



## VIOLENCE AGAINST WOMEN: AN INDIAN APPROACH

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### Abstract:

This paper clearly envisages and reflects the fact that women have faced violence, cruelty, brutality, discrimination, and coercion which endorses that women, in the past, were not integral when it comes to execution of Human Rights in true spirits and in clear terms articulating the consequences of failure. It is alarming that to note that women are still a deprived a lot in the masculine world. In order to safeguard & uplift these rights, though painstaking yet a critical approach has been made by many social Activists and NGOs . This is to make sure that the human rights framework is developed and women are safeguarded and given the due dignity. However, the increasing crimes & atrocities against womanhood is indicative of inaccessibility, lack of knowledge coupled with lack of conviction & commitment in enforcement. This would clearly be huge lag and inevitably the biggest stumbling block to the idea of progressive development of the nation, since we stand to forego the remits of synergy. The ability of a woman to enjoy her rights is generally defined and anchored on the fundamental societal structures and power relations which have an impact on various aspects like – law and politics, family life and community wellbeing, social and economic conditions, employment opportunities, education, training, etc. Gender

discrimination and gender based violence is one of the most notable violation of human rights which is rooted in laws of gender inequality. Women unfortunately have been the victims of such type of viciousness. Protection of Women against Domestic Violence Act (PWDVA), 2005 is an initiative taken up by the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) – a treaty adopted in 1979 by the UN General Assembly to guard protection of human rights of women. The focus of this paper, however, is on the ineffective implementation of such laws leading to a tremendous increase in the number of domestic violence cases unfortunately quite a lot of them go unreported. Therefore, the need for protection of human rights of women is the need of the hour and furthermore, there is an imminent need to aware women about the available rights to them and the ways by which they can protect them. A nation is developed only when its people are developed and for that, one of the most essential elements is to protect the basic rights to women so that they are able to prosper and ultimately play catalyst in being the integral part of progress of the country.

**Keywords:** Women rights empowerment, Discrimination, UN General Assembly, protection, violation, Development, education society.

The term *Gender* , according to Cambridge Dictionary, is defined as the physical and/or social condition of being male or female<sup>1</sup>. The universally accepted definition of the word gender is that

<sup>1</sup> Cambridge Advanced Learner's Dictionary, o. (2016). gender Meaning. [online] Dictionary.cambridge.org. Available at:

<http://dictionary.cambridge.org/dictionary/english/occupation> [Accessed 3 Feb. 2019].



it refers to identities and attributes including the roles of men and women which are constructed socially. Gender cannot be interchanged with women. The positioning of men and women in the society is affected by various factors including political, social, religious, economic, ideological and other factors and these can be modified by the society, community and culture. A popular cultural understanding is that the role of women, in most societies, is to look after children and other domestic activities while men play an active role in providing for the family by working. However, changes in these perceptions about the men and women role have changed and are constantly evolving. Ironically, due to the gender differences, women at a global level are positioned at disadvantageous positions despite the fact that women constitute about one half of the global population<sup>2</sup>. The worst victims of exploitations of a patriarchal society all over the world are women which remains prevalent even today. Equality, as a concept, was almost unknown till the Constitution of India was enacted. It provides for freedom of speech and expression, freedom of faith and worship, equality of status and opportunity and assuring individual's dignity thereby promoting fraternity<sup>3</sup>. However the concept of equality is seldom seen in practice.

The Violence Protection Alliance (VPA) in its *World report on violence and health* (WRVH) defines violence as "the intentional use of physical force or power,

threatened or actual, against oneself, another person, or against a group or community that either results in or has a high likelihood of resulting in injury, death, psychological harm, mal development, or deprivation<sup>4</sup>." The United Nations Declaration on the Elimination of Violence against Women, 1993, has defined violence against women as "any act of gender-based violence that results in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life<sup>5</sup>."

In legal terms, violence has been defined as an attempt to injure someone with a malicious intention by use of physical force. Among the different kinds of violence that prevails, the central focus of this paper shall be on Domestic Violence, various forms of domestic violence, laws on the same, their implementations and statistics and the current scenario.

Women have been subjected to crimes like rape, kidnap, molestation, eve-teasing, sexual harassment, cruelty, dowry violence, etc. It is an undisputable fact that women have been the worst victims of domestic violence at a global level which by far, in the public domain, has remained invisible. Over the last two decades, domestic violence against women has been a major problem recognized nationally and internationally and has been increasing drastically.

<sup>2</sup> Vol. 64, Jogendra Kr. Das, *Reflections On Human Rights And The Position Of Indian Women*, pp. 203-220 (The Indian Journal of Political Science)

<sup>3</sup> IND. Const.

<sup>4</sup> World Health Organisation, *World Report on Violence and Health*, Geneva, (2002)

<sup>5</sup> Declaration on the Elimination of Violence against Women, UN Resolution (1993) Art.1 Proclaimed by General Assembly resolution 48/104 of 20 December 1993



Since the later Vedic period in India women have been exploited and considered vulnerable. The victims of domestic violence may be children, woman, aged, disabled or any other vulnerable group. Domestic violence happens behind the very doors which are to safeguard women from the perils of the external world. In India, domestic violence is rampant and women on a regular basis encounter such kind of violence. Ironically, it is such a crime which is least reported due to the reason that the social stigma that prevails in the society where it is expected of a woman to be subservient not only to their male counterparts but also to their male relatives<sup>6</sup>. Limited remedies to tackle the issues of domestic violence victims existed till 2005, amongst these, the provisions of Sections – 304 B<sup>7</sup> and 498 A<sup>8</sup> of the Indian Penal Code, 1872<sup>9</sup> are a few to mention.

Under the provisions of these sections, women had to go either to the civil court for the decree of divorce or a prosecution could be initiated in a criminal court. However, there were no emergency reliefs available. All these circumstances led majority of women with no choice but to suffer in silence. Analyzing the loopholes in the

*aforementioned sections of IPC, The Protection of Women from Domestic Violence Act, 2005<sup>10</sup> was enacted by the Indian Parliament. It is a progressive act whose motto is to protect women from any kind of violence, irrespective of the kind of relationship she shares with the accused. This Act is civil in nature and it entrusts the state a duty to publicize, sensitize and take proper steps for creating awareness on the issues which have been addressed in this act to the authorities including the police officials, members in the judicial services, etc<sup>11</sup>. Therefore, a person may, at any time, inform the concerned protection officer if he has any reason to believe that an act of domestic violence has been or is likely to happen against him. Section 5 of this act lays down the duties of police officials, protection officers, service providers and Magistrates<sup>12</sup> in case any complaints received on domestic violence. The aggrieved person<sup>13</sup> shall be informed about the right to seek one or more relief by making an application as specified in the act.*

Some of the drawbacks of the provisions of sections 304 B and 498 A are: failure in safeguarding women subjected to violence in marital relationships and reliefs like

<sup>6</sup> Sheila Daur, “Indivisible or invisible: Women’s Human rights in the Public and Private Sphere”, Women, Gender, and Human Rights: A Global Perspective, Marjorie Agosín, ed. (Rutgers University Press, 2001).

<sup>7</sup> The Indian Penal Code, § 304 B, 1860

<sup>8</sup> The Indian Penal Code, § 498 A, 1860

<sup>9</sup> The Indian Penal Code, 1872

<sup>10</sup> The Protection of Women from Domestic Violence Act, 2005, is an act to provide for more effective protection of the rights of women guaranteed under the Indian Constitution who are victims of violence of any kind occurring within the family and for matters connected there with or incidental there to.

<sup>11</sup> Sahoo Harihar and Pradhan Manas Ranjan, ‘Domestic Violence in India: An Empirical Analysis’, 89(3), Man in India, 2009

<sup>12</sup> The Protection of Women from Domestic Violence Act, § 5, (2005): *Duties of police officers, service providers and Magistrate.*

<sup>13</sup> The Protection of Women from Domestic Violence Act, § 2(a), (2005): “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...



maintenance, shelter, custody etc. are also not provided. Since women do not have any support from her family and friends, a recourse in law cannot be taken by them if the offence is merely recognized and the guilty is punished. As the provisions of the criminal law are state driven, the victim's needs are hardly reflected. To implement such laws, there are many hurdles. The provisions of these sections had ignored violence that women encounter on an everyday basis by not specifying the measurable standards.

Section 304 B of Indian Penal Code<sup>14</sup> which imply that dowry deaths becomes effective only when the woman is dead. Dowry deaths cannot be proved easily as specified in the section because while meeting the dowry demands, there is no maintained record while the girl is still alive. On the whole, this section does not favour women to tackle domestic violence. From the words "soon before her death" it can be inferred that violence committed prior and violence committed on daily basis are not included in this section. Thus, this section fails to bring abetment to suicide under its purview.

According to the Report of National Crime Records Bureau (Crime in India) by *Ministry of Home Affairs, 2016*, most reported cases under crimes against women were recorded under the category of 'Cruelty by Husband or His Relatives' (32.6%) followed by 'Assault on Women with Intent to Outrage her Modesty' (25.0%), 'Kidnapping & Abduction of Women' (19.0%) and 'Rape' (11.5%). The highest number of cases was

reported in Uttar Pradesh amounting to 14.5% (49,262 out of 3,38,954 cases) during 2016. Delhi reported the highest crime rate (160.4) compared to the national average rate of 55.2<sup>15</sup>.

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)<sup>16</sup> adopted by the UN General Assembly had mandated exercise of due diligence by the States to prevent, investigate and punish the convicts in the violent acts against women in accordance with the National legislation. All State parties have been directed to take appropriate measures in preventing discrimination of all forms against women. India is a signatory to CEDAW and has accepted and ratified it in June, 1993. When there is inconsistency between the domestic laws, the domestic Courts in India have been obligated to give due regard to International Conventions and Norms<sup>17</sup>."

The implementation of PWDVA has not been effective as it is beset with numerous challenges like lack of funds and human resources, indigent coordination across agencies, and ineffective monitoring mechanisms, etc. The Indian Government has also given its commitment of achieving gender equality and empowers all girls by 2030 while focusing on Sustainable Development Goals.

Domestic Violence is an infringement of fundamental laws which are mentioned in the

<sup>14</sup> Supra 7

<sup>15</sup> Report of National Crime Records Bureau (Crime in India) by Ministry of Home Affairs. (2016).

<sup>16</sup> The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

<sup>17</sup> Gita Hariharan and another vs. Reserve Bank of India & another, (1), 481, (CTC:1999) *Handbook for Parliamentarians*



Universal Declaration of Human Rights.<sup>18</sup> Of the Women between the age group of 15 and 49, one third of them encounter domestic violence and one out of every ten women encounter sexual violence as mentioned under National Family Health Survey (NFHS) Round III report (2005-06).<sup>19</sup> Comprehensively, 35 per cent of the women have encountered physical and sexual violence while 37.2 per cent of women have encountered spousal violence<sup>20</sup>.

The term “*domestic violence*” in India generally is understood that any kind of violence endured by an individual from a biological relative, commonly it is the female who suffers violence by male members other family or relatives<sup>21</sup>. Under Section 3 of the Protection of Women from Domestic Violence Act, 2005, domestic violence has been clearly defined as any act, omission or commission of respondent where the life, safety, health, limb or well-being is injured, or tends to aggrieve the person mentally or physically will amount to domestic violence. It includes physical abuse, sexual abuse, verbal and emotional abuse and economic abuse. It can also be viewed as injuring or harassing the aggrieved person with an intention to coerce her or any other related person demanding dowry or any other property unlawfully.<sup>22</sup> It is based on the framework of the United Nations for Model Legislation on Domestic Violence and the

Declaration of UN on Elimination of Violence against Women<sup>23</sup>.

There are different kinds of domestic violence and these have also been mentioned in the act and they can be expressed as follows: physical abuse which means any physical force which may result in bodily injury, pain or impairment. The gravity of the injury might vary from minimal tissue damage, fracture leading to a permanent injury or even death of a person. Physical abuse conjointly includes denying a partner treatment or forcing alcohol and/or drug use. It also may include depriving a woman for seeking a medical treatment.

Sexual abuse refers to any sexual act, or attempting to seek any sexual act, unwelcome sexual comments or advances, or any act which goes against the sexuality of a person, using unwanted force, by any person, irrespective of the relation with the victim, whichever place apart from home and work. Acts like rape or any other forms of sexual assault, subject to pornography, genital mutilation of a female, testing the virginity, incest, etc<sup>24</sup>.

Verbal or emotional abuse is kind of abuse where the psychological integrity of a woman is directly impaired due to an act or set or certain acts. Some acts of psychological violence may include intimidating harm against the woman or anyone close to her which may be verbally or through some actions, mortifying comments, restricting and

<sup>18</sup> The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Recommendation No: 19

<sup>19</sup> National Family Health Survey (NFHS) Round III report (2005-06)

<sup>20</sup> *id* 19

<sup>21</sup> Martin, S., Tsui, A., Maitra, K. and Marinshaw, R. (1999). Domestic Violence in Northern

India. *American Journal of Epidemiology*, 150(4), pp.417-426

<sup>22</sup> The Protection of Women from Domestic Violence Act, § 3, (2005)

<sup>23</sup> GA Res. 48/104 of 1993

<sup>24</sup> The Protection of Women from Domestic Violence Act, § 3, (2005)



isolating from communication, hurting the woman using a child by violent intimate partner.

Economic abuse is commonly known as any action or set of actions used to curb woman's access to resources which may include time, basic necessities such as food and clothes, money, and also transportation. Acts that constitute to economic violence are constraining a woman from going to work, prevent her from financial decision making in the family, denying paying maintenance, etc.

This act also provides the right to live a violence free life and it has also been acknowledged unambiguously and proper provisions for immediate relief to victim in case of emergency has also been provided in this act. Another key feature of this act is that it ensures effective access to justice by way of introducing new authorities and mechanisms such as protection officers who shall act as the mediator or an interface between the woman and the court. This act also provides for a blend of civil and criminal laws in a two phase process which includes the orders passed by the Magistrate on application including the details of such cases in civil matters as referred in section - 12 of the act and also arrest of the perpetrator on breach of civil orders.<sup>25</sup>

The important mechanisms provided under the PWDV Act in order to address the needs

of a victim are creation of a Single Window Remedy system which could be coordinated by Protection Officers, Police, in-charges for Medical Facilities, Service Providers and Magistrates. Under the act, the term '*Protection Officer*' is appointed by the State Government under sub-section (1) of section 8<sup>26</sup>. The protection officers are the key authorities who act as a nodal agency between the various stakeholders. The Act also specifies the duties of these protection officers which include enforcement of the court orders, receiving of complaints of the victim, and making her aware of the rights available and also facilitate her in having an access to the Court and other services. The role of Service Providers which comprise people within governmental and members of non- governmental organizations which are registered under the act is to perform a significant role in supporting the protection officers and serving victims of domestic violence. The role of Police is to assist in the enforcement of this law. States like Karnataka, Kerala, Tamil Nadu and Maharashtra have appointed full time Protection Officers from within the Government. Requisite infrastructure and facilities have also been provided in all these states. Within other states, preliminary facilities have been provided to the protection officers. To carry out their functions effectively, protection officers in the full time independent cadre of government have been provided adequate infrastructural facilities<sup>27</sup>.

<sup>25</sup> The Protection of Women from Domestic Violence Act, § 12

<sup>26</sup> The Protection of Women from Domestic Violence Act, § 8(1), (2005) "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

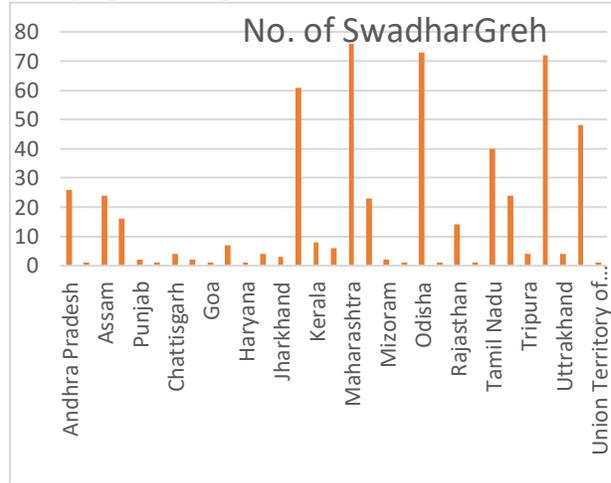
Protection Officer shall exercise the powers and perform the duties conferred on him by or under this Act."

<sup>27</sup> State visit study, 2012 conducted by LCWRI in collaboration with Vimochana & Infrastructure data, 2012 reflects that full time govt. of cadre of POs have been effectively carrying out their duties under the Act.



PWDV Act's another mechanism is the provision of Shelter Homes and Medical facilities as expressed under Sections 6 and 7.<sup>28</sup> The notification of establishment of shelter homes ensures that women when who are in need of such facilities are not deprived of them. The shelter homes<sup>29</sup> envisions a clear framework for women survivors to enable them lead their life with dignity. The person who has the authority of the notified shelter home will provide shelter to an aggrieved person if a request has been made by her, or on her behalf, by any other person<sup>30</sup>. The Swadhar Greh refers to those funds for the shelter home that have been allotted on the demand of the state government. The Swadhar Greh Scheme was launched by Ministry of Women and Child Development under the scope of this act. According to the scheme, shelter homes should be setup in every district with a capacity of 30 women. Any districts or big cities where the population is above 40 lakh or a district or a city where extra amount of support is required, more than one shelter home can be setup. Provision of basic needs like food, shelter, clothing and medical treatment to the aggrieved is the main objective of shelter homes, besides, emotional and economical support. Currently, in India there are 551 shelter homes functioning in both public and private sectors<sup>31</sup>.

A graphical representation of shelter homes



set up in each state has been given below, based on which one can understand that major metropolitan states like Delhi, Goa, Jammu and Kashmir, Sikkim, etc. lack these shelter homes for the protection of women which is a major drawback. For example, a city like Delhi where the rate of crime against women is high merely has two shelter homes. Maharashtra records the highest number of shelter homes, 76. While states like Arunachal Pradesh, Chandigarh, Goa, Haryana, Nagaland, Puducherry, Sikkim and Union Territory of Andaman and Nicobar Islands, has the least recorded number of shelter homes i.e., 1 each<sup>32</sup>.

Copyrights lies with Report from Ministry of Women and Child Development

<sup>28</sup> The Protection of Women from Domestic Violence Act, 2005

<sup>29</sup> The Protection of Women from Domestic Violence Act, § 2(t), Rule 16 (2005) : "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"

<sup>30</sup> The Protection of Women from Domestic Violence Act, § 6 (2005)

<sup>31</sup>Report from Ministry of Women and Child Development –

<https://data.gov.in/resources/state-wise-details-swadhar-greh-women-currently-being-run-both-private-and-public-sector>

<sup>32</sup> Id 25



<https://data.gov.in/resources/state-wise-details-swadhar-greh-women-currently-being-run-both-private-and-public-sector> Usha Kiran Yojana<sup>33</sup>, a scheme launched by the Madhya Pradesh government, with the intention that if not funded the government, the aforesaid act will be funded by an assistance grant of Rs. 2 Lakh in the very first year. According to the report released under National Data Sharing and Accessibility Policy (NDSAP) of the Ministry of Women and Child Development in the year 2017-18 the states where shelter homes have been established have discrepancy in the amount that has been allocated for these shelter homes<sup>34</sup>. A separate state budget is still not made by many states for the proper implementation of the PWDV Act. Under this act, registration of women's help groups, NGOS working against violence for women are recognized as Service providers with significant role played by them<sup>35</sup>.

*Court directed counseling* granted in section 14 of the concerned act states that only a member of Service Provider with own adequate qualifications and experience in counseling can conduct counseling following the detailed procedures mentioned in Rule 14 of the act. Counseling is conducted with a purpose to curb the menace of the violent acts and to ensure that the convicted furnishes an undertaking of refraining himself/herself

from causing further violence<sup>36</sup>. The Act also specifies those provisions which clearly indicate that such counseling must be carried out by following the feminist principles. The Court and the protection officer shall supervise the counselor in his work. Mizoram, with 94 Domestic Incidence Reports earlier, now is one of those states with progressive implementation of those laws in all stages of litigation where Service Providers have assisted the Protection Officers. It has been noted that assistance was provided in serving notice in about 98 cases and 25 house visits were conducted. Additionally, assistance in 90 cases was given for enforcing the court orders<sup>37</sup>.

The duties of police are laid in the present act to ensure that assistance is provided to women and help the Protection Officers and Service Providers in serving notice and enforcing orders. According to the Act, once a Domestic Incident Report (DIR)<sup>38</sup> is recorded, the copies of this report must be forwarded by the protection officer to the Magistrate and the local police station<sup>39</sup>. In case, an order is breached, the police should take an action under Section 31<sup>40</sup> and Section 32<sup>41</sup> of the Act where the respondent must be produced before the court.

The medical authorities under this act are authorized to record Domestic Incidence Reports and are imposed with a duty to

<sup>33</sup> [www.mp.gov.in/wcd-uk-scheme](http://www.mp.gov.in/wcd-uk-scheme) February, 13, (13:29)

<sup>34</sup> Report by National Data Sharing and Accessibility Policy (NDSAP) of the Ministry of Women and Child Development, 2017

<sup>35</sup> The Protection of Women from Domestic Violence Act, § 10 (2005)

<sup>36</sup> The Protection of Women from Domestic Violence Act, § 2(t), Rule 14(3), (2005)

<sup>37</sup> Refer to Staying Alive: the Sixth Monitoring and Evaluating Report on the Implementation of the

Protection of Women from Domestic Violence Act, 2005, January 2013

<sup>38</sup> The Protection of Women from Domestic Violence Act, § 12, (2005)

<sup>39</sup> The Protection of Women from Domestic Violence Act, § 9(b), (2005)

<sup>40</sup> The Protection of Women from Domestic Violence Act, § 31, (2005): Penalty for breach of protection order by respondent

<sup>41</sup> The Protection of Women from Domestic Violence Act, § 32, (2005)



provide medical aid to women who are a victim of domestic violence. An intervention centre based on public hospital crisis was established in certain states which aim at institutionalizing domestic violence as an important concern of public health within the system of the government. These centers have not been functioning as effectively due to lack of funds from the government in appointment of professionals who can provide proper medical aid to the victims of domestic violence.

PWDVA recognizes the right of an aggrieved person to seek legal aid under the Legal Services Authorities Act, 1987 (39 of 1987)<sup>42</sup>. Many states have taken this initiative and provided assistance in providing legal aid to the victims of domestic violence. with a view to review once in every two months, the procedural and practical hurdles and challenges encountered by the Protection Officers, victims of Domestic Violence and Service Providers in the implementation of the Act, a legal aid cell has been created. A report of the cell with proper suggestions for resolutions shall be submitted to the State Authority regularly. Although there are effective measures being taken, yet there are few states which have not taken any such measures to provide such legal aid to the victims of domestic violence. Hence these victims continue to suffer as they are unaware of the rights available to them.

With regards to the creation of awareness of this act a number of steps have been taken up by the government like a toll free women helpline number. In Gujarat, a resource centre on gender has hoarded the buses and

other modes of public transport with basic information of PWDV Act and other contact details of the helpline for women. This has been followed by many other states even today. However there is still lack of awareness of prevalence of such act in remote areas where people are uneducated and where there are higher cases of domestic violence.

*Bell Bajao* Campaign<sup>43</sup> in the form of an advertisement starring *Mr. Boman Irani*,<sup>44</sup> is another initiative taken up by Breakthrough in India for creating awareness on the rights available to women against domestic violence. This indicates to the abuser that the community is vigilant about what is happening around. This campaign has also been instrumental in ensuring that men play a pivotal role in ending this menace of violence and lend a helping hand in making the country a violence free country.

The budgetary allocation and utilization of funds for the implementation of the act has not been taken very seriously. While some states have no separate schemes for protection of women against such acts, the other states have neglected the core aspects in allocating budget for the schemes that they have undertaken. In many cases, the allocated fund remains unspent or is misused to a large extent. For example, there are funds allocated for awareness creation and capacity building and also for salary of the protection officers, but, aspects like assistance to service providers, medical facilities, legal aid, shelter homes, etc., have been neglected. The specific components of the budget must be carefully looked at for positive results and effective implementation.

<sup>42</sup> The Protection of Women from Domestic Violence Act, § 9(d), (2005) imposes a duty on the Protection Officer to ensure that legal aid is provided to the women.

<sup>43</sup> Information available on the Breakthrough website <http://www.bellbajao.org/>

<sup>44</sup>

<https://www.youtube.com/watch?v=zmNz0cTcxFU>



National Commission for Women had released a draft in the year 2012 called Centrally Sponsored Scheme (CSS) with a view to remove the disparities in the implementation of the law at the inter-state and inter-district level. The primary objective of such a scheme is to increase the accessibility to justice for women by providing enough financial aid to states which can strengthen and create suitable and institutional mechanisms to control domestic violence. The estimated annual Union Budget for this scheme was Rs. 1158 crore for the implementation of the act. But this action of the government is not in force due to poor budgetary allocation. This draft scheme, at the national level, creates a council in accordance with PWDVA which would solely be accountable for monitoring and implementation of the scheme under the act. Being an advisory body, the main task of this council is to review the reports of the states on the effective implementation of the PWDV Act and initiate proper measures and take necessary actions in case there are hurdles in the process of enforcement or implementation of the mentioned act. Co-operating with the Gram Nyayalayas, creating awareness among the general public, training and capacity building, etc., are some of the other major other aspects of this scheme<sup>45</sup>.

The implementation procedures and law practices under this act are in an evolving juncture. Some of the International Principles on Effective Implementation of Laws on Domestic Violence are legal provisions are setup for protecting women,

<sup>45</sup> Centre for Budget & Governance Accountability, New Delhi, Report- 2011

enabling access to support services and justice, execution of laws provoking to women's agency, adequate budgetary allocations, actions plans or strategies for capacity building and training of stakeholders etc<sup>46</sup>.

Further discussing about the budgetary issues, for the better implementation of the Act the Central Government has not dispensed funds exclusively, although the Act is under the purview of the Ministry of Women and Child Development. Therefore, due to the lack of financial assistance some states have established Plan Schemes and designate some basic resources. For example an allocation of amount of Rupees 560.73 lakh under the Swadhar Greh Scheme, which support the state in finer execution and implementation of the Act<sup>47</sup>. Nevertheless, some states have still not commenced any such scheme. Therefore to bring effect on the various schemes under this Act Centrally Sponsored Scheme (CSS) have a vital importance.

One of the major reasons for celebrating the introduction of PWDV Act by Women's Rights Activists across the country was incorporation of critical provisions in the Act for protection of women from the greater extent of injustice. Some of which include the appointment of Protection Officers and notification of Service Providers, therefore it is very much necessary to delve into whether the state has allocated adequate funds for the critical provisions under the Act. Protection Officers are the integral connection between the resentful women and the judicial system. Therefore lack in providing financial support

<sup>46</sup>Jhuma Sen: *Handbook For Parliamentarians*, Centre For Legislative Research and Advocacy (CLRA) and Oxfam India.

<sup>47</sup>Id 27



which surely affects the service delivery quality and overall satisfaction of the Protection Officers should also be taken into consideration. Although the Act provides for appointment of a protection officer at the block level assisted by support staff, yet it is not the case in when it comes to implementation.

One of the drawbacks of this act is that, it is not accessible to the vulnerable sections of society like bisexual, lesbians, transgender, etc. furthermore, there are no specific provisions mentioned under the aforesaid Act with regards to the aggrieved in case the woman is disabled. Lack of immediate relief to victims is still not addressed in the given Act. The time taken to dispose cases under the Act is longer than as mentioned under the statute.

Lack of infrastructure and the guidelines for enlisting the service providers, their roles and duties, and their engagement with the other stakeholders etc. have not been mentioned clearly which hinder the service providers in carrying out their duties efficiently.

Keeping all this issues in mind, it could be inferred that this issue needs to be addressed in order to safeguard women's rights. In this endeavour, there is an ardent need to review the current act and make certain modifications which would ultimately lead to effective implementation of the act at all levels. Thus, the following recommendations are put forth to bring certain changes and ensure the implementation of the act accordingly.

The Protection Officers in adequate numbers should be employed full time exclusively in order to fulfill their role effectively under the Act. One of the integral parts of training of the Protection Officers is Gender sensitivity

and as such proper awareness must be created on gender sensitivity issues. It is necessary to have qualified protection officers who have knowledge in social sciences, social work or law. There must be an easy access to the location of the officer of the protection office for women as well as the courts. Proper Infrastructure must be provided by the State for the protection officers. A proper record of woman who entreats help from the Protection Officers must be duly maintained by the Protection Officers. They must in all cases be directed to fill out Domestic Incidence Reports even if such cases do not go to court.

The Protection Officers must also make an attempt to undertake socio legal counseling and conduct awareness drives by briefing women of their available rights under the law. Stringent action should be taken against those protection officers who attempt reconciliation or mediation in cases where women have approached them. An annual report has to be made by these protection officers which includes the number of cases which are on record along with their details to the concerned authority so that any modifications required in the mechanism can be made for effective implementation.

With regards to the service providers, they must have an experience record in working cases which involve violence against women. Just like Protection Officers, it is necessary to have competent and adequate number of Service Providers throughout the state. Proper infrastructure must be ensured to these service providers and they must be directed to follow the guidelines and counsel the victim after the order has been passed by the court. and must be directed to be available to the victims at all times throughout the entire three-stage process of litigation. In this



endeavour, the social workers must also help the victim in following necessary procedures required for filing a suit. The Service Providers must also be directed to maintain a track record of feminist principles based casework conducted by them.

Police must also play a crucial role in mediating and making referrals to the Protection Officers, Service Providers and Medical Officers and co-ordinate them to provide relief to the victims even in cases of emergencies. The Police authorities must be vigilant enough in serving the notice and also in enforcing the orders of the court.

It should be made mandatory for all the medical institutions providing medical assistance to the victims, to record the Domestic Incidence Reports (DIR) and identify the cases of domestic violence. Such cases must be documented separately and preserved for future endeavors. The law should also mandate preserving the document of medical history as narrated by the victim in each case. Medical aid should also be provided in cases of emergency and for this, proper infrastructure and adequate funds must be granted by the state at all times keeping in view, the needs of such medical institutions. Proper guidelines must be set and their implementation must be ensured.

The Women Empowerment committees must take initiative to review the existing laws and their implementation and accordingly consultations on enforcement, amendments,

etc must be organized. Public hearings must be held to look into the gaps in the legislation with the stakeholders. Auditing and monitoring the legislation shall be strictly ensured by the courts. The failures in the implementation of the law must be brought to the notice of the respective Parliamentary committees and hearings of the same must be conducted duly. Political commitment which is backed by adequate resources is needed for the effective implementation of any law. It is necessary for the policy framers to ensure that budget is allocated in a proper way and in a timely manner in order to avoid any such gaps in the implementation process. It should be the obligation of the Central Government to advance protocols on providing services to women under the law for courts and other ministries.

The present paper deals with understanding the reality behind the implementation of Protection of Women from Domestic Violence, Act, 2005. It is necessary to look at the shortcomings of this act as domestic violence is internationally looked by many components. Domestic violence against any person is undoubtedly an infringement of a human right. The judiciary in India, in a series of cases have interpreted the provisions of this Act and also recognized its guaranteed rights. New rights like right to residence<sup>48</sup>, right of divorcee to reside in the share household of the husband<sup>49</sup>, right to get monetary relief though maintenance<sup>50</sup>, right to maintenance in absence of a valid

<sup>48</sup> Vimlaben Ajitbhai Patel v. Vatslabeen Ashokbhai Patel, 2008 ALL SCR 1707, the Court held that, the Protection of Women from Domestic Violence Act, 2005 provides for a higher right in favour of a wife. She not only acquires a right to be maintained but also there under acquires a right of residence. The right of residence is a higher right.

<sup>49</sup> 5 Razzak Khan v. Shanaz Khan, 2008 ALL MR (Cri.) Journal 213

<sup>50</sup> Sunil Hujband v. Smita Hujband, 2010 ALL MR (Cri.) 1221, See also Rajesh Kurre v. Safurabai, 2009 ALL MR (Cri.) 215



marriage<sup>51</sup>, right to get protection order even though the aggrieved woman is not residing with the respondent<sup>52</sup>, etc., are recognized, safeguarded and enforced by the concerned act which could not be possible under the criminal law.

For making the Protection of Women from domestic Violence Act, 2005, effective in its functioning, a comprehensive policy or a legal framework is needed in its implementation. Although, the act is enacted to ameliorate position of one of the most important sections of the society, there are statutory, factual and administrative hurdles which come in the way of the implementation process. Hence, we must look forward and act upon the changes which can be made in the act and make the act more effective, user-friendly and accessible to all the women and ultimately make India, a violence-free country.

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<sup>51</sup> Suresh Khullar v. Vijay Khullar, I 2008DMC 719 (DB)

<sup>52</sup> Savita Bhanot v. V.D. Bhanot, 2011 CRILJ. 2963