Critical Analysis of the Protection of women from Domestic Violence Act, 2005: A Critical Analysis
By Purusottam Chuli

Violence against women is a social reality across all countries in the world. It is more pronounced in case of domestic violence which remained unnoticed by the civil society for ages to come. India is no exception to this, though we worship the female form of God as most powerful. The prevalence of Domestic Violence in India ranges from 6% to 60% with considerable variation across the states in different settings. The magnitude, extent and burden of Domestic Violence have already assumed alarming proportions.

At present the prevalence of domestic violence in India is considerable across all socio-economic strata existing in all the communities. The National Crimes Records Bureau (NCRB) under the aegis of the Government of India publishes annual statistics titled ‘Crime in India’ since 1953. Crimes against women approximate over 10 per cent of all crimes committed in India. Statistics of crimes against women reveals that offences under Section 498A (cruelty by husband or relatives of husband) of the Indian Penal Code (IPC) have grown from 28579 cases in 1995 to 106527 cases in 2012 registering a growth of 372.7 per cent in less than 20 years. Similarly, offences registered under Section 304B IPC (dowry death) have also seen a rise in incidence from 4648 cases in 1995 to 8233 cases in 2012 recording an increase of 177.1 per cent. This increase in the incidence of crimes against women is even more alarming when compared to the fact that the incidence of all crimes under the Indian Penal Code has risen by 296.6 per cent over a period of almost six decades from 1953 to 2012 (Crimes in India 2012).

The Vienna Accord of 1994 and the Beijing Declaration and Platform for Action (1995)\(^1\) have acknowledged that domestic Violence is a human rights issue. It is serious deterrent to personality development. The United Nations Committee on Convention on Elimination of All forms of Discrimination Against Women (CEDAW)\(^2\) in its general recommendations No. XII (1989) has

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1 The Beijing Declaration and Platform for Action (1995)
2 The United Nations Committee on Convention on Elimination of All forms of Discrimination Against Women (CEDAW).
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recommended that state parties should act to protect women against violence of any kind especially that occurring within the family.

India being a signatory to all such International Conventions has been trying to address this social issue, rather social evil. In the 1980s, violence suffered by women within marriage received greater attention and this was reflected in the amendments creating new offences in the Indian Penal Code. The legal recourse available for women seeking escape from violence within marriage was to rely on criminal law provisions including Section 498-A IPC.\(^3\) (penalizing physical cruelty, mental cruelty and dowry harassment) and Section 304B IPC (penalizing dowry death). In view of the socio-economic realities of women’s lives, these punitive provisions provided limited protection and support for many married women. The Civil Law could not, however, address the phenomenon of Domestic Violence in its entirety.

Despite the prevailing penal provisions, growing domestic violence against women necessitated Parliament of India to enact a specific law under the title of the Protection of Women from Domestic Violence Act, 2005\(^4\) in the fifty-sixth year of the Republic of India to provide more effective protection of rights of women guaranteed under the Constitution of India. It came into force on 26th day of October 2006. Thus, the Act is intended to effectively protect the rights of women to a decent and dignified life in the family.

The Protection of Women from Domestic Violence Act, 2005 has been enacted keeping in view the rights guaranteed under Articles 14, 15 and 21 of the Constitution of India. It provides for a remedy under Civil Law which is intended to protect the women from being victims of Domestic Violence and to prevent the occurrence of Domestic Violence in the primary social institutions i.e; families in our society.

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\(^3\) The Indian Penal Code, 1960, Sections 498-A & 304-B.

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Background of PWDV Act:

The great Indian history shows that violence on women was there too in the ancient India. In the magnum opus epic The Ramayan, Rama directed Laxman to disfigure the nose of Surpanakha as an action of revenge, Ravana forcibly and fraudulently kidnapped Sita. In the magnum opus the Mahabharata, Dushasan’s attempt to make Draupadi naked in front of all members sitting in the open court to make her feel insulted, to kill her honour showed sorrowful condition of women then. It was believed that a wife had no meaning of her life after the death of her husband and so with his dead body she too was forced to die as a ‘Sati’. Later on, that heinous practice of Sati was abolished by the Britishers on the sane advice of Raja Ram Mohan Roy. Even today, instead of making a woman to die, she is forced to live an isolated life as a helpless and harassed widow, in the scarcity of food, making her living by begging food.

Thirty five years ago, violence against women was not considered an issue worthy of international attention or concern. Victims of violence suffered in silence, with little public recognition of their plight. It began to change in the 1980s as women’s groups organized locally, nationally and internationally to demand attention to the physical, psychological and economic abuse of women. Gradually, violence against women, especially violence within the household has come to be recognized as a legitimate human rights issue and as a significant threat to women’s health and well-being. For over three decades, the feminist groups in India have been working since 1980s to draw more attention to the physical, psychological, and sexual abuse of women and to stimulate action against the menace. Ultimately, it touched the conscience of our legislators and the Indian Parliament came out with a landmark legislation, Protection of Women from Domestic Violence Act( PWDV Act).

This legislation vindicates the constitutional promise of equality, non-discrimination and the right to life and liberty for women. It also marks compliance by the Indian state with its international obligations, specifically under the Convention Against Elimination of all forms of Discrimination Against Women (CEDAW).
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The Foundations of the PWDV Act:

Though domestic violence is caused by individuals in the private sphere, international human rights law makes the state accountable for the same and places on states the responsibility to eliminate domestic violence through numerous measures. These include creating legal and policy frameworks for addressing domestic violence (including formulating and implementing laws), ensuring a responsive criminal justice system, providing for social and support services to victims / survivors of domestic violence and formulating and implementing policies for empowerment of women. The International Covenant on Civil and Political Rights (ICCPR) states that women have the right not to be subjected to torture or cruel, inhuman and degrading treatment or punishment; the right to liberty and security of person and equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution.

The relevant provisions in the International Covenant on Economic, Social and Cultural Rights (ICESCR) which strongly argue against domestic violence are:

- widest possible protection and assistance to the family and special protection to mothers for a reasonable period before and after childbirth;
- right of everyone to the highest attainable standard of physical and mental health; and
- India is a party to both ICCPR and ICESCR and is therefore bound to respect and implement the standards set by the same.

India is a party to the UN Convention on Elimination of Discrimination Against Women (CEDAW), often referred to as the Women’s Bill of Rights. CEDAW imposes

- an obligation on states to eliminate discrimination against women;
- elimination of prejudices and practices, based on the stereotyped roles of men and women;
- elimination of discrimination against women in marriage and family relations;
- Obligations of state parties that are spelt out in the CEDAW include:
  - to take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to eliminate prejudices and customary practices

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5 Article 7 of the ICCPR
6 Article 9(1) of the ICCPR
7 Article 23(4) of the ICCPR
8 Article 10(1) of the ICESCR
9 Article 12(1) of the ICESCR
10 Article 2 of the CEDAW
11 Article 5 of the CEDAW
12 Article 16 of the CEDAW
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based on the idea of superiority / inferiority of the sexes or stereotyped roles for men and women;\(^\text{13}\)

- to provide special protection to women during pregnancy;\(^\text{14}\)
- to eliminate discrimination in health care and to ensure equal access to health care services;\(^\text{15}\)
- to eliminate discrimination against women in all matters relating to marriage and family relations on the basis of equality of men and women, including same rights and responsibilities during marriage and at its dissolution.\(^\text{16}\)

Till the beginning of 21\(^{\text{st}}\) century, domestic violence was condoned in the sense that there was no law in India to address the menace. It was considered as either a private affair or a normal part of life. By becoming a party to CEDAW, as a part of its commitment to eliminate all forms of discrimination against women, the Indian government has not only recognized the need to address domestic violence through legal and other measures, but is also duty-bound to do so.

The Content of the PWDV Act:

The Protection of Women from Domestic Violence Act, 2005 consists of five Chapters enshrining 37 Sections.

It is very important to note here that the Preamble of the Act emphasizes the need of the aggrieved women to immediate reliefs as well as compensation and for rehabilitation when it speaks of matters connected therewith and incidental thereto. The preamble itself suggests that protection must be effective. In a word, domestic violence means actual abuse or threat of abuse that is physical, sexual, verbal, emotional or economic.\(^\text{17}\) Dowry harassment is also covered under this

\(^{13}\) Article 5(a) of the CEDAW
\(^{14}\) Article 11(2) of the CEDAW
\(^{15}\) Article 12(1) of the CEDAW
\(^{16}\) Article 16 (1) of the CEDAW
\(^{17}\) Ibid, Section 3.
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The act provides for the rights of women to secure housing. It ensures a woman to reside in her matrimonial home or shared household.

The incidents of Domestic Violence is maintainable in the learned Court of Judicial Magistrate (First Class) when both the parties have shared household and/or related by consanguinity, marriage or through a relationship in the nature of marriage or adoption. In addition, relationship with family member living together as a joint family also comes under this Act. Even those women who are sisters, widows, mothers, single women or living with the accused are included in this Act.

Chapter III of the Act describes the powers and duties of Protection Officers, service providers, etc. The Act provides for appointment of Protection Officers and Service Providers by the state governments to assist the aggrieved women with respect to medical examination, legal aid, safe shelter and other assistance for accessing her rights. Service Providers are organizations and institutions working for women's rights, which are recognized under the Companies Act or the Societies Registration Act. These service providers are Swadhar homes or Short Stay homes recognized by the State. The person in charge of a shelter home shall provide shelter to the aggrieved person in the shelter home upon request made by the aggrieved women or a Protection Officer or a Service Provider on her behalf.

Chapter IV describes the procedure for obtaining orders of reliefs. The Act describes Protection Officers as public servants and prescribes penalty for both the parties for breach of order. The Central and State Governments are under a duty to ensure wide publicity of the provisions of this Act through all forms of public media at regular intervals, to provide awareness and training to all officers of the government, and to coordinate the services provided by all Ministries and various Departments.

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18 The Protection of Women from Domestic Violence Act, 2005, Section 12.
19 Ibid, Section 8.
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According to this Act, every woman who has been deprived of their right to life by the act of her husband or relatives of the husband, can file a complaint to the protection officer, police officer or magistrate in the form of ‘Domestic Incident Report’ (similar to FIR). Complaint can be filed by the victim /aggrieved person or relatives, it will be considered as the prima-facie evidence of the offence. Every ‘Domestic Incident Report’ has to be prepared by the Protection Officer which will assist in the further investigation of the incidence.

Rights Granted To Women under Pwdv Act

The Act guarantees some specific rights to women who share a household. They are as follows-

Right to reside in a shared household:

The Act secures a woman's right to reside in the matrimonial or shared household even if she has no title or legal rights in the household. A part of the house can be allotted to her for her personal use. A court can pass a residence order to secure her right of residence in the household.

It is important to mention the injunctions against this right. The Supreme Court has ruled in a recent judgment that a wife's claim for alternative accommodation lie only against her husband and not against her in-laws and that her right to 'shared household' would not extend to the self-acquired property of her in-laws.

Right to obtain assistance and protection:

A woman who is victimized by acts of domestic violence will have the right to obtain the services and assistance of Police Officers, Protection Officers, Service Providers, Shelter Homes and

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20 Ibid. Section 5.
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medical establishments as well as the right to simultaneously file her own complaint under Section 498 A of the Indian Penal Code for matrimonial cruelty.

Right to issuance of Orders:
She can get the following orders issued in her favour through the courts once the offence of domestic violence is prima facie established:

- Protection Orders: The court can pass a protection order to prevent the accused from aiding or committing an act of domestic violence, entering the workplace, school or other places frequented by the aggrieved women, establishing any kind of communication with her, alienating any assets used by both parties, causing violence to her relatives or doing any other act specified in the Protection order.

- Residence Orders: This order ensures that the aggrieved person is not dispossessed of her shared household.

- Monetary Relief: The accused can be made accountable for all expenses incurred and losses suffered by the aggrieved women and her child due to the infliction of domestic violence. Such relief includes loss of earnings, medical expenses, loss or damage to property, and payments towards maintenance of the aggrieved person and her children.

- Custody Orders: This order grants temporary custody of any child or children to the aggrieved women or any person making an application on her behalf. It may make arrangements for visit of such child or children by the accused or may disallow such visit if it is harmful to the interests of the child or children.

- Compensation Orders: The accused may be directed to pay compensation and damages for injuries caused to the aggrieved person as a result of the acts of domestic violence by the Respondent. Such injuries may also include mental torture and emotional distressed caused to her.

- Interim and Ex parte Orders: Such orders may be passed if it is deemed just and proper upon commission of an act of domestic violence or likelihood of such commission by the
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Response. Such orders are passed on the basis of an affidavit of the aggrieved person against the Respondent.

Right to obtain relief granted by legal proceedings:

Women will be entitled to obtain relief granted by other suits and legal proceedings initiated before a civil court, family court or a criminal court.

Right to go to the Appellate Authority

An appeal can be made to the Court of Session against any order passed by the Magistrate within 30 days from the date of the order being served on either of the parties.

What the Judges say:

The Domestic Violence Act of 2005 has been reportedly misused against men in some cases, though the vast majority of cases involve abuse of a woman. In Mumbai, men allege that women are misusing the Domestic Violence Act, while in Karnataka, the Act cannot be used against women, the Delhi High Court clarified that the Act could also be used to prosecute women. In the case of Smita Singh Vrs. Bishnupriya Singh & Ors., 2013 (II) ILR-CUT-854, the Hon’ble High Court of Orissa has held that Criminal Revision is not maintainable against the orders passed U/S. 12 of the Protection of Women from Domestic Violence Act, 2005. Appeal U/S. 29 of the Act is maintainable before the Court of Sessions. In the case of Sou. Sandhya Manoj Wankhede Vrs. Manoj Bhimrao Wankhede & Ors., (2011) 3 SCC 650 : (2011) 48 OCR -658, the Hon’ble Supreme Court of India has held that female relatives can be made respondents U/S. 12 of the Protection of

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Women from Domestic Violence Act, 2005 even though Section 2 (q) of the Act defines respondent as ‘any adult male person’.  

Consequences of domestic violence on women:
One of the most significant consequences of domestic violence on the aggrieved woman is the denial / violation of her fundamental and human rights. Domestic violence leads to serious and long-term health consequences for women. In addition, the personal and social lives of the woman are also affected, as indicated by findings, that survivors of domestic violence restrict their social contacts and are ashamed to mix with friends and relatives. Family life is also adversely affected by domestic violence, due to strained relations, lack of mutual trust, strain in conjugal relations and the negative impact on children.

Implementation of PWDV Act

Despite legislative measures and consequential institutional arrangements, the Protection of Women from Domestic Violence Act does not reach the women who are victims of violence in domestic sphere. Following factors may be cited as reasons for its non-implementation. Firstly, a legislation becomes effective if citizens claim their rights by using it. It has been mentioned by many research studies that community level awareness is demonstratively low about the protection measure particularly the institutional measures created for protection of women which is provided under the Act. Secondly, wherever there is little awareness exist about the institution for prevention of domestic violence, these institutions are not easily accessible. Thirdly, a continuous engagement with these institutions reveals that the institutions established for protection of women from domestic violence are not adequately equipped to effectively serve the


24 Ibid
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victims of violence due to inadequate funding for converting legal provisions into practical actions. Fourthly, women are given to understand that violence by male on women is a prerogative; hence, it is bound to take place. Lastly, but not the least that there is no organized and systemic approach undertaken by the State to address all the above problems in an integrated manner to make the system effectively function for women. As a result of these succinctly described issues, women continue to suffer violence within the domestic sphere and their fundamental human rights are manifestly violated.

A Case analysis of State administration:

To cite one example from the state of Odisha; in 2012 the State Resource Centre(SRC) was established by the National Mission for Empowerment of Women(NMEW) with an objective of monitoring of the implementation of the Act and also ensuring adequate training of the stakeholders. However, with limited support from the NMEW on resources the SRCs could not function effectively at the state level. A nominal amount of Rs 50,000(Fifty Thousand Only) was allocated for each district for effective implementation of the act of which in most of the district the PO could not spend due to no clear guidelines. There has been no investment into creating awareness and disseminating information about the Act at the community level, though the state had adopted the Bel Bajao Campaign to raise awareness. There are little systematic efforts towards training and orientation of officials to effectively implement the Act. There is lack of commitment and general apathy on part of state to set up the most basic infrastructure towards the implementation of the Act. Often the duty bearers and institutional defenders of violence like the police and judiciary systems are apathetic towards the survivors of violence either due to their patriarchal conditioning or due to the lack of understanding of their roles and responsibilities which restrains survivors of violence to seek justice. It has also been pointed out that though there is a budget allocation for implementation of PWDV Act, it is insufficient to serve the purpose.
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It is imperative to state that extremely rigid patriarchal mindsets at all levels, including institutions and communities, there is a demonstrated lackadaisical attitude towards enforcement of the law. An enquiry into implementation of the various provisions of the Act reveals that there is inadequacy in terms of passing of orders by the Magistrate and also in the area of services provided. In respect of court proceedings it was found that barely any order is passed for counselling. It is not clear why orders are not passed for counselling when there is a provision for it during pendency of the case. Similarly, very few protection orders are passed by the Magistrates. In most of the cases only compensation order is being granted. In case of services provided, it has been found that the stakeholders are not making any attempt for medical assistance. The services of Welfare Expert are nowhere availed for the purpose of family welfare.

One of the major gaps in the system is inadequate availability of infrastructure. At present there are Protection Officers operating at the district level and one of the voluntary organisations of the district is notified as Service Provider. Organisations having a Swadhar Home or Short Stay Home with financial support from Government are declared as Shelter Homes. It is found that the Protection Officer has no separate office to operate. The Office of the Protection Officer is housed in the District Welfare Office building in Odisha. It has a direct bearing on the beneficiaries who face difficulty when they approach the Protection Officers. In many cases the aggrieved parties come to the office of Protection Officers or the Service Providers with their kids. However, in the absence of any earmarked space, it is difficult for them to feed their child and make sleeping arrangement. Even the Shelter Homes do not have much facility for aggrieved women. None of the Protection Officers are provided with a computer facility, although it becomes an essential tool both for maintenance of data and preparation of domestic incident reports.

Further, the Service Providers have not been provided with any financial assistance. Most of the Service Providers undertake their work as Service Providers from their own sources. Moreover, no separate funding or budget is allocated for the Shelter Homes. The Shelter Homes, however, receive grant-in-aid from government to run Swadhar Home or Short Stay Home.
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One of the major problems of PWDV Act is the time frame it suggests for hearing and finalization of cases. Although cases are heard within a period of 3 days, it is not possible to hear the cases within 3 days without serving notice to the parties. Similarly, the question regarding final disposal of the case within 60 days from the date of first hearing, the stark fact is that it is not done in time. Legal practitioners opine that time taken for finalization of the case is more than 2 years.

In all proceedings execution of the order of the court is important for actual realization of rights conferred under the law. Under the Act, various orders like protection order, residence order, monetary relief, custody order and compensation order are being passed. As per the provision under section 24 of the Act the Magistrate shall pass an order to provide copies of the order to the parties to the application, the Police Officer in charge of the Police Station in the jurisdiction in which the Magistrate has been approached and the Service Providers within the local limits of the jurisdiction of the court. But, the execution of order is not properly done. Very often an execution proceeding is required to be filed again for execution of order. Many a time due to appeal against the order the orders are delayed for execution. Similarly, due to shortage of police personnel generally no actions are taken where such order is received by the police.

In addition to various institutions and agencies envisaged under the Act, there is a provision under section 15 of PWDV Act to seek assistance of Welfare Expert. The Act says the Magistrate may secure the services of such person, preferably a woman including a person engaged in promoting family welfare for the purpose of assisting her in discharging the functions. In this regard, however, the services of Welfare Expert has never been availed of. This shows that an opportunity created under the law is not being used in matters of domestic violence where family welfare is a major concern.

Another major bottleneck on the path of proper implementation of the act is absence of coordination among the institutions which are entrusted with different responsibilities. Even through the nature of the law demands convergence of services like medical assistance, shelter home facility and legal aid as well as counseling, however, it appears that all institutions operate in isolation.
Conclusion

Thus, there is an urgent need to look forward to achieving a world free of domestic violence. There must be a call to action to eliminate the menace. For this, widespread awareness as well as education on this topic is essential. Health workers and NGOs alone can not transform the cultural, social and legal environment that gives rise to and condones widespread violence against women. State organs, NGOs, mass and social media have got a significant role to play in the field. Ending physical and sexual violence requires long-term commitment and strategies involving all parts of society.