieved person shall not be evicted or excluded from the shared household or any part of it by the respondent save in accordance with the procedure established by law.

Types of order issued by the Magistrate:

Protection order (Section 18): The Magistrate may, after giving the aggrieved person and the respondent an opportunity of being heard and on being prima facie satisfied that domestic violence has taken place or is likely to take place, pass a protection order in favor of the aggrieved person and prohibit the respondent from-

- Committing any act of domestic violence
- Aiding or abetting in the commission of acts of domestic violence
- Entering the place of employment of the aggrieved person or, if the person aggrieved is a child, its school or any other place frequented by the aggrieved person
- Attempting to communicate in any form, whatsoever, with the aggrieved person, including personal, oral or written or electronic or telephonic contact
- Alienating any assets, operating bank lockers or bank accounts used or held or enjoyed by both the parties, jointly by the aggrieved person and the respondent or singly by the respondent, including her stridhan or any other property held either jointly by the parties or separately by them without the leave of the Magistrate
- Causing violence to the dependants, other relatives or any person who give the aggrieved person assistance from domestic violence
- Committing any other act as specified in the protection order

Residence order (Section 19): While disposing of an application under sub- section (1) of section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order-

- Restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household;
- Directing the respondent to remove himself from the shared household;
- restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides;
- restraining the respondent from alienating or disposing off the shared household or encumbering the same;
- restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate; or
- directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require: Provided that no order under clause (b) shall be passed against any person who is a woman.

Monetary relief (Section 20): 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 and such relief may include, but not limited to,-

- the loss of earnings;
- the medical expenses;

- the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person; and
- the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force.

The monetary relief granted under this section shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed. The Magistrate shall have the power to order an appropriate lump sum payment or monthly payments of maintenance, as the nature and circumstances of the case may require. The respondent shall pay the monetary relief granted to the aggrieved person within the period specified in the order under sub- section (1) and upon failure, the Magistrate may direct the employer or a debtor of the respondent, to directly pay to the aggrieved person or to deposit with the court a portion of the wages or salaries or debt due to or accrued to the credit of the respondent, which amount may be adjusted towards the monetary relief payable by the respondent.

Compensation order (Section 22): In addition to other reliefs as may be granted under this Act, the Magistrate may on an application being made by the aggrieved person, pass an order directing the respondent to pay compensation and damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence committed by that respondent

Custody order (Section 21): The Magistrate may, at any stage of hearing of the application for protection order or for any other relief under this Act grant temporary custody of any child or children to the aggrieved person or the person making an application on her behalf and specify, if necessary, the arrangements for visit of such child or children by the respondent: Provided that if the Magistrate is of the opinion that any visit of the respondent may be harmful to the interests of the child or children, the Magistrate shall refuse to allow such visit

Power to grant interim and ex parte orders (Section 23)- In any proceeding before him under this Act, the Magistrate may pass such interim order as he deems just and proper. If the Magistrate is satisfied that an application prima facie discloses that the respondent is committing, or has committed an act of domestic violence or that there is a likelihood that the respondent may commit an act of domestic violence, he may grant an ex parte order on the basis of the affidavit in such form, as may be prescribed, of the aggrieved person under section 18, section 19, section 20, section 21 or, as the case may be, section 22 against the respondent.

Jurisdiction (Section 27): The court of Judicial Magistrate of the first class or the Metropolitan Magistrate, as the case may be, within the local limits of which-

1. The aggrieved person permanently or temporary resides or carries on business or is employed
2. The respondent permanently or temporally resides or carries on business or is employed
3. The cause of action arises.
4. Any order made under this Act shall be enforceable throughout India

Criminal Proceedings (Section 31)- Penalty for breach of protection order by respondent.-

1. A breach of protection order, or of an interim protection order, by the respondent shall be an offence under this Act and shall be punishable with imprisonment of either description for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both.
2. The offence under sub- section (1) shall as far as practicable be tried by the Magistrate who had passed the order, the breach of which has been alleged to have been caused by the accused.
3. While framing charges under sub- section (1), the Magistrate may also frame charges under section 498A of the Indian Penal Code (45 of 1860) or any other provision of that Code or the Dowry Prohibition Act, 1961 (28 of 1961), as the case may be, if the facts disclose the commission of an offence under those provisions.

Duties of Government (Section 11): The Central Government and every State Government, shall take all measures to ensure that-

1. The provisions of this Act are given wide publicity through public media including the television, radio and the print media at regular intervals;
2. The Central Government and State Government officers including the police officers and the members of the judicial services are given periodic sensitization and awareness training on the issues addressed by this Act;
3. Effective co- ordination between the services provided by concerned Ministries and Departments dealing with law, home affairs including law and order, health and human resources to address issues of domestic violence is established and periodical review of the same is conducted;
4. Protocols for the various Ministries concerned with the delivery of services to women under this Act including the courts are prepared and put in place.

Section III: Domestic Violence Act- An Analysis

I. Provisions of the Act: Merits & Demerits

The Protection of Women from Domestic Violence Act, 2005 is a significant step towards proving relief for women in cases of domestic violence. The act **provides two model relief system**. One is reconciliatory model and the other is punitive. Under section 14 Magistrate may at any stage of the proceedings direct the respondent or aggrieved person, either singly or jointly to undergo counseling with any member of a service providers who possesses such qualification and experiences in counseling. An aggrieved person has the right to make an application for obtaining relief by way of a protection order, residence order, an order for monetary relief, custody order, compensation order, interim/exparte order, or more than such order. Section 25(i) says that these orders will be in the force till such time the woman requires it. She can ask for a discharge of the order by applying in the court. Moreover, the procedure for obtaining such reliefs is simple and inexpensive. Care has also been taken to ensure the compliance of the orders of the Magistrate. Because civil remedies are integrated with criminal sanction, breach of protection order or of an interim protection order by the perpetrator is a cognizable and non-bailable offence punishable with imprisonment of either description for a term that may extend to one year, or with fine which may extend to twenty thousand rupees or with both. The court can also initiate proceedings under criminal law, i.e. section 498-A of the IPC in addition to the above. The provisions of the Act are in addition to, and not in derogation of the provisions of any other law for the time being in force. This means that any this relief may be sought along with any other relief before criminal court. Secondly, the Act **ensures speedy justice** . The act lays down a tentative time table for an early disposal of an application made under Section 12 of the act. Thus the first date of the hearing is to be ordinarily not beyond three days from the date of receipt of application. The disposal of the case would be endeavored within a period of sixty days from the date of its first hearing. The Act also **creates coordinated response to prohibit domestic violence**. It provides provisions for state to provide protection officers and necessary infrastructural facilities. The act provides provisions for protection officers and service providers and expects a lot from them. The protection officers can be penalized for failing or refusing to discharge his duties. The service providers i.e. the NGOs are not a subject of suit, prosecution or any other judicial proceeding.

Though the Protection of Women against Domestic Violence Act is dynamic landmark legislation with a broad view to ensure women safety in all the terms including physical, monetary and emotional abuse, it **suffers from some weaknesses**. The legislation is not devoid of loopholes. There are mainly two legal approaches for women who had suffered domestic violence, one is filing for divorce through Family Court, and the other is filing application to Magistrate according to DV Act which might go through Criminal Legal System. Few believe that **a dual system can be problematic**. The dual system sometimes makes the legal proceeding more complex even tedious for them. Also, the social impression of each approach put some stress on them.

The **exclusion of marital rape** is another cause of concern. Though the Act covers physical abuse, sexual abuse, verbal or emotional abuse as well as economic abuse, it does not speak anything regarding 'forced sex' or 'sex without the wife's consent', that is, 'marital rape'.

While the West has legally recognised the consent of women even in marital relationship violation/rejection of which is equivalent to a criminal act, in India this is an area still awaiting legal recognition.

As per the provisions of this Act, **domestic violence has been misled as a one-way affair**.

The act is deeply controversial due its insistence that firstly, the person who commits domestic violence is always a male, and secondly, that on being accused, the onus is on the man to prove his innocence. The Act does not provide any legal protection to men. Only women have the right to complain and seek legal action against their male partner. When a woman complains of domestic violence, prima facie, the complaint will be treated as true and genuine. Therefore there are a lot of chances of the act being misused by unscrupulous women. In

attempting to anticipate all possible ways to protect all aggrieved women from any sort of harm, the framers of the law have put their faith in all women being essentially honest victims, without worrying about proof of claims. In the process we are likely to see this law make a mockery of itself.

Un-clarified responsibility is a key concern. According to the Domestic Violence Act, Protection Officer has the duty to make domestic incident reports (DIR) in prescribed form and make application to Magistrate. Also, service providers have the power to record the DIR if the aggrieved person desires so. In practice, after two years of implementation, duty of each role still seems ambiguous. Moreover, in recent years there have been fading attempts of NGOs as service providers. Very few NGO's have registered themselves as service providers under the Act, the registered service providers as well as protection officers' lack experience with domestic violence work, too few protection officers are assigned in each district to handle the caseload, and government service providers provide poor services to those in need.

Advocates and protection officers have noted **additional inadequacies of the PWDVA**, including the Act's failure to mandate criminal penalties for abuse along with its civil measures, its failure to explicitly provide a maximum duration of appellate hearings which delays women's grant of relief, the residency orders' failure to give women substantive property rights to the shared household (only giving them the right to reside there), and a basic lack of infrastructure linking law enforcement officials, officials under the act, and service providers together in order to best and most efficiently serve domestic violence victims.

II. Enforcement of the Domestic Violence Act:

Table 1- All India Domestic Violence Act: 2009-2012

Year	Cases Registered	Cases Charge sheeted	Persons Arrested	Persons Charge sheeted	Persons Convicted
2009	16013	1922	1332	1385	129
2010	14189	4588	809	926	119
2011	14520	6105	1527	3431	370
2012	16309	1706	1093	2873	454

Source: GOI & Press Information Bureau

The Protection of Women from Domestic Violence Act, 2005 is a civil law meant for providing reliefs to women facing domestic violence. Under this law women can apply for reliefs in the nature of protection order, residence order, compensation order, monetary relief and custody order. It is only when the Protection Orders granted by the Courts are breached that criminal action is taken against the respondent under Section 31. As per the data provided by WCD Ministry, the cases under Domestic Violence Act, 2005, during 2009 to 2012 shows a rising trend in conviction rate (*Refer Table*). However this relief under DV Act was not as high as was expected.

There are multiple reasons for the poor reporting of DV cases. Problems such as lack of awareness among women, absence of training for enforcing officers, along with the low number of protection officers stand in the way of effective implementation of Protection of Women from Domestic Violence Act. These problems have been addressed later in the Section.

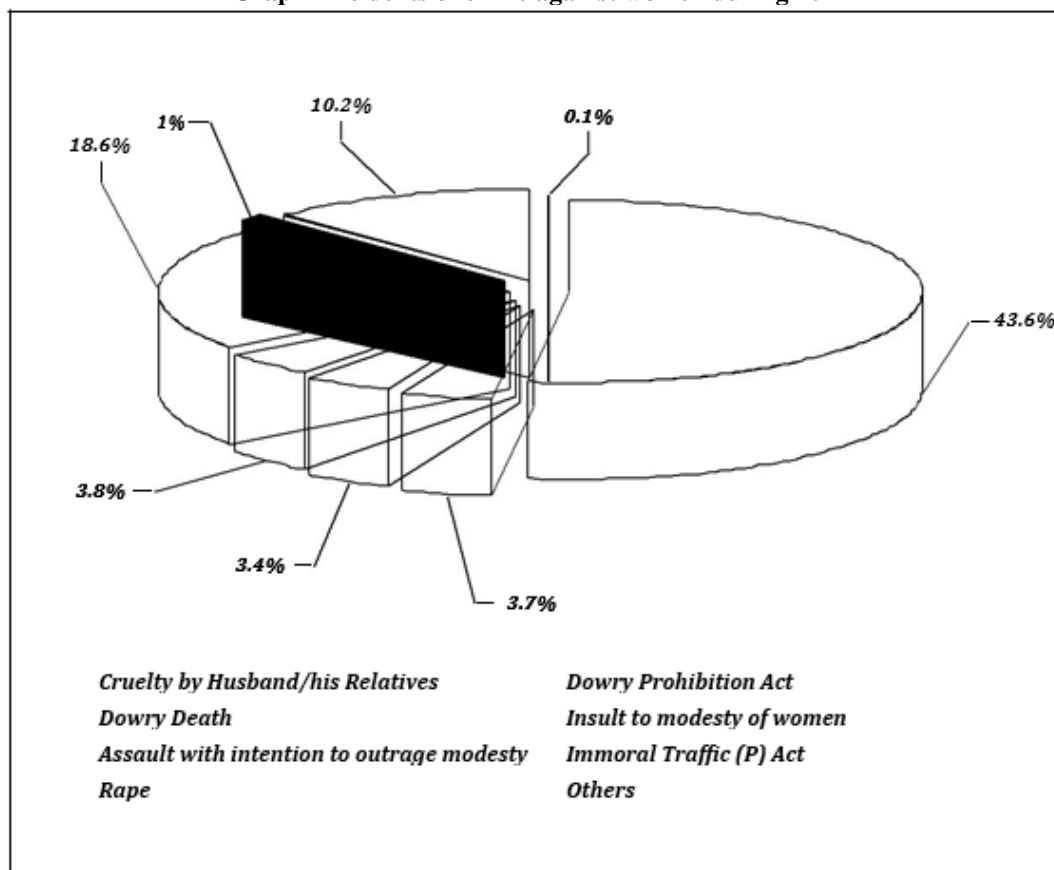
III. Current Status of the Domestic Violence in India: Criminal Law

The Domestic Violence Act 2005 is principally a civil law, which provides immediate emergency remedies for women facing violence, etc. However at the criminal law level, women facing domestic violence primarily seek relief from provisions of Section 498A, IPC (Cruelty to wife), Section 304 B, IPC (Dowry) and Dowry Prohibition Act. Keeping in mind the extreme violence relating to this subject, it is important to review the current status of criminal cases.

Although women may be victims of any of the general crimes such as ‘murder’, ‘robbery’, ‘cheating’, etc, only the crimes which are directed specifically against women are characterized as ‘crimes against women’. Various new legislations have been brought and amendments have been made in existing laws with a view to handle these crimes effectively. These are broadly classified under two categories: IPC and Special laws of women.

A total of 2,44,270 incidents of crime against women were reported under these laws in 2012 out of which domestic violence under Sec. 498-A IPC constituted nearly half of the total number of cases. The incidence of cases under the Dowry Prohibition Act and dowry deaths comprised nearly 7 % of the total crimes. This confirms that domestic violence is current endemic problem in India (Refer Graph).

Graph- Incidents of crime against women during 2012



Source: NCRB (2012)

IV. Problems and concerns in implementation:

In studying domestic violence and its prevention through law, one should admit the inherent difficulty for application of law through various organs of state. Difficult to **identify and obtain accurate data** is a key problem area. As this is an area where the dark figure of crime is, perhaps the highest, several factors render accurate data difficult to obtain. Chief among them are the inhibitions that surround reporting this form of deviant behavior. Self reporting by perpetrators is hardly the norm, and other family members often fail to report abusive acts for fear of provoking more violence against themselves or breaking up the family. In most cases, the victims are incapable of making their plight known to the responsible authorities. From an Indian perspective, we may say that domestic violence or crimes are generally not reported to the police for the following reasons:

- Due to traditional conservative value system, members of a family are reluctant to register cases in the police station considering reputation or prestige of the family.
- Police is reluctant to record the family disputes in the “Diary” and generally advises the complainant to mutually settle the disputes.
- Domestic violence may cause embarrassment to the family members if investigated by the police. Hence, the victim avoids reporting to police.

- Victims of domestic violence have no confidence in the Criminal Justice System as a result; speedy and definite justice is not meted out to the offender.
- There are many invisible costs of securing justice in terms of tension, harassment, repeated adjustments, inexpressible anguish etc. which the victim wants to avoid.
- Lastly, both the victim and the wrong-doer are bound to each other in love and affection. This close relationship is hard to break. Thus, domestic violence occurs in a fur of emotional moments which is later on adjusted with the passing of time.⁴

4- Rakhi Lahiri, “The Protection of Women From Domestic Violence Act: The Current Situation”, HRLN, 2009

After 7-8 years of the enactment of the PWDVA, there are still glaring gaps in its implementation. A major issue responsible for the limited reach of the legislation is **absence of adequate mechanisms and lack of financial resources**. The concerns laid out by Lawyers Collective Women’s Rights Initiative (WRI) through its periodic monitoring and evaluation reports, and by other women’s groups working on addressing violence against women are elaborated below.

Appointment of Protection Officers (POs): POs have been appointed on a full time basis only in 7 States and their number is inadequate to address the enormity of the issue. Wherever existing officials in the government machinery – like ICDS CDPOs, welfare officers, probation officers, Dowry Prohibition Officers, Child Marriage Prohibition Officers, etc – have been given ‘additional charge’ as POs, they are unable to work effectively as POs since they are already overburdened, and sometimes under-skilled for the task at hand. Further, POs do not have the infrastructure or sufficient funds to carry out their duties.

Notification of Service Providers (SPs): Out of 33 States and UTs, only 15 States and UTs have notified Service Providers under the Act, and they remain too few in number. No clear guidelines have been drawn for enlisting of SPs, definition of their roles, and their convergence with other stakeholders. SPs are also not being given any financial inputs to carry out their roles.

Access to Justice for Vulnerable Women: PWDVA is meant to ensure justice to all women facing domestic violence. However, several vulnerable sections that face gender based violence are unable to access the law and other forums of justice. These include lesbian and bisexual women, widows in sexual relationships, women in relationships that cross caste and religious barriers, sex workers, young married women and transgender people. In cases of bigamy, often only the rights of the first wife are addressed. Moreover, no special provisions have been made to ensure that disabled women can access the law.

Capacity Building: Currently, there is a critical gap with respect to the capacity building of people involved in implementing PWDVA. Where POs have been appointed, the extent and nature of training has been inadequate. Training of other stakeholders like police, lawyers, and judiciary is equally important. Some States have taken initiative in this regard, but it needs sustained support. Due to lack of understanding of gender, violence, patriarchy and sexuality, POs, SPs, police, lawyers and judges, amongst others, often encourage outcomes and decisions like ‘reconciliation’, or label women survivors as ‘bad women’ and ‘home breakers’. These emerge from existing social attitudes of the duty bearers under PWDVA.

Addressing these attitudes is critical to enable women to report violence, access justice and exercise choices based on their own needs and interests. Capacity building therefore plays a significant role in starting this shift in attitudes.

Coordination, Monitoring and Evaluation: While the Act envisages a multi-agency response to violence against women, many states have not formed Coordination Committees. There is no mechanism for reporting and monitoring PWDVA within the government. This impacts every aspect of PWDVA implementation, like awareness generation, capacity building, service of notice, enforcement or breach of orders, etc.

Providing Immediate Relief to the Survivor: The PWDVA Act recognizes that survivors of violence require counseling, shelter, health services and financial support. In this context, the lack of counselors remains a serious concern. Also, no additional shelter homes have been set up for survivors of domestic violence. The meager 260 Swadhar homes in the country and existing short-stay homes are not able to address the vast needs of women in distress who require shelter. Women survivors of violence – particularly those who have no steady source of income, have limited assets, are single, and have dependents to look after – also need some immediate financial support before interim orders for maintenance and shelter are provided under PWDVA. In reality, it is sometimes months and sometimes years before survivors get any monetary relief. Some provision for an ‘untied fund’ to financially support vulnerable women is a basic requirement to help these women access justice.

Resource Allocation: As indicated by Centre for Budget & Governance Accountability (2011), the Central government has not provided funds exclusively for implementation of the Act. In the absence of financial support from the Centre, some States have initiated Plan Schemes or allocated some basic resources (e.g. an allocation of Rs.7 crores by the Karnataka government). However, 19 States have not initiated any such scheme. Therefore, it becomes imperative to have a Centrally Sponsored Scheme (CSS) to bring to effect the various provisions laid in the Act.

Awareness about the Law: Whether it is the direct stakeholders in PWDVA implementation (like the police, judiciary, lawyers, etc.) or the supportive structures (like the Legal Services Authority), or the general public, awareness regarding the PWDVA law and its provisions remains poor. The lack of awareness is a serious problem considering the Act provides for measures to be taken by the Government in this regard. As per a news report, around 40% of women have no idea that DV Act exists while others are ignorant of the protection it provides. Also, lack of awareness is not necessarily on part of women but also management personnel under this Act. In a 2011 Staying Alive Report indicated that in Maharashtra, knowledge of POs, on provisions including their role and the roles of others, there is a considerable gap. For instance, on the role of the police, a higher proportion reported that the police have no role to play under the Act. Similar to POs, police officers are confused on the issue of women as respondents. Around 70 percent reported that a daughter can file a case against her mother and a mother-in-law against her daughter-in-law. This depicts a lack of sensitization conducted at the field.

Lack of Training of Police Officers and Magistrates: Numerous advocates pointed to the lack of training of police officers and magistrates regarding the Act’s requirements and its purpose, as well as a lack of sensitivity training towards the issue of domestic violence, an old evil but newly recognized concept in Indian society. This lack of training has led to the re-victimization of women within the justice system, either through police non-response to calls for help, sending women back home to their abusers by branding their victimization as mere domestic disputes or magistrates allowing for numerous continuances of cases, prolonging the court process and forcing victims to come to court to face their trauma time and again.

The **type of cases for prosecution** also relate to the issue of practicability of implementation. Physical injuries as a result of domestic violence are more evident than psychological injuries, and can be more easily discerned by health professionals as well as courts of law in the context of legal prosecution.

V. Methods of implementation under the PWDVA:

Duties of PWDVA agencies arise at different stages, which may be categorized as follows:

Putting in place infrastructure under the PWDVA - As mentioned earlier, the State Governments are required to establish the infrastructure under the PWDVA. This is to be done by appointing Protection Officers, registering Service Providers and notifying Shelter Homes and Medical Facilities. To ensure effective functioning and coordination between PWDVA agencies, the nodal agencies are required to provide trainings and develop protocols to ensure coordinated service delivery.

Pre-litigation stage- A complaint of domestic violence may be received by Protection Officers, Service Providers, Medical Facilities and the police. Protection Officers, Service Providers and Medical Facilities are empowered to record DIRs. PWDVA agencies are required to provide information to the victim/survivor of her rights and remedies and facilitate her access to support services (e.g. shelter, medical aid, counseling, legal aid). They are also required to assist victim/survivors file applications under the PWDVA in courts against 'respondents' or persons alleged to have committed domestic violence.

Litigation stage- Once an application is filed before the Magistrate, he/she can order Protection Officers to make enquiries, conduct home visits and serve notices. Magistrates may also refer matters for counseling, as per the procedure laid down in Rule 14 of the Protection of Women from Domestic Violence Rules (PWDVR). Magistrates may order the police or Service Providers to assist Protection Officers or provide assistance directly to court. The litigation stage ends with either the grant or rejection of orders applied for by the victim/survivor.

Enforcement stage- After an order has been granted by courts, Protection Officers and the police may be directed to ensure that such orders are enforced. Applications for alteration or modification of court orders may be filed by either of the parties (victim/survivors and respondents). Victim/survivors may also apply for discharging the order granted. Both parties are allowed to file appeals against orders granted. Breach of court orders is a punishable offence. In cases of breach, victim/survivors may initiate criminal proceedings against the respondent.

VI. Interpretation of PWDVA & Role of Judiciary

For prevention of Crimes against women of India is being dealt by different provisions of law. The crime against women is an age old thing. There are number of enactments to deal with crimes against women. Legislatures make enactments and it is the proper application/ implementation by the executive and judiciary is the key to success.

It is the judiciary which acts as a guard for better implementation. People look to the judiciary no less than god. Indian judiciary has a name all over the world therefore role of judiciary is of great importance. Given below are few case laws under PWDVA , which will help in understanding judicial interpretations of PWDVA.

Concept of shared household: In *S.R. Batra and Anr. V. Smt. Taruna Batra*⁵ decided by Markendeya Katju and S.B. Sinha court held that the shared household would only mean house belonging to or taken on rent by the husband of a petitioner or house which belongs to a joint family of which the husband is a member. On the definition of shared household the court held that it is not very happily worded, and appears to be the result of clumsy drafting, but we have to give it an interpretation which is sensible and which does not lead to chaos in the society. In other words, the Supreme Court found that "there is no right to matrimonial home in India

Definition of respondent: In *Nand Kishore and ors V. State of Rajasthan and Ors*⁶, the definition of respondent under section 2(q) of the Act was discussed. Section 2 (q) runs as respondent means any adult male person who is or has been in a domestic relationship with an aggrieved person and against whom the aggrieved person has sought any relief. Justice G.S. Saraf opined that a female relative is not excluded from the definition of respondent contained in sec 2(q) of the Act as in the proviso to sec2(q) the of the Act the word relative and not male relative is used.

Definition of domestic relationship: In *Priya V. Shibu and Ors*⁷, it was held by Justice V. Ram Kumar that it is obligatory on the part of the applicant to be in a domestic relationship on the date of preferring the application. The application under PWDVA is only valid if applicant is on continuous domestic relationship.

Relief: In *Saravana Kumar V. Thenmozhi*⁸, the court held that when a wife is driven out of the shared household then it falls within the definition of domestic violence namely, economic abuse. Further the court opined that the act being a benevolent piece of legislation to protect women from domestic violence, technicalities cannot stand in the way of the court entertaining the said application, even if the petition is not in the proper form and the

respondent has no sought for any particular relief. From these cases it can be observed that judiciary not only play the important role in interpreting the law and help to sought relief but also detects the flaws in drafting the act. And thus provide base for further amendments in the act for strong piece of legislation.

Live in relationships: *In D Veluswamy vs D Patchaimal, 2010*, the respondent filed a petition under Section 125 of the Criminal Procedure Code (CRPC) in 2001 before the family court at Coimbatore for maintenance of Rs 500 alleging that the appellant had deserted her. She stated that she was married to the appellant in 1986 and they had briefly lived together in her father's house for two or three years. The family court held that the appellant was married to the respondent and not to Lakshmi and the same was upheld by the Madras High Court. The SC however stated that the question had to be examined from the point of view of the PWDVA and examined Sections 2 (a), 14 2(f), 15 2(s), 16 3(a), 17 12, 18 20(1)19 and 26(1)20 of the Act. The court interpreted the term "relationship in the nature of marriage" and held that not all live-in relationships will amount to a relationship in the nature of marriage to get the benefit of the act. To get such benefit the conditions mentioned must be satisfied, and this has to be proved by evidence. If a man has a 'keep' whom he maintains financially and uses mainly for sexual purpose and/or as a servant, it would not, in our opinion, be a relationship in the nature of marriage.²¹ The conditions mentioned in the judgment are fourfold. First, the couple must hold themselves out to society as being akin to spouses. Second, they must be of legal age to marry. Third, they must be otherwise qualified to enter into a legal marriage, including being unmarried. And fourth, they must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time. Hence, the court has excluded two categories, from relationships in the nature of marriage; namely, women in live-in relationships who do not satisfy the fourfold condition and women in marriages void or voidable in law but where all the other elements of valid marriage exist. This judgment reduces the scope of the law considerably and consequently denies relief to many women who would have otherwise been able to use the PWDVA⁹.

5- MANU/SC/0007/2007 – www.manupatra.com

6- (MANU/RH/0636/2008-) www.manupatra.com

7- (MANU/KE/0265/2008)- www.manupatra.com

8- (MANU/TN/9828/2007)- www.manupatra.com

9- Pooja Badarinath; "The Challenge of Subjectivity within Courts: Interpreting the Domestic Violence Act", EPW (2011)

Section VI: Recommendations

Recommendations:

- We believe that the Domestic Violence Act needs some revision. There is need for an amendment in the Act for making provisions for 'Separate courts' to handle Domestic Violence cases. Such arrangements can be adopted for efficient time bound disposal and quick relief can be granted to the victim.
- Budgetary allocations should be made for creating the required infrastructure for effective implementation of these legislations
- Ensuring adequate infrastructure capacity to protection officers to function effectively
- Sensitization and training in a regular interval to Protection Officers, police officers and members of Judiciary.
- Provisions to train and provide clear instructions to Service Providers
- Periodic Monitoring of Shelter homes are entrusted to National women commission and finding of Commission be accepted as it is.
- Awareness Campaigns at district or block level involving all stakeholders

As prevention is always better than cure, eradication of domestic violence from the society should be our aim to build Strong and ethical society. Following things can be done in terms of advocacy to achieve this:

- Sensitization of men from grass root level including police, advocates, bureaucrats, Judicial officer, doctors

- Legal and Moral Education needs to be included in school course curriculum as a part of human right education
- Talk to children and promote gender sensitivity among them
- Expand education and awareness efforts to increase positive attitudes toward non-violence and encourage individuals to report family violence
- Advocate for the implementation of the Protection of Women from Domestic Violence Act 2005 and judicial procedures at the state and local levels that support and protect battered women
- Mandate training in domestic violence protection prevention training for all social services and legal professionals.
- Build support shelters. Also, shelter homes to be equipped properly to handle victims of all ages
- Recruit and train volunteers to staff help lines, accompany victims to court, and provide administrative support to shelters and victim services
- Establish medical facility to help physicians and other health care personnel identify and help victims of domestic abuse
- Provide legal representation for victims of domestic violence. Advocate for the accessibility of services for all population groups
- A strong monitoring mechanism to supervise effective implementation so that problem area can be identified then only necessary action can be possible
- Censor Board of India should restrict telecast of gender insensitive programmes. To achieve justice in the society, ignorance and helplessness need to be removed and the attitudes of the people should be changed through awareness, education and skills. And for this, a deeper and more sincere involvement of the State and civil society in the working towards women's right, women's security and autonomy is most needed. If the progress of women in India is to be more rapid, the education of the girl child must receive the highest attention. Laws alone are not enough, the mindset of the society and units of the society i.e. family needs to be changed and brought in tune and temper with the notion of equality in the true sense of the term. The preference given to males in this male dominated society is the root cause of domestic violence. Therefore, if the equality is ensured in the real sense of the term, the evil of domestic violence can be cured. Despite the galaxy of laws, the position of women is still deplorable. It clearly indicates that a superficial acceptance of modern notions of equality of sexes is scarcely enough to combat centuries old patriarchal ideas and institutions. So, attempts should be made both by the Government sponsored agencies and other social organizations to introduce attitudinal changes in the society towards the women particularly the girl child. Women empowerment is another key to success in this direction. The fiscal empowerment of women is the need of the hour. Therefore, the girls should be encouraged more and more to take up their career seriously which will made them financially independent and will also help in awakening of the women. In the ultimate analysis, there can be no two options about the need of gender sensitive laws, sensitive judiciary, effective machinery, vigilant women groups to deal with the salient crime o domestic violence.

II. Conclusion

Protection of Women from Domestic Violence Act is still in its infancy. No doubt it is an attempt to address a problem which is an age old practice of patriarchy society, very difficult to break the trend of male supremacy and sharing of powers with that of their so called subordinates (women). Therefore too much resistance from men, it is a fact even women are used and conditioned to such secondary status they treat this is inherent aspect of a women life so they too resist against this equality of status and violence free home. Now this is a period of transition a lot is to be done in order to achieve the desired goal.

Indians have not learned to craft their laws judiciously because they have no experience of their honest implementation. And yet every time a law shows signs of dismal failure. The Government responds by passing another new law or amendment and then, it pretends that it has handed over a new magic wand for empowerment. This Act is founded on the premise that domestic violence at the hands of men folk is the general rule in every 'household: it creates new legal concept that are dangerously imprecise, The important point to be noted under the Act is that it offers the same level of protection to women in live-in-relationship on par with

marriage. It also protects women in fraudulent or bigamous marriages, holding out the possibility of relief for the women duped into cohabitation and then dumped on the grounds that there was no valid marriage. So far as time limitation for shared household is concerned, the Act is silent as to how long a couple has to have lived in a shared household. No doubt, there would be certain legitimate cases. The law is for women who genuinely need help so the people should try to use it in its real matrix and not as isolated instrument for misuse.

The requirement of such an act was indispensable to address violence which was constantly brushed aside saying it is private affairs of a family outsider are not welcome. Who so ever tried to raise her voice against such cruelty only avenue was IPC where woman has to take a bold step sacrificing her place of residence, maintenance, many times custody of children, support of own people, society. It was difficult situation for her. On the other hand the husband or inlaws were in a comfortable position because after getting bail (mostly in 498A) due to delay of our legal proceedings things becomes standstill for women rather bad to worse. With the introduction of this new legislation new ray of hope shined in the horizon. However under PWDVA, women atleast can now raise their voice against domestic violence without fear of becoming destitute. Now both the complainant and respondent can live in one house and fight the case of violation of women. Owing to such significance, the Act needs to receive more attention for better implementation. With few changes, it is hopeful that the prospects of this act will be achieved.

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