

**A CRITICAL STUDY OF ENFORCEMENT AGENCIES AND INSTITUTIONAL RESPONSES TOWARDS SURVIVORS OF DOMESTIC VIOLENCE WITH REFERENCE TO MONITORING AND IMPLEMENTATION OF DOMESTIC VIOLENCE ACT, 2005**

**\*DR. SANJAY SATYANARAYAN BANG & \*\*VAISHALI MANOJ GURAV**

**ABSTRACT**

*Domestic violence is a widespread form of violence against women across the world. The National Family Health Survey (NFHS) has stated that there is under-reporting of domestic violence in India. This is because domestic violence is still considered to be a 'stigma' according to the Indian societal and cultural norms. Victims of domestic violence, themselves have the attitude that they are subservient to their husbands and male relatives. The enforcement agencies provided by the Protection of Women from Domestic Violence Act, 2005 (PWDVA) have not been successful in encouraging and facilitating victims of domestic violence from reporting abuse, especially victims from the lower economic strata. The number of Protection Officers appointed under section 8 of the PWDVA are insufficient and overburdened to handle cases of domestic violence. Most often, Magistrates do not guide the victims towards the Protection Officers and orders are passed without submitting the Domestic Inquiry Reports. In case if proceedings of divorce and domestic violence are simultaneously being carried on, then there is a tendency of Magistrates to club the domestic violence with the divorce proceeding in the family courts. There is a lack of awareness about the provisions of the Act amongst the Magistrates, Lawyers and Police, leading to ineffective implementation of the PWDVA. Hence, there is a need for monitoring the implementation of the Act by the Enforcement agencies.*

**Keywords:** *Domestic violence, under-reporting, enforcement agencies, monitoring, implementation.*

---

\* Dr. Sanjay Satyanarayan Bang, Associate Professor, Christ (Deemed to be University), Lavasa Campus, Pune, [sanjay.satyanarayan@christuniversity.in](mailto:sanjay.satyanarayan@christuniversity.in).

\*\* Vaishali Manoj Gurav, Research Scholar, Christ (Deemed to be University), Lavasa Campus, Pune, [vaishali.gurav@res.christuniversity.in](mailto:vaishali.gurav@res.christuniversity.in).

## INTRODUCTION

The United Nations' "Convention on Elimination of all forms of Discrimination against Women" (CEDAW), defines discrimination and eliminates all forms of discriminations to promote political, social and economic rights of women. "Violence against Women" is defined as "any act of gender-based violence that results in, or is likely to result 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 private life."<sup>1</sup>

"Domestic Violence" which is a subset of "Violence against Women", is defined as "violent or aggressive behaviour within the home, typically involving the violent abuse of a spouse or partner".<sup>2</sup> Domestic Violence prevails in Indian society due to certain regressive norms and practices. The National Family Health Survey (NFHS) states that in India, there is under-reporting of cases of domestic violence. This is because victims of domestic violence hesitate to report domestic abuse due to reasons such as lack of financial independence, family values, well-being of children, emotional dependency, etc. The researchers have taken this aspect of the topic with the following aims and objective;

- To study the conceptual framework of the Domestic Violence in general and PWDVA (the Act) in particular.
- To study the enforcement agencies and the practical implementations of the Act.
- To see the practical challenges that the enforcement agencies are facing.
- To come up with suggestions for better implementation of the Act.

In the present research paper, the researchers have adopted the Doctrinal method based on the collection of required data. The entire research bases its findings on the theoretical, analytical and critical studies. To come up with relevant findings and to provide credible recommendations, primary and secondary sources of data have been utilized wherein, the primary source includes the Constitution of India, while the secondary source includes articles published in law journals, different case laws, papers presented in different conferences and seminars and various e-sources in the library of CHRIST (Deemed to be University) Pune, Lavasa campus. Due to the pandemic of COVID-19, the researchers did not get an opportunity to visit the site.

---

<sup>1</sup> United Nations - Human Rights; Office of the High Commander - Violence against women  
<https://www.ohchr.org/EN/Issues/Women/WRGS/Pages/VAW.aspx>

<sup>2</sup> [https://www.lexico.com/definition/domestic\\_violence](https://www.lexico.com/definition/domestic_violence)

## CONCEPTUAL STUDY OF DOMESTIC VIOLENCE AND PWDVA

The PWDVA was enacted with the main object of providing more effective protection to women against violence of any kind occurring within their families. A civil remedy is provided in this Act for enforcement of rights of a woman e.g. Right to residence, Right to maintenance, Right to custody, Right to compensation. The PWDVA provides for appointments of Protection Officers and Service Providers, who are mainly NGOs (Non-Government Organizations), for assisting the women, who are victims of domestic violence, in making use of the services provided under the Act, as well as assisting them in securing the correct order under the Act. Thus, the Protection Officers play a significant role as Enforcement Agents in the implementation of the Act.

However, the provisions of PWDVA have failed to encourage victims from reporting domestic violence. The number of Protection Officers appointed under section 8 of the PWDVA are insufficient and overburdened with the workload of handling cases of domestic violence. Often, orders are passed by Magistrates without assigning a Protection Officer to aid the aggrieved person in need and without the Domestic Inquiry Report, which is required to be submitted by the Protection Officers. In cases where divorce proceedings are ongoing simultaneously with the cases of domestic violence, Magistrates transfer the cases of domestic violence to the family courts for consideration under the Divorce Act.

Studies reveal that the legislative developments have failed to reduce domestic violence, and especially during the COVID-19 pandemic, the incidents of domestic violence have risen. Further, studies have also revealed under-reporting of domestic violence under the PWDVA. Gender based violence has increased from 21.3 as per the report of NFHS 4 to 25.2 as per the report of NFHS 5.<sup>3</sup> The report of NFHS-4 (2015-2016), states that a husband hitting his wife was thought to be reasonable by 52 per cent of women respondents.<sup>4</sup>

The situation in the state of Maharashtra does not show a good picture of the implementation of the Act. The following table depicts the situation as per the report of the NFHS -5 (2019-2021);

Women in the age group of 18-49	Percentage
Sought help for domestic violence	16%
Never sought help but told someone	8%
Never sought help nor told anyone	76%
Sought help from police	2%

Source: <sup>1</sup> <http://rchiips.org/nfhs/NFHS-5Reports/Maharashtra.pdf>

<sup>3</sup> [http://rchiips.org/nfhs/NFHS-5\\_FCTS/Maharashtra.pdf](http://rchiips.org/nfhs/NFHS-5_FCTS/Maharashtra.pdf)

<sup>4</sup> <https://www.shethepeople.tv/news/nfhs-5-report-domestic-violence/>

The NFHS 5 (2019-2021) Report states that, out of women between the ages 18-49, who have ever experienced physical or sexual violence, only 16 percent of women sought help, while the percentage of women who never sought help but told someone was only 8. An alarming percentage of 76, i.e., more than three-fourths of women never sought help nor told anyone. From those who sought help, the main sources of help were mostly their own family, husband's family, or a friend at 63%, 35% and 14% respectively. The women who reported to sought help from the police was dismally low at only 2 percent.<sup>5</sup>

The above data clearly shows that the Act has failed in its purpose to protect the constitutional rights of women. It is evident that the enforcement of the Act is falling short due to various reasons, one being non-availability of adequate enforcement and support services from the Protection Officers, Service Providers and Legal-aid Lawyers. State authorities and judicial officers need to respond to the current situation and help restitution of the survivors of domestic violence. Thus, as has been reiterated time and again, just enactment of laws is not the answer to eradicating domestic violence. There is a dire need to investigate the implementation of the laws by the State agencies.

Dr Natarajan, M. (2006) states that, domestic violence is still considered as a “family matter” in traditional societies and victims of domestic violence fear reporting to the police, as they are uncomfortable speaking with male police officers. The state of Tamil Nadu in India has established All Women Police Units (AWPUs) to handle domestic violence and has framed model dispute-resolution training programmes for the women police. The AWPU is a mechanism which helps in reducing the delays caused due to the mediation and negotiations in the family courts in Tamil Nadu. This study was limited only to the state of Tamil Nadu.<sup>6</sup> However, in the State of Maharashtra, there are no such All-Women Police Stations established yet. Suraj Jacob & Sreeparna Chattopadhyay (2019) have found that in India most women neither reported domestic violence nor shared their experiences to seek help from anyone. Their findings suggest need for strengthening of the institutional routes for reporting of domestic violence.<sup>7</sup> Gajmer P, Tyagi S. (2021) in their case report state that the statistical data on domestic violence does not show a clear picture of the actual cases of domestic violence because there is under-reporting of cases as a social stigma is attached with reporting domestic violence. Sadly, most incidents reach the police and courts of law very late, either when the victim dies after succumbing to her injuries,

---

<sup>5</sup> <http://rchiips.org/nfhs/NFHS-5Reports/Maharashtra.pdf>

<sup>6</sup> Dealing With Domestic Disputes/Violence by Women Police in India: Results of a Training Program in Tamil Nadu | Office of Justice Programs, <https://www.ojp.gov/ncjrs/virtual-library/abstracts/dealing-domestic-disputesviolence-women-police-india-results> (last visited Jul 6, 2022).

<sup>7</sup> Suraj Jacob & Sreeparna Chattopadhyay, *Speaking of Abuse The Pyramid of Reporting Domestic Violence in India*(2019), <http://localhost:8080/xmlui/handle/123456789/9797> (last visited Jul 6, 2022).

or she commits suicide or approaches the hospitals for treatment. Milder forms of abuse are either ignored or hidden in most cases.<sup>8</sup> Dr. Anshul Singhal, Dr. Sarita Anand, Suvidhi Puri (2020) in their paper titled “Mitigating Domestic Violence and the Role of Protection officers under Domestic Violence Act: A case of national capital of India” found that the weak links leading to abuse were the lack of information and logistical issues in implementing the provisions of PWDVA. With respect to the Protection Officers appointed under section 8 of the PWDV Act, lack of proper demarcation of jurisdiction, delay in referral of the cases and transfer of Protection Officers were found to be the drawbacks. Generating awareness about PWDV Act was vital because most women reported lack of information about the legal provisions available to them.<sup>9</sup> Hornbeck, Amy, et al. (2006) have suggested that the aim of PWDVA to assist women experiencing domestic violence, will not be effective without training, sensitization and cooperation among police, protection officers, service providers, and magistrates who are the keys factors in enforcing the Act.<sup>10</sup> Maji Sucharita, Saurabh Bansod, and Tushar Singh (2021) have observed an unprecedented and major increase in cases of domestic violence during the COVID-19 pandemic as compared to the years when there were no restrictions like lockdowns due to any pandemic. The home containment due to the lockdown imposed, has increased the sufferings of women due to increased domestic violence.<sup>11</sup>

## JUDICIAL RESPONSE TO DOMESTIC VIOLENCE

The Hon’ble Supreme Court of India in *Ratan Singh v. State of Punjab*<sup>12</sup>, has rightly stated that “It is a weakness of our jurisprudence that victims of crime and the distress of the dependents of the victim do not attract the attention of law. In fact, the absence of victim reparation in our criminal law, is the deficiency in the system, which must be rectified by the legislature.” The first major international acknowledgement of the issue of violence against women came in 1979 when

---

<sup>8</sup> Pooja Gajmer & Swati Tyagi, *Domestic violence: An overview of Sec 498A IPC- A case report*, 8 IJFCM 55–57 (2021), <https://ijfcm.org/article-details/13600> (last visited Jul 6, 2022).

<sup>9</sup> Anshul Singhal & Sarita Anand, *Mitigating Domestic Violence and the Role of Protection Officers Under Domestic Violence Act: A Case of National Capital of India*, (2020), <https://papers.ssrn.com/abstract=3603601> (last visited Jul 6, 2022).

<sup>10</sup> Amy Hornbeck et al., *The Protection of Women form Domestic Violence Act: Solution or Mere Paper Tiger*, 4 Loy. U. Chi. Int’l L. Rev. 273 (2006), <https://heinonline.org/HOL/Page?handle=hein.journals/intnlwrv4&id=277&div=&collection=>.

<sup>11</sup> Sucharita Maji, Saurabh Bansod & Tushar Singh, *Domestic violence during COVID -19 pandemic: The case for Indian women*, 32 Community & Applied Soc Psy 374–381 (2022), <https://onlinelibrary.wiley.com/doi/10.1002/casp.2501> (last visited Jul 6, 2022).

<sup>12</sup>1979 SCC 719

the United Nations General Assembly adopted the CEDAW.<sup>13</sup> Goel, Aadish (2021)<sup>14</sup> opines that though the Hon'ble Supreme Court of India in compliance to CEDAW, provided guidelines to address complaints about sexual harassment in *Vishakha v. State of Rajasthan*<sup>15</sup>, this is not the only remedy that is available and therefore, understanding these guidelines and the due process of serving justice and constitutional equality becomes all the more essential.

The Hon'ble Supreme Court on 8<sup>th</sup> November 2021, issued notice in a petition seeking proper implementation of Chapter III of the PWDVA in the case of *We the Women of India v. Union of India & Ors*<sup>16</sup>. The Hon'ble Bombay High Court in *Rajendra Dattatraya Anbhule Petitioner v. The State of Maharashtra*, has directed the State Government to take steps to appoint and impart training to the newly appointed full-time Protection Officers<sup>17</sup>. However, till date there are still vacancies in the posts of Protection Officers in Mumbai.

## **LEGISLATIVE PROVISIONS FOR AIDING ENFORCEMENT OF THE PWDVA**

### **Protection Officers & their Duties**

A Protection Officer is an officer appointed u/s 8 of the PWDVA, who is preferably required to be a woman. Such a Protection Officer is to be appointed by the State Government in notified area for discharge of his/ her duties under the Act. A Protection Officer plays a very significant role in cases of domestic violence, being the key person to ensure protection and relief for victims of domestic violence. The duties of a Protection Officer are;

- Assisting the Magistrate in the discharge of his functions under the Act.
- Preparing a Domestic Incident Report.
- Making applications to the Magistrate seeking Protection Orders for the aggrieved.
- Aiding and ensuring legal aid for the aggrieved under the Legal Services Authorities Act, 1987.
- Maintaining a list of Service Providers.

---

<sup>13</sup> MARJORIE AGASIN ed., WOMEN, GENDER AND HUMAN RIGHTS 230 (Rawat Publications, 2003).

<sup>14</sup> Aadish Goel, *Vishaka and Others vs the State of Rajasthan: The Importance of Due Process and Its Effectiveness in Addressing Sexual Harassment*, (2021), <https://papers.ssrn.com/abstract=3859309> (last visited Jul 7, 2021)

<sup>15</sup> AIR 1997 SC 3011

<sup>16</sup> Writ Petition (Civil) No. 1156/ 2021

<sup>17</sup> Public Interest Litigation No. 152 of 2011, Civil Application No. 59 of 2012 and Civil Application No.89 of 2014

- Arranging safe shelter homes for the aggrieved, if so desired.
- Arranging for medical examination of the aggrieved person if she has sustained injuries.
- Ensuring that any order granting Monetary Relief made by a Magistrate is duly complied and executed.

### **Service Providers & their Powers**

The provisions of the Act state that any voluntary association, registered under the Societies Registration Act, 1860 or any company, registered under the Companies Act, 2013 may register such association with the State Government as a Service Provider. The object of such Service Providers should be to protect the rights and interests of women by aiding in procedures such as counselling, medical, financial, conveyance, shelter and such other manner. A Service Provider is empowered to prepare Domestic Incident Report; and whenever required arrange for a medical examination and/ or ensure safe shelter home for the aggrieved person.

### **Legal Services Authorities Act, 1987**

The various State Legal Services Authorities, setup under the Legal Service Authorities Act., 1987, are required to provide free legal services to women. An aggrieved woman is entitled to free legal aid under Section 9(d) of the Domestic Violence Act, 2005. However, this is not practically being implemented due to lack of awareness among lawyers and lack of monitoring.

### **Section 12 of PWDVA**

This section provides for an aggrieved person or a protection officer, or any other person on behalf of the aggrieved person to present an application to the Magistrate for relief and protection. After providing a hearing to the aggrieved person and the respondent, the Magistrate may pass any of the following orders;

- Protection Order.
- Residence Order.
- Order providing Monetary Relief e.g., for loss of earnings, medical expenses, loss or destruction of property, maintenance.
- Interim Custody Order.
- Compensation Order, i.e., damages for injuries including mental torture and emotional distress caused to the aggrieved.

## **PROBLEMS IN EFFECTIVE IMPLEMENTATION OF PWDVA**

### **Procedural Safeguards to Facilitate Access to Justice**

The procedure under section 12 provides for an option to the aggrieved person to make an application either to the Protection Officer, or any other person or even directly to the Magistrate. Thus, only aggrieved persons from affluent and well-read strata of the society, who are financially capable, can avail the option of making an application directly to the Magistrate, because they may have easier access to a lawyer. But for victims from the lower economic strata of the society, engaging services of a lawyer may not be possible. Hence, such aggrieved persons need to have an easy access to the Protection Officers. The Karnataka High Court in *Narayankumar v. State of Karnataka & Anr.*<sup>18</sup> has held that an aggrieved person is not bound to go to the Protection officer in every case and hence, the Domestic Incident Report is not required to be mandatorily submitted in complaints made directly to the Magistrate by the aggrieved person. Thus, there is apparent absence of an effective statutory mechanism and procedural safeguards to facilitate access to justice.

### **Inadequate Number of Protection Officers**

Immediately after the enactment of the PWDVA, the Second Monitoring and Evaluation Report (2008)<sup>19</sup> of the Lawyers Collective (Delhi based NGO who majorly contributed towards framing the PWDVA) had reported that women, particularly from the lower economic strata of the society, benefitted from the services of the Protection Officers in making applications before the Magistrate. The second report also asserted the distinct role of Protection Officers in the pre-litigation stage where they provide access to support services for aggrieved persons who wished to seek legal remedies. However, an important point to be noted in the appointment of Protection Officers is that their appointments are made by vesting additional responsibilities on the existing government officials. The details of their appointments, cadres, qualifications and pay-scales are not available. The Hon'ble Supreme Court in *We the Women of India v. Union of India & Ors.*<sup>20</sup> has directed to provide the status of the appointments, qualifications, eligibility terms, cadres, training and other standards for the Protection Officers. The Sixth Monitoring and Evaluation

---

<sup>18</sup> 2010 ALL MR (Cri) Journal 158

<sup>19</sup> Lawyers Collective; 2nd Lawyers Collective; 2<sup>nd</sup> Monitoring and Evaluation Report 2008 on the PWDVA; Printgraphics; New Delhi; 2008

<sup>20</sup> Writ Petition (Civil) No. 1156/ 2021



Report (2013)<sup>21</sup> by the Lawyers Collective has expressed concern over the administrative failure to sanction adequate budget for the appointment and training of Protection Officers.<sup>22</sup>

### **Inadequate Budget**

Another major impediment in achieving the objects of this Act is the allocation of budget and personnel necessary for effective implementation of PWDVA is inadequate. There are several genders-responsive legislations, which due to lack of implementing agencies and lack of coordination between the government and law enforcement bodies are rendered ineffective.

### **Lack of Training and Support System**

Generally, there is a lack of training and gender sensitization among the members of the judiciary, law enforcement officials and implementing agencies, which is another reason for delay in the access to justice in our criminal justice system. Support systems like provision of adequate shelter homes, medical facilities, legal aid and counselling services, victim protection programs and other support are far from adequate in meeting the demand to provide services to the aggrieved persons. Shelter homes are flooded, and an aggrieved person cannot avail such a facility for more than two months. The orders, which are required to be passed within 60 days, take 90 days and sometimes even more, causing hardships and delay in justice to the aggrieved person.

### **Domestic Incidence Report**

The Rule 5 of the PWDVA provides that as soon as the Protection Officer receives a complaint, he must prepare a Domestic Incident Report. This report is generally prepared favouring one side though the mandate is that after thorough investigation of the incident, the report is to be filed by the Protection Officer. Unfortunately, many of the Protection Officers do not know about the technicality of this important document, which is the basis to judge the case for the judiciary. In most of the Domestic Violence cases, the Domestic Incidence Report by the Protection Officer/Service Provider/Department of Women and Child is not filed and if filed, in some cases

---

<sup>21</sup> LCWR. "Staying Alive: Sixth Monitoring and Evaluation Report on PWDVA, 2005." (2013).

<sup>22</sup>[https://www.academia.edu/9399244/Expert\\_paper\\_on\\_harmful\\_practices\\_in\\_India\\_an\\_examination\\_of\\_selected\\_legislative\\_responses](https://www.academia.edu/9399244/Expert_paper_on_harmful_practices_in_India_an_examination_of_selected_legislative_responses)

considerable length of time may lapse before a report is received by the court, which dilutes the case. Moreover, the report so presented is prepared in a very casual manner and its effects on the evidential value of the report. All these factors eventually pose hurdles in ensuring speedy justice to the aggrieved person.

### **MONITORING THE IMPLEMENTATION OF PWDVA**

In India, there is no practice of monitoring the implementation of laws. The orders which are granted by the Judicial Magistrate First Class and Metropolitan Magistrates are not published formally or digitalised. This makes it difficult to analyse if the objectives of the Act are effectively implemented or not. It is therefore imperative that the State agencies monitor the implementation of laws, because monitoring is not only crucial to ensure effective implementation of laws, but it also helps in identifying any difficulties in the implementation of laws. Better practices can be planned and adopted by effective monitoring.

### **CONCLUSION**

The PWDVA has been derived from the United Nations Model Code on legislation to prevent violence against women. Certain practices like dowry related harassment have been provided for in this Act. This Act has been enacted in addition to the Dowry Prohibition Act. However, unlike the Dowry Prohibition Act, this Act is civil in nature, but applications which are required to be filed for obtaining injunctive orders under the PWDVA are to be filed before magistrates under criminal law. The Protection Officers appointed under this Act, work under the supervision of the criminal courts. Married women have been primarily availing this Act and have been successfully obtaining orders related to dowry harassment from the courts. The Dowry Prohibition Act continues to operate simultaneously to have a deterrent effect against the practice of dowry. Augmenting the number of exclusive appointments of Protection Officers, their training and sensitisation could be a positive step towards the effective implementation of the PWDVA. In addition, as provided under section 11 of the PWDVA, the Central and State Governments must create awareness on the topic and organise programs for such purpose. They are also required to provide training to the implementing agencies and establish protocols to ensure coordinated services. This would monitor the effective implementation of the law and would pave way for a better future for the women of our society.

## **SUGGESTIONS**

The present study has highlighted a critical gap in the implementation of the PWDVA in the country. The institutions of Police, Judiciary, Ministry of Women and Child Development as a civil society have undergone various structural changes to deal with the increasing crimes against women in the state. However, some gaps have been found that hinder the purpose of successful implementation of the Act by fulfilling its objectives. Thus, the study has presented certain suggestions/ recommendations that will be supportive to make this Act viable and will bring justice to women. The following are recommendations;

- It has been observed that the laws are being enacted are ideally very good, but when it comes to their practical implementation, it is very difficult to manage. All these laws are to be implemented by the police and other authorities. The police and other authorities are not performing their duties in an efficient manner as observed in the research. Hence, there should be a new mechanism by which the duties and responsibilities of the police may be fixed so that they can be held accountable for any deficiency in their duties.
- There should be separate cell in women welfare desk for dealing with cases of domestic violence in women's department and all the information given in the department should be kept secret. Proper action must be mandatorily taken in order to have a better security for the aggrieved persons.
- More appointments of the women officers must be made as the crime against the women can be better handled by the women officers. Most aggrieved persons hesitate to discuss incidents of domestic violence with male officers.
- The incidents of domestic violence start from the home itself. So, the solution must also start from the homes. All the members in the household must sit together in order to discuss and guide each other, that such type of crimes should not be committed because they are not only anti-legal, but anti-social as well.
- NGO's and other women empowerment agencies should hold door to door campaigns in the areas where such incidents are reportedly taking place very frequently. They should guide the women about their rights and how they can manage the factors that are the causes of domestic violence.