

Conclusion and Recommendations

Chapter VII

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7.1 Summary of Conclusions

After passing through a long process of analytical study of the women rights with special reference to the Protection of Women from Domestic Violence Act, 2005 and its operational dimensions and going through various study material, Judicial decisions, reviews and articles related to domestic violence and relief mechanisms available, an attempt is made to conclude the research work with proper findings and to justify and prove the hypotheses. Some recommendations are suggested to improve wise the functioning of the Act and to bring in certain changes/amendments for the effective implementation and to fulfill the purpose for which the enactment is made.

The goal of the authors of our Constitution was to make this land safe for women and to ensure a place of dignity and honour for their fearless participation in all the spheres of life and development process. India, dreaming to become a developed country¹ is possible only by bringing revolutionary programs of action to bring about a radical change in social behavior towards women. It is essential that human dignity of every individual be respected; each individual irrespective of sex has to contribute for their share of responsibility.

Society reform starts from home therefore member of every house has a role to play. Domestic violence is a private matter if our people will get sensitive and start changing their mind set, definitely things will change. Expecting drastic change with the enactment is impossible, law is to support and assist to discourage happening of illegal activity. People are expected to reform themselves. Women community is waiting for social justice for long period. Now it is the time to provide justice to them through empowerment.

¹ Pradeepkumar Das, *Gender Equality for Women, problems and prospectus*, Pg. 201, 1st Edn., 2010

Now the time has changed, our women folk demand equal rights in all spheres of life. Therefore any kind of mental or physical cruelty is liable to be challenged by them. This is the sign of progress. More than the use of law, society needs to educate the wrong doers so that all human beings respect one another irrespective of their sex². Indian Society has undergone many cultural changes during the past. This challenge will set the pace for further development for the society if it is tackled properly and with circumspection by both men and women³.

The tolerance of minimal forms of violence is the breeding ground for extreme forms of violence against women. The first lesson one should learn is to come up to say no to violence, women themselves should participate and respond to the abuses

We need to grasp the moment and declare that zero tolerance of violence means absolute no tolerance of violence. This intolerance must not be only in proportion to the brutality of the violence or its visibility but intolerance of violence as an everyday occurrence in our lives. The Protection of Women from Domestic Violence Act, 2005 was designed as an instrument for protecting the human rights of women in domestic relationships. The Law was based on the faith that each human being is independent entity; that a woman is autonomous in her being; that her hopes, her aspirations and relationships are meant to be mutually nourishing and nurtured.

In the scheme of this research the historical perspective of the status of women is projected which clearly indicated that there were distinct changes of raise and fall in the status of women through the ages. The subservience of women is not a common day issue. It has been there since time immemorial⁴.The structure upon which contemporary Indian society rests has its roots in ancient India.

² Joshi Uma, *Violence and the Legal Rights of the Women, Social Welfare*, 1999 Pg. 14.

³ Sanjay Kumar Singh, *Human Rights and Gender Discrimination, a Quest for Gender Justice, Women Rights, Human rights*, 2010 Pg. 51.

⁴ <http://www.bellbajao.org/across-the-sea-of-time-violence-against-women/>

During the Vedic period women participated in the outdoor life and there was no prescribed position exclusively earmarked for them. Women had as much rights to enjoy life as men had and were never inferior to men.

Between the Vedic and Brahmanical period came the transitory epoch, which witnessed the dawn of separation of spiritual from the temporal power. This epoch still retained a certain liberty of expression for women's religious aspirations. Ancient period was basically ruled by Hindu Administrators. Every administration system brought changes in the status of women. Gradually, the position was deteriorated. The patriarchal society was strengthened by the law. Early marriages were encouraged and practiced. The institution of devdasi was in evidence during this period. Devdasis were commonly found in the most temples. In many temples, the devdasis degenerated into shamefully exploited prostitutes, their earnings being collected by the temple authorities⁵. Later on many restrictions were imposed on marriage. The birth of a daughter was regarded as a source of misery and it is no wonder that some of the girls were killed even at the time of their birth itself. Polygamy was prevalent. It was the closing period of Ancient era steps were entering into Medieval. During this closing time, very vicious practices like sati, purdah system, bride prices, dowries etc. dominated the society on the whole; diminution was noticed in the status of women.

The attitude, behaviour and living pattern of Hindu society changed drastically during the British regime due to education and western impact on the socio-cultural life of India. Injustice on women folk was echoed by many reformers.

Various evils of the medieval period were destroyed in the British era. It age was an era of social reform for the women. During the British era, there is a long list of reformers who undertook major efforts on women's behalf. Women were part of all movements, conservative and radical and began to view themselves differently. Though the female educational system was overwhelmingly conservative, the

⁵ Dr. S.R. Myneni, *Indian History*, Allahabad Law Agency, Faridabad, reprint 2013, pg. 175

educational experiments of women in India produced a “New Woman” “with interest that went beyond the household. For the first time in India’s history women began to communicate with women outside their families and local communities and they joined the new clubs and associations formed by women. These organizations became the medium for the expression of women’s opinion. At the same time they were a training ground for women who would later take up leadership roles in politics and social institutions⁶.

The British period saw various reform movements and social changes which took up the issues of gender inequality, primarily by passing laws that removed barriers to women’s emancipation. Though the dramatic changes did not take place in whole India, the age was definitely set for launching a struggle for creation of a gender just society.⁷

During the post independence era, much has been done for the liberation of Indian women in all classes and religions of the country. People had become aware about their rights. But still it cannot be declared that women got redemption from the clutches of the past and male domination. In India, women fall victim to traditional practices that violate their human rights. The persistence of the problem has much to do with the fact that most of these physically and psychologically harmful customs are deeply rooted in the tradition and culture of the society. When the modern period heralded, it was hoped that the previous situation of the Indian women will be totally transformed and the new day with happiness and freedom will be waiting for them.

But apart from the omnipotent power of globalization, there is another factor which is stark reality. If, on one hand she is at the peak of ladder of success, on the other hand she is mutely suffering the violence afflicted on her by her own family members for which the history is responsible.

⁶ Geraldine forbes, *The new Cambridge History of India Women in Modern India*, Cambridge University Press, sixth Reprint 2012, pg. 64, 65.

⁷ Subhamoy Basu, “Position of women in Pre-independence Era; A Socio Political Perspective”, in ‘*Women Rights Human Rights*’, R.Cambray and Co. Private Ltd Kolkata, 1st Edn. 2010, Pg.82

Besides, there are many other problems which women in India have to go through daily. These problems have become a part and parcel of the life of Indian women. Whatever problems are faced by women today are the cumulative product of previous position of women and the attitude of people. The position of women in present society is found to be precarious. In the new role while adjusting to her world of works, she is encountering variety of violence either in domestic sphere or in outer world. The exploitation of women can neither be prevented only by new enactments nor by enlarging law enforcing agencies because several elements of old built- in culture and thinking about the role of women are also responsible for the rise in violence. Historical factor is still a fetter for women to be liberated against any sort of violence.

Violence is one of the most pervasive of human rights violations, denying women and girls' equality, security, dignity, self-worth, and their rights to enjoy fundamental freedoms. No society can claim to be free of such violence the only variation is in the patterns and trends that exist in countries and regions.

It is only in recent years, due to the untiring efforts of the international women's rights movement, that violence against women received the attention it deserved. This led to the drafting of various legislations dealing with violence against women, such as the Vienna Accord, Beijing Declaration and the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW).⁸

United Nations has played a vital role in gender equality. It has taken the responsibility to ensure, promote and protect the Human rights of women and also to empower them. In its work for the advancement of women the entire U.N system has dedicated itself to ensure the universal recognition of equality between men and women and their Human Rights. United Nations sponsored many conferences, passed many charters, conventions and covenants. These all instruments have become a

⁸ "Staying Alive: Third Monitoring and Evaluation Report 2009 of the Protection of Women from Domestic Violence Act, 2005",
<http://www.frontline.in/static/html/fl2702/stories/20100129270209200.htm>, 12/1/14

vehicle for women to develop the political, social and economical skills necessary for this twenty first century.

The United Nations has however been in the forefront in galvanizing various steps towards protecting human rights of women across nations and regions. But despite its remarkable efforts, the world is torn apart by gender inequality, fanaticism, brutality, inhuman behavior, sexual harassment, cruelty against women etc.

To fulfill the international commitment India has an elaborate system of laws to protect the rights of women. Though, various legislations were enacted to the tune of Constitutional provisions in India to protect the women and to change their status, which have been enacted from time to time to remove gender discrimination and protect women's rights. In fact, they brought many changes in the status of women but largely failed to achieve the stated objectives due to the existing socio-cultural pattern of Indian society. Exploitation is rampant in all walks of life. Crime against them is increasing. The laws, by and large, have proved to be ineffective and only remain mute in statute books.

However, the Government is unable to enforce these laws especially in area where culture is deeply rooted. In reality, there is a visible gap between the law as it stands and the law as it operates, which is regularly marked by incidents of overwhelming injustice. The inequities that occurs in its daily working is a gap that should be closed, if equal justice for all is to become a reality in a country governed by rule of law.

Implementation, of women related laws, is a very herculean task. History reveals that these laws work very slowly in the society; unless sufficient efforts from the State as well as from the Public are initiated it would be a herculean task to change the fixed mind set of the society to accept these laws. Law alone is not sufficed for the security of women but it should be fortified by the social awareness. Hence the need of the hour is to create awareness among general masses about the

rights of women in India and to provide them social justice to make the vision of the Constitutional framers true.⁹

State has to identify gaps and has to seek out the strategies for future action. There is need for a concerted, dedicated and integrated approach in collaboration with civil society that would place implementation at broader framework.

Among the many manifestations of the violation of fundamental rights of women, domestic violence is one of the vicious one. It takes place behind closed doors, the very doors which are meant to protect women from the hazards of outside world. Those victimized suffer physically and psychologically. They are unable to make their own decisions, voice their own opinions or protect themselves and their children from fear of further repercussions. Their human rights are denied and their lives are stolen from them by the ever-present threat of violence.¹⁰

Violence and insecurity for a woman begins at very safest place for her – her own house’ is proved at this juncture. She needs protection against her own ones. Here the abuser is either her husband and her relatives or her near one. Since times immemorial, domestic violence has been an intrinsic part of the society we are living in. It is cutting across all social classes, genders, racial lines and age groups. It is becoming a legacy being passed on from one generation to another. The increasing instances and continued prevalence of domestic violence demonstrate that this global pandemic of alarming proportions is yet to be tackled with full determination. It is possible only when its root causes are to be eradicated and the domestic violence Act is strongly implemented.

⁹⁹ Dipak Das, *Women's Rights and the Constitution, Women Rights Human Rights*, R. Cambray and Co. Private Ltd. Kolkata, 1st Edition 2010, pg. no.213-214

¹⁰ Innocenti Digest 6 – Domestic Violence, domestic violence.pdf,
<http://www.google.co.in/url?sa=t&rct=j&q=&esrc=s&source=web&cd=7&cad=rja&ved=0CH4QFjAG&url=http%3A%2F%2Fwww.hawaii.edu%2Fhivandaids%2FDomestic%2520Violence%2520Against%2520Women%2520and%2520Girls.pdf&ei=Yhp9UZLjCluurAe4oIHIBg&usg=AFQjCNFL2vbLl-jjXyyk8t4H8LbmEBveyw&sig2=zY1uNShupjjbXKsWPYjK7g&bvm=bv.45645796,d.bmk>

It is for the first time that an Act has been made to address women's issues in detail. The Act is an extremely progressive one not only because it recognizes women who are in a live in relationship but also extends protection to other women in the household, including sisters and mothers thus the Act includes relations of consanguinity, marriage, or through relationships in the nature of marriage, adoption, or joint family thus, 'domestic relationships' are not restricted to the marital context alone. It provided comprehensive definitions and effective civil reliefs, while incorporating a criminal element which comes into play on the breach of civil order by a perpetrator, which leads to imprisonment and fine. It saw domestic violence as a criminal and civil law issue.

By empowering Courts to grant the protection orders and reliefs, the Act has made an attempt to build more equal relationships within the home. The Act is specifically designed to operate in conjunction with other civil laws and criminal laws, thus reducing the multiplicity of forums, while simultaneously providing multiple avenues for victim to seek legal redress.

Undoubtedly legislation itself cannot transform a society without the help and the support of judiciary. All provisions get their real meaning and import through the process of judicial interpretation. The Constitutional mandate and the various laws providing for protective discrimination in favour of women relating to several aspect of their social, economic and political life have come up before the Courts. Through various devices like judicial review, judicial activism, social action litigation and the duty of enforcement of fundamental rights the Superior Courts in India have evolved a gender jurisprudence which has given substance and life to the Constitutional scheme of protective discrimination in favour of women¹¹.

The judiciary is responsible for making the Act a reality for the domestic violence victim and interpreting the various provisions of the Act such as reliefs,

¹¹ Shilpi Jain and Rahul Aggarwal, *Justifying Women Reservation with Reference to India*, *Nyaya Deep*, the official Journal of NALSA, Volume XII, Issue 4, October 2011 and Volume XIII, Issue 1, January 2012, Pg. 16

among others. Analysis of orders suggests that judges are readily passing to stop violence and residence orders. This is a major step forward in empowering women. The judiciary has laid down exhaustive guidelines in its various decisions to realize the concept of gender justice and gender equality.

There is need for greater recognition that India's future depends on our ability to end domestic violence. The Domestic Violence Act should be functioned effectively, if the Act fails India's commitment towards women will also fail. The culture of the country can and must be changed through this law from a culture of gender inequality to a culture of gender equality; from a culture of pervasive violence to a culture of non-violence. There is a need for massively scaling up the commitment of all branches of the State to ensure the effective implementation of the Domestic Violence Act.

Every individual of our country must contribute in strengthening the women position by the efforts to make the women related laws more effective

After examining carefully the violation of women rights in general and domestic violence in specific, the following suggestions and recommendations are made to make the Protection of Women from Domestic Violence Act, 2005 the best instrument for creating violent free society and non-discriminative world where women feel free and safe at home and outside.

Following are the recommendations suggested after going through the research work:

7.2 Recommendations

Recommendations for Amendments under the Domestic Violence Act

❖ *Amendment to Section 9(b) of the Domestic Violence Act*

Section 9(b) of the Act¹² provides the duty on Protection officer to file the Domestic Incident Report to the Magistrate and Section 10(2)(b)¹³ of the Act authorizes Service Providers to record the Domestic Incidence Report and forward to the Magistrate, Rule 5 of the Domestic Violence Act authorizes only POs and SPs to make DIR. These provisions are restrictive in nature curtailing the role of Police and Women Commission in filing the DIR. In these cases Magistrate has to call DIR from POs and SPs, even Police report would be dependent on the DIR to be filed by POs or SPs.

Women Commission many times have demanded the amendments in the aforesaid provisions of the Domestic Violence Act, 2005 to activate their role in filing DIR. Hence amendment is proposed to widen the scope of filling DIR through Women Commission and Police department.

¹² Section 9 of the PWDVA deals with the Duties and functions of Protection Officers.-(1) It shall be the duty of the Protection Officer-

(a) to assist the Magistrate in the discharge of his functions under this Act;

(b) 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;

¹³ 10. Service providers.-(1) Subject to such rules as may be made in this behalf, 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.

(2) A service provider registered under sub-section (1) shall have the power to

(b) 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;

❖ *Deletion of the Proviso to Section 12 of the the Domestic Violence Act*

Section 12 of the Act provides the provision for seeking one or more reliefs from the Magistrate by filing application. Proviso of the Section put the mandatory duty on the Magistrate to consider any Domestic Incidence Report filled by POs or SPs before passing any such order¹⁴. This has been the cause of many delays and refusal to grant interim order by the Magistrates. This proviso should not be used as a reason to refuse interim orders under the Act

Hence, the proviso to Section 12 must be deleted, and it should be left to the discretion of the judge to decide whether or not to ask for a report at that stage. This Amendment has been suggested to ensure that the Magistrate cannot refuse an application for the sole reason that the DIR has not been recorded or attached. Since the Domestic Violence Act is welfare legislation, procedure cannot defeat the substance.

❖ *Amendment of Section 29: Appeals only for final Order*

Under Section 29 of the Act orders of the Magistrate is appealable which means that even interim orders are subjected to appeal. Appeals from interim orders are one of the most important reasons for the delay in disposal of cases. The proposed amendment seeks to address this by restricting appeals to final orders only. Other laws also deal with same nature of appeal. In the Hindu Marriage Act 1955 Section 28 provides that orders made by the Court under Sections 25 and 26 are appealable if they are not interim orders. Section 19 of the Family Courts Act, 1984, states that appeal shall not be allowed from interim orders. Following the same principle in the proposed amendment, appeals should be allowed only from final orders to ensure

¹⁴ 12. Application to Magistrate.-(1) An aggrieved person or a Protection Officer 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: Provided that before passing any order on such application, the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer or the service provider.

timely disposal of cases. Since the Domestic Violence Act cases can be called as matters relating to family, we can restrict appeals from interim orders.

❖ ***Section 31 of the Act¹⁵ has to be amended to include Breach of All Orders***

Only the breach of Protection Orders is an offence. The law is silent on aspect of breach of other orders such as residence order, custody order, etc. section 31 needs to be amended to include breach of other orders as well. Various Magistrates have taken cognizance of breach of orders other than protection orders, especially if it relates to a breach of residence order. The following Amendment ensures that this positive practice is being reflected in the law so as to ensure uniform interpretation of the Act

❖ ***Amendment to the definition of 'Respondent'¹⁶***

Section 2(q) of the Domestic Violence Act describes the definition of respondent. After the long debate whether the word respondent includes female relatives of the husband or male partner is settled by the Supreme Court by holding that since the Statement of Objects and Reasons of the Act explains that an aggrieved woman can file against any relative of her husband or male partner and since the word “any” applies to all categories or classes of persons, the proviso covers the adult female persons of the family. The Court also observed that while the main provision under Section 2(q) of the Act uses the word male but in referring to a relative, the word “male” is not used. Drawing from this, it can be concluded that if it is the intention of the legislature that relative mentioned in the proviso can only be a male relative, it would have mentioned so, but it is absent.

¹⁵ 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.

¹⁶ Section 2(q) of the Act "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;

Though it is settled but the gaps in the act must be fulfilled by amending the Section 2 (q) of the Act by clarifying the intention of the legislature that whether word respondent includes female relatives

❖ ***Need to have separate procedure for the Domestic Violence cases***

According to Domestic Violence Act Respondent shall be a male adult member and relatives of the husband or male partner but as per general Law of Procedure Section 64 of the Cr.P.C states that summons can be received by only adult male member. There is contradicting between substantive law and procedural law itself and Domestic Violence Act is the special Law. These legislations create confusions. Hence Domestic Violence shall provide a separate procedure specifically for the domestic violence cases.

❖ ***Recommendations for the effective implementation of the Domestic Violence Act***

There are varieties of critical issues which have arisen in relation to implementation of the Domestic Violence Act

Awareness about the Domestic Violence Act 2005

One precondition of improving the implementation of the Domestic Violence Act is to increase women's awareness of it. Still large number of women community is unaware about the Law. The awareness of the Act should be extensively created at the rural and urban areas. There should be advertisement through electronic media;

At the juncture of violence people must be known about the officers with whom they can seek assistance, demand services and expect support. Police at the receipt of the complaint has to provide sufficient information about the rights and remedies available to aggrieved women. Police has to change their patriarchal mind set and careless attitude towards women.

Steps should be taken to create sensitivity about women problems among people, Protection Officers, Service Providers, Shelter Homes, Police and Magistrate

Sensitivity towards the women issues, particularly with reference to domestic violence should be forged and created in the authorities who work within the framework of the Act such as POs, SPs, SH, Magistrates and Police. Gender sensitization is to be impeded through trainings.

Sufficient and proper allocation of budget by the States

There is a definite need to increase budget for support and for allocation of funds to implement the Act. However, there is no systematic basis for making these allocations, and much is left to the discretion of the individual State. Inadequate budget allocation affects the whole implementation process. It is suggested that a scheme should be formulated to ensure a regular annual flow of a specified amount every year with ongoing financial monitoring.¹⁷ Special budgetary allocations for publicity and creating the required infrastructure for effective implementation of the legislation should be made.

Need of trainings and orientations to the stakeholders

The survey responses of Protection Officers, Service Providers, Magistrates and Police provide critical insight into the current gaps in understanding and execution of their specified functions. 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 adjournment of cases, prolonging the Court process and forcing victims to come to Court to face their trauma time and again.

This requires the uniform guidelines fixing minimum standards of implementation and a national action plan to ensure adherence to such standards. Further, there is an urgent need for protocols on various aspects associated with the

¹⁷ *Staying Alive Third Monitoring & Evaluation Report 2009 on the Protection Officer of Women from Domestic Violence Act, 2005, Lawyers Collective, Women's Rights Initiative*

implementation of the law such as methods of providing trainings, coordination and maintaining referral networks, counseling, case management by implementing agencies, etc. These will further improve the manner in which the law is implemented and will, in turn, allow for more effective monitoring and evaluation of the law¹⁸.

Monitoring and Evaluation of the Act

All states, through their agencies, must collect the necessary data on implementation of the Act, and publish annual monitoring and evaluation reports. This system may help to find out its failure and success. One governmental agency should be responsible for managing monitoring and accountability of Protection Officers.

Mandatory Reporting System shall be created

A uniform reporting system should be developed to collect data from all stakeholders under the Act. Strict action plan is required to be created to ensure mandatory submission of the data failure of which must invite strict action from the concerned nodal department.

Directions on Record Keeping

A record of every visit of a woman, who comes to the Protection Officer or the Service Provider, similar to a diary entry made in a police station, should be maintained so that it indicates the date, time and purpose of the visit. If the woman does not want mediation, counselling or any shelter, the record must indicate whether or not a reference has been made. The SP to whom the reference is made must keep a corresponding record of the visit and the name of the person who referred the woman. Thereafter, the SP should maintain a complete record of the steps taken to mediate or

¹⁸http://www.endvawnow.org/uploads/browser/files/resource_tool_for_monitoring_evaluation_of_pwd_va_lawyers_collective.pdf, 24/12/14, pg. 13

counsel, which can be adduced in court at any time as evidence and may assist the woman in getting a protection order

Fast track Courts or special Courts for domestic violence cases

Another difficulty in the way of implementation of the Protection of Women from Domestic Violence Act, 2005 is that the Courts which are already overloaded with pending cases under the situation speedy disposal of cases under the Act is simply not possible. For giving real justice to victims of domestic violence special and fast track courts shall be started for efficient time bound disposal and quick relief to the victim. Amendment shall be made in the Act for making provisions for Separate court to handle domestic violence cases so that the very purpose of quick relief from domestic violence shall not be vitiated.

Access to Justice for Vulnerable Women

The Domestic Violence Act 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, sex workers 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 vulnerable woman, mentioned above, can access the law¹⁹.

Resource Allocation from Central Government

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. However, States have not initiated any

¹⁹ <http://pwdvact.in/gaps-in-pwdva-implementation>, 20.03.2015

such scheme. Therefore, it becomes imperative to have a Centrally Sponsored Scheme (CSS) to bring to effect the various provisions laid in the Act.²⁰

❖ ***Recommendations for the effective functioning of Protection Officers***

Heavy burden of responsibilities are kept on the Protection Officers to implement the law and give expected outcomes to the women victims. He is a crucial link between victim and the mechanism to get relief. Therefore, effective implementation of the Act rests on the shoulders of Protection Officers.

Sufficient numbers of POs with full time appointment

Protection Officers are charged with a variety of key responsibilities, including: preparation and filing of DIRs, service of notices, monitoring compliance with Court orders, and preparation of safety plans.

The present number of Protection Officer is far short than sufficient. One Protection Officer at district level is unrealistic. For the Protection Officer who holds a concurrent post faces difficulty to paid appropriate attention as Protection Officer. Additionally charged officers retain extensive responsibilities related to their primary posts; their work loads are too heavy and that their PO duties are compromised as a result. POs are not appointed for fulltime and hence they are unable to discharge their duties to the fullest expectations of the Act.

It is strongly recommended that sufficient number of POs with adequate qualification and training shall be appointed as full time officers with no other responsibilities.

Infrastructural support to Protection Officers

The State Government has to provide necessary office assistance to the Protection Officers for the efficient discharge of their responsibilities under the Act. There is no

²⁰ *ibid*

individual office for Protection Officer where aggrieved woman come and tell confidential detail of her suffering and requirement. Protection Officers have neither an office/assistance nor a proper set up to function efficiently. POs typically lack the office space, infrastructure, vehicles and staff for the fulfillment of their responsibilities. The Act urgently requires the office assistance to the Protection Officers for the efficient discharge of their responsibilities under the Act²¹.

Location of POs

The POs shall be provided a separate office structure with all the needed paraphernalia and located in a prominent place. They should not be located at police stations because they will be influenced by the authority of Police. Privacy of the AP shall be affected at any cost by the interference of Police.

Qualification of POs and training to the Authorities

For effectiveness all POs must be qualified social workers with the professional or academic qualifications such as law, psychology, and staff from preventive and social medicine. Then they should be trained adequately when inducted as POs under the Act or must relate to law field because the work of a Protection Officer needs more legal knowledge to understand the Court procedures. They are expected to do preparing and serving summon and to communicate the Court orders. This is a new work for them. Hence proper and regular trainings are to be provided to the SP's and PO's to aid aggrieved person in understanding their rights and fulfilling their procedure part.

The DIR to be filled in all approached cases

The interpretation and purpose of the DIR needs standardization. Nodal departments and the Higher Judiciary need to issue instructions to POs in their

²¹ Rule 3(4) PWDVR, 2006

jurisdiction directing that a DIR must be filled in all cases when a woman approaches a PO, whether she wishes to go to court or not.

Coordination among multi-agency response system

What are needed are coordinated actions among the various service providers for women in need of help. These are the Health Sectors, the Police, Social Workers, Shelter Homes, NGOs, Community Centers, Prosecutors and the Judiciary. Successful implementation of the Act can only occur if the multi-response system, envisioned under the Act, is properly established and functions uniformly with full coordination.

The information received by the one authority is to be circulated among others, so that proper networking can be build up. The Judicial Officers should be provided with a list of POs, SPs, SHs, MFs and State Legal Aid Lawyers comprising of their contact details for effective coordination. It is noticed that SPs have very weak links to the POs and the Police. A current list of SPs with accurate contact information should be provided to all POs so that they are able to adequately inform survivors regarding the services available to them. Information should be regularly shared between POs, SPs and the Courts

Appointment of night Protection Officer

There is an urgent need to have services of protection officer during night time so that assistance could be provided to an aggrieved person in emergent situation especially mid-night timing when she is thrown out from home. She may be reluctant to approach police station at odd timing that is why during the consultations women groups feel it is necessary to have a 24-hours help-line for domestic violence victims. The services of the POs shall be made available around the clock.

Need of Public Awareness about the POs and SPS

The information about the POs, SPs and SH, MF with regard to their names, address, contact numbers, e-mail Ids if possible photographs also shall be widely

made available to the public for an easy access. Proper steps should be taken toward disseminating the information about the implementing agencies and their duties.

Discourage pre-litigation Counselling by Protection Officers

Pre-litigation counseling by the POs shall be totally discouraged. In some cases, the previous experience was that the POs instead of filing DIR started pre-litigation counseling to the victims, whereby victim is forced to go back to the place of offence instead of getting a relief. Hence, it is important that the role of POs be confined to that of officers of the Court and the interface between the Court and the women facing violence with no role in counselling, mediating, settling or compromising, prior to filling up of DIR²².

Any woman wanting reconciliation must be referred to a professional counselor or an SP. In coordination with the SP and the woman, the PO must ensure that all settlements are recorded in writing and a copy maintained.

Recording Settlements:

If the AP and the respondent arrive at a settlement in pending court proceedings, the PO must ensure that the settlement is recorded in order of the court.

❖ Recommendations for the effective functioning of Service Providers

The Act sees the SPs as a key implementing agency with the power to facilitate access to shelter homes and medical facilities. They are supposed to receive complaints from the aggrieved person in the form of a DIR, which can then be forwarded to the Magistrate.

²² *Staying Alive, 5th Monitoring & Evaluation 2012 on the Protection Officer of Women from Domestic Violence Act, 2005, Lawyers Collective, Women's Rights Initiative*

Uniform Protocol for Service Providers

There must be a uniform protocol for SPs across the State on the action to be taken when an AP approaches them for action under the Act. The SPs must maintain a register and record all details of the meeting with the AP.

Supervision on the working of Service Providers

Service Providers rendering their services under the Act shall be under strict supervision of some authority or other. The SPs also must be adequately remunerated for their effective services so that qualitative services may be provided. but no supervisory authorities are made to supervise their working. There is no clarity as yet on which government department is responsible for monitoring the services provided by SPs. As SPs are charged with providing key services to the aggrieved, it is necessary to ensure that the facilities offered are of a suitable quality.

Uniformity in appointing Service Providers

There shall be certain norms for appointing any agency as the Service Providers under the Act to bring out uniformity in the services provided by the SPs. Most of the Organizations listed as SPs are Shelter Homes functioning under Central and State Government schemes; they have the necessary infrastructure to provide shelter services, while some also offer counseling and legal aid, none has been allocated extra funding, resources or infrastructure to meet the needs of women under the Act. Shelter Homes are important aspect of the Act, where a destitute woman gets shelter. But the Shelter Homes are not properly equipped with. Therefore women are reluctant to take shelter. There shall be some minimum requirement for registering as service providers so that with minimum standard services could be provided.

Follow-up by Services Providers

The Service Providers shall be made to keep the track and to follow up the victims referred to them to keep track of their well being. Service Provider's counseling system should have follow-up actions. It is noticed that lack of further follow-up

action after the temporarily outcome of counseling or orders makes the effort in vain. Women could not feel comfortable and safe within the counseling system. In many situations, the circumstances just replay again and again. Such impression decrease women's confidence on the Act as well as the system. And it is very important to set up regulation of follow-up, both for counseling and order delivered.

Provide instructions and clarity about the functions to be performed by Service Providers

Proper instructions shall be provided to the Service providers at the time of registration about the functions and duties to be provided by them. In many evaluation reports conducted by different Organizations it is repeatedly highlighted that the Service Providers are not clear about their roles. As SPs are charged with providing key services to the aggrieved, it is necessary to ensure that the facilities offered are of a suitable quality. In particular, because counseling is one of the major services provided by SPs and requires specialized training to carry out counseling. SPs must be carefully monitored so as to guarantee that survivors receive the emotional and psychological support to which they are entitled. At present, indicators suggest that SPs lack the human resource capacity to adequately understand counseling needs and processes for the aggrieved as defined by the Domestic Violence Act²³

²³ Status Report on Implementation of the Protection Officer of Women from Domestic Violence Act (PWDVA), 2005 in Uttar Pradesh, India, AALI, Supported by- OXFAM India Association for Advocacy and Legal Initiatives (AALI), Website-www.aalilegal.org, reference-
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Budget Provisions

The committee on the elimination of discrimination against women has also been concerned about the inadequate financing and lack of monitoring mechanism for the services like shelter homes, legal, medical facilities.

❖ Recommendations for Police functioning

The police must be provided with training and clarity on their role in implementing the Act

Police plays a major role in tackling the domestic violence cases. They need to be sensitized to treat domestic violence cases as seriously as any other crime. Special training to handle domestic violence cases should be imparted to police force. If the attitude of Police changes towards women the whole system will come on main stream. They should be provided with information regarding support network of Judiciary, POs, SPs and other Government agencies.

As many police officers lack basic awareness around the Act and their responsibilities under it, structured workshops should be provided on a uniform basis to promote understanding among the police as to the Domestic violence Act processes. The police do not provide adequate information to the AP regarding her options under various Acts. They continue to discourage her to file a FIR under Section 498A of the Indian Penal Code, and do not provide her with possible alternatives. This apart, the police have also been reluctant to help POs and SPs with enforcement and breach of orders

❖ Recommendation for improving the Medical facility and Shelter Home

Active medical facilities should be provided to the APs. From the inception of the Act onwards medical facilities are absent and missing. MOHFW should issue practice directions to all the State run, and Municipal Corporation hospitals for its MFs to intervene in domestic violence cases, fill in the DIR, and send a copy to the

POs so that they can take appropriate action. Services of the medical facility should be supervised by some authority or other.

Special protection homes must be established for the children of victim. During destitution women may be insecure for their children or sometimes she is forced to remain in the abusive relation for children. Children protection services may boost her to protest against violence. The studies of the children should be cared by the Homes. They will be kept far away from violent atmosphere.

❖ ***Legal Services Authority: Appointment of Lawyers Dealing Exclusively with Domestic Violence Cases***

Directions must be issued by the National Legal Services Authority to have a panel of lawyers in all State and District Legal Aid Services who would exclusively deal with the cases of domestic violence.

❖ ***Recommendations with regard to judiciary***

Here are some recommendations for the positive approach of the judiciary. They are as follows:

- The Judicial Magistrates receive intensive trainings under the Sct and other related laws, to enable them to pass appropriate orders and grant relief to APs. The new inductees to the judicial services must be trained to deal with cases of domestic violence during their induction program.
- A better understanding of the domestic relationship and clear recognition that a relationship that has existed in the past is also a Domestic Relationship is necessary particularly in the case of divorced women and daughters. In the case of divorced women, Courts should consider whether a full and final settlement agreed to with the full, free and informed consent of the woman had been arrived at as part of the divorce instead of denying reliefs.
- Courts should make greater use of protection orders as a preventive measure to offer women the full protection of the law.

- Courts should clearly recognize the right to reside as separate from property rights. In particular, personal laws and issues of the ownership of the Shared Household should not be used as a basis to deny residence orders.
- In granting or denying reliefs the judiciary must look deeper into the causes and consequences of the violence. Judges must recognize that subjectivity in examining issues of violence are likely to prejudice the Court against the woman and Courts are required to go beyond that which is apparent in dealing with cases under the Domestic Violence Act.
- Courts need not direct the recording of a DIR in every case which is filed without a DIR, but only in those cases where the Court is of the opinion that essential facts are not clear from the application, or there is an ambiguity that may need clarification.
- Courts should recognize the purpose behind the grant of compensation orders distinct from monetary relief as the former relates to recompense for violence or injury.
- Courts must make greater use of Protection Officers particularly in cases where they believe the evidence is insufficient to grant an Order. Before dismissing the application, Courts should ask for further reports by the Protection Officer.
- There must be strict adherence of the deadline for disposal of domestic violence cases within sixty days. While the judicial system is loaded by the high pendency of cases, there is particular urgency to follow the rule of sixty days to ensure protection and speedy disposal of cases for women facing domestic violence.

❖ ***Recommendations to fulfill international obligations***

1) Implementation of international standards at the national level remains inadequate, all necessary actions shall be taken by the States to meet their international obligations

2) States should take urgent and concrete measures to secure gender equality and protect women's human rights. Therefore it is recommended to

- Ensure that all human rights and fundamental freedoms are respected, protected and fulfilled.
- Ratify without reservations all human rights treaties, including, in particular, the Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol.
- Ensure that women know their rights and are empowered to demand and exercise them.
- Educate men and women, boys and girls about women's human rights and their responsibility to respect the rights of others.
- Ensure that women have access to justice and equal protection of the law and that perpetrators of violence against women do not enjoy impunity.
- Secure women's rights to inheritance, property, housing and social security, among the range of economic and social rights.

3) It is recommended that States shall bring national laws, policies and practices into compliance with international commitments; remove all laws that discriminate against women; review and, revise all State policies and practices to ensure that they do not discriminate against women; and ensure that legislation is in place that adequately addresses forms of violence against women; Take positive measures to address structural causes of violence against women and to strengthen prevention efforts that add discriminatory practices and social norms.

5) Knowledge base on all forms of violence against women should be strengthened to inform policy and strategy development

6) United Nations should take a stronger, better coordinated and more visible leadership role to address violence against women

7) It is recommended that inter-governmental bodies strengthen accountability for action on women rights violation with a view to accelerating implementation of

commitments, norms and standards on violence against women, nationally, regionally and internationally.

8) To strengthen the capacity to collect process and disseminate data on violence against women and to use such data as a basis for legislative, policy and program development.

❖ ***Women related laws should be more effectively implemented - with harsh punishments***

There is increase in the incidences of violence against women. Women related laws are to be strictly implemented and it should ensure that deterrent punishment is given to the criminals. In order to bridge the gap between legislations and their implementation, a multi-sectoral approach is needed that tackles various levels concurrently. Improving the legal and institutional frame work for the protection of women and girls is crucial to preventing and combating gender based violence.

❖ ***Dynamicity of the Laws should be maintained through consultations***

Government and Women Commission should conduct consultations and conferences with community participation to check out the effectiveness, the strengths and weaknesses of the existing laws and advocate for proper implementation of the women related Laws. Policies must be framed to eradicate gender based violence. These meetings should project on creating conducive environment for ensuring adoption, periodic review, and effective implementation of women related laws in a gender sensitive manner of women related laws through advocacy and civil society participation. Time to time amendments suggested must be taken place for effective implementation.

❖ ***Reforms in investigation and judicial procedures with Speedy justice***

Sensitive, proactive and competent police investigation; gender-sensitive, victim-centered procedural and evidentiary rules; filing of the charge sheet within a

specific time frame; appointment of special public prosecutors; and trial in fast track courts are the need of the hour²⁴.

The government of India needs to create special funds to support the victims and their family members or relatives to enable them to follow up the cases to their logical conclusion. Further, government should facilitate appointment of new judges to ensure that the judicial system works fast and effectively. Issue of fund crunch should not come in the way of putting in place safety and security measures for women. Here the commitment of government and political will to bring reforms can work out.²⁵

❖ ***Need to increase the number of female police***

India has historically lower percentage of female police officers than other Asian countries. Women feel more comfort to report the crimes. Studies show that women are more likely to report sex crimes if female police officers are available. Male Police interrogation causes embarrassment

❖ ***Police department should be provided by gender sensitization trainings***

Police should always keep the welfare of the people and be sympathetic towards the victim. At the receipt of violence the Police are first visible point of contact of citizens, whole expectations of the victim depends on the functioning of the Police and ultimately FIR, investigation and framing charges are on the shoulders of the Police which are the base of criminal justice system. Their negligence, corruption, domination and cunningness erode public faith and undermine the rule of law. Hence we need co-operative, sensitive, supportive and faithful Police which may help in preserving law and order and preventing crime.

❖ ***To strengthen the empowerment of women***

The empowerment of women should be strengthen through policies and action plans by creating newer methods and avenues that facilitate the women to share all

²⁴ <http://www.thehindu.com/todays-paper/tp-national/ensure-speedy-justice-to-survivors-of-violence-un-women-tells-govt/article5126760.ece>, 18/3/2015

²⁵ <http://www.ndtv.com/delhi-news/safe-delhi-governor-najeeb-jung-for-fast-track-courts-for-sexual-assault-cases-742069>, 18/03/2015

types of powers enjoyed by men aiming at changing the nature and direction of society and its traditional practices. It will help in providing the opportunities and resources for the development of the self and for the removal of all the hurdles and constraints in the way of self actualization. Thus, women empowerment is not only an effort for their economic betterment but also it realizes their identity and power in every walk of life.

❖ ***Steps should be taken for Economic Equality***

Appropriate steps should be taken to protect the women's economic rights and independence by providing policies for access to employment, appropriate working conditions and control over economic resources; Facilitate women's equal access to resources, employment, markets and trade; Provide business services, training and access to markets, information and technology, particularly to low income women; Strengthen women's economic capacity and commercial networks; Eliminate occupational segregation and all forms of employment discrimination; Promote harmonization of work and family responsibilities for women.

❖ ***Easy access of women to property and resources***

In India, the problem of violence against women is a result of a long standing power imbalance between men and women. Men have control over access to property and resources. There is also a sexual division of labor in India that results in female exploitation—physically, mentally, and commercially. Legislature shall ensure the access of women to property and other resources by their participation and representation in the decision making process.

❖ ***Political participation of women shall be encouraged:***

Government has to ensure healthy environment, good governance and equal protection for women everywhere by supporting efforts to end violence, bringing them to the centre of peace building, advancing their political participation and leadership. Policies and schemes for women accession in decision making process shall be promoted. Their participation may provide self confidence, self dignity and self respect among women community which will help the country in bringing new heights of developments

❖ ***To change the traditional socio-cultural attitude of the people towards the role-relationship of women***

India has to change the traditional socio-cultural attitude of the people towards the role-relationship of women for becoming developed country. The old traditions are still boosting many crimes against women and we are blind spectator and unable to implore ways to raise public opinions against these old evil customs. The old attitudes towards the women are to be changed. Attempt should be made to introduce attitudinal changes in the society towards the girl child. Family needs to be changed and brought in tune and temper with the notion of equality in the true sense of the term. State, Legislature, implementing machinery, society, community and every individual have to come together to contribute to the change to hurl the evil practices responsible for women subjugation.

❖ ***Change the settled mindset of the society towards women subordination***

Men's perspective of viewing a woman as a commodity has to change. It is a time we contemplated how boys are brought up in society. Studies have also found that most of the men commit violence against women as they feel they have authority over women and her body. They can assault as a punishment for mistakes. Therefore patriarchal mindset should be changed. Society is trapped with stereotyped notion of 'Masculinity' which should be cleared. Today, women have started to think as well as dream big. Women have contributed to various fields. Even in sports they have achieved a lot. Patriarchal mindsets are very much prevalent here, with various groups presuming to enforce their outdated notions concerning appropriate behaviour for the young and especially young women.²⁶

❖ ***Zero tolerance policy for all forms of violence against women shall be adopted.***

For a healthy violence free society, it is essential that human dignity of every individual be respected where all individual are equal. Women are to be treated as

²⁶ http://www.daijiworld.com/news/news_disp.asp?n_id=188603, 187/03/2015

equal of man. To achieve this goal each individual irrespective of sex is to contribute for their share of responsibility. Society starts from home therefore member of every house has a role to play to resisting violence at home. Domestic violence is a private matter if our people will get sensitivity and start changing their mind set, definitely things will change. Expecting drastic change with the enactment is impossible, law is to support and assist to discourage happening of illegal activity. People are expected to reform themselves. Every individual, groups, organizations and State together has to adopt zero tolerance of violence against women policy. Complaints are not systematically recorded and in investigation process evidence are hushed up. Hence for zero tolerance needs initiative with aligning policies, practices and protocols, coordinating services and creating a climate where violence and abuses are not tolerated.

❖ ***Women related studies and laws through compulsory subjects shall be included in the eliminatory and secondary schools and colleges***

These subjects shall be included in the school and college syllabus. Legal and Moral value oriented education needs to be included in school course curriculum as a part of human right education. Curricula that teach non-violence, conflict resolution, human rights and gender issues should be included in elementary and secondary schools, universities, professional colleges, and other training settings. Violence against women can be prevented and eliminated only when the new generation is brought up in the line of gender equality.

❖ ***Legal education should be disseminated***

Concerted efforts should be made to generate legal awareness among general mass especially illiterate and poor women about their rights and legal safeguards provided under different Acts. There is necessity to have legal literacy among women so that they can have information relating to their rights and entitlements in society with a view to enhance their participation on an equal footing in all areas.

❖ ***Enhancing educational and employment opportunities for women***

Education is an effective tool to enhance the self-esteem and self-confidence of women community. Education develops the ability to think critically. Women can participate in development process aEducation will broaden their outlook and make them aware of their rights, responsibilities and duties in society.

- ***Enhance the role of Non Government Organization***

The Non Government Organizations have excelled in bringing the social reforms in India. Their pro-active involment is required to uplift the women and to bring the changes with regard to their role relationship

❖ ***Enhancing the role of Media***

Both the print and electronic media should play important and responsible role in highlighting the issues pertaining to domestic violence and suggest suitable steps to curb the crime. Media should take responsibility to educate women about their rights as well as agency to be approached in case of a particular problem. Through media women from poor and backward families may be motivated to utilize the schemes started by the Government for their welfare in general. Media can actively bring out the voices of women before the world. It can increase the participation and access of women to expression and decision-making in and through the media and new technologies of communication. It can promote a balanced and non-stereotyped portrayal of women in the media.

- ❖ The Government shall strengthen the role of Panchayats and Self Help Groups members for mobilizing and monitoring maternal health care services to the poor women especially BPL families at the Grassroots level.

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