



IMPLEMENTING THE PWDVA: SAFEGUARDING WOMEN FROM DOMESTIC VIOLENCE

Violence Against Women and Girls (VAWG) is one of the most widespread, and yet, the least recognised of human rights violations across the world. Manifest in many forms, the most common form experienced by women globally is physical violence inflicted by an intimate partner. Documenting this continues to be a challenge due to lack of reliable, timely datasets. In 2005, the government of India enacted the Protection of Women from Domestic Violence Act (PWDVA) that came into force in 2006. Nine years hence, progress in its implementation is insignificant as it remains plagued by challenges such as inadequate funds and human resources, poor coordination across implementing agencies and ineffective monitoring mechanisms. Addressing these would go a long way in strengthening the Act and making it effective. This also corresponds with the Indian government's wholehearted commitment to 'achieve gender equality and empower all women and girls' by year 2030 with its adopting the Sustainable Development Goals (SDGs). The standalone goal 5 on gender equality has two out of the six targets focusing on ending discrimination and VAWG.

Incidence of Violence Against Women and Girls (VAWG) in India and the South Asia region remains one of the most shameful reflections of the poor progress made towards realising rights, including right to life with dignity, for all. A 2014 World Bank study reveals that almost one-half of surveyed married women in Bangladesh, one-third in India, and one-quarter or more in Nepal and Pakistan report physical spousal violence.¹ Another study by United Nations Population Fund (UNFPA) and International Center for Research on Women (ICRW) in 2014 reveals that six out of ten Indian men rationalised VAW. A bigger surprise is that nearly 70 per cent of married women justify gender-based violence.² India has one of the lowest sex ratios worldwide, pegged at 940 girls per 1000 boys in 2011.³ This points to the systemic violence characterising gender relations in the country.

Dominant social norms dictate son preference and sanction violence as a means to control women and girls. Additionally, inequalities derived from gender norms and lack of agency affects perceptions of power and freedom. This is compounded by fierce resistance from traditional forces to any changes to the *status quo* in gender roles and relations.

Nationwide assessments confirm these normative constructs. The most recent, albeit outdated, nationally available data—the third round of the National Family Health Survey (NFHS) in 2005–06—reports that 40.1 per cent of ever-married women and 16.9 per cent of never-married women between 15 and 49 years in India have experienced physical or sexual violence in 2005. State level data is equally disturbing. For ever-married women, Bihar records a staggering 56 per cent, while Rajasthan, Uttar Pradesh, Madhya Pradesh and Tamil Nadu follow closely, with figures ranging between 40 and 50 per cent.⁴ Given the sensitivity of the information and the difficulty of enabling women to speak freely during the survey, these numbers are likely to be underestimates despite precautions taken by surveyors.⁵ A related concern is that the available datasets do not provide a comprehensive picture.

The National Crime Records Bureau (NCRB), on latest count, reported 309,546 cases of VAWG in 2013 of which 118,866 cases pertained to domestic violence, followed by cases of molestation,

kidnapping and rape. Data suggests an increase of 11.6 per cent in reported cases of 'cruelty by husband and relatives' over 2012; it is useful to mention that NCRB data also suffers from underreporting. Yet again, and disturbingly so, Bihar and Uttar Pradesh report the highest rate of crime under incidents of 'cruelty by husbands and relatives' and 'dowry deaths' in the country.⁶

In this backdrop of blatant denial of the right to life with dignity for almost 50 per cent of the country's population, state action to institutionalise measures to end VAWG is needed. The enactment of the Protection of Women from Domestic Violence Act (PWDVA) in 2005 is, by far, the most important initiative of the Indian government in this regard (the Act came into effect from 2006). The Act, for the first time, acknowledges 'Domestic Violence' (DV) as a problem and obligates the state to prevent it and punish offenders.

Recommendations

As the law nears a decade of its existence, it is time to assess how far the Act has succeeded in securing the rights of survivors of domestic violence. Oxfam India builds on its previous policy recommendations⁷ and proposes the following:

- ▶ The Union Government should conduct periodic surveys to monitor VAWG and make available timely, reliable data, disaggregated by social categories and up to the district level.
- ▶ The Union Government should earmark financial allocations and release funds in a timely manner with a clear specification of purpose.
- ▶ The State governments should put in place dedicated staff backed by adequate infrastructure and quality services for effective implementation of the law.
- ▶ The Union and State governments should create a mechanism to ensure convergence among stakeholders supported by protocols and guidelines for them to function effectively under the Act.
- ▶ The State governments should monitor and document cases of domestic violence by state level Women and Child Development Departments.

Backdrop

The PWDVA is a civil law that complements existing criminal laws. It provides immediate relief—to married and unmarried women—ranging from medical aid, shelter, monetary support and legal assistance. It links the right to a violence-free home with a structure aimed at facilitating access to justice, through dedicated staff and infrastructure. By doing so, it aims to reach out to the majority of women who are not in a position to face criminal procedure.⁸

It is well known that people who come from violent homes are more prone to socially sanction violent behavior.⁹ Children and women are the most common victims of violence in the home.¹⁰ In this regard, the main pathways for women to gain agency are education, employment, and decreased risk of domestic violence.¹¹ The effect of violence on their health and welfare, their families, and communities is substantial. Mainstream economists have also estimated the costs of VAWG, both direct and indirect, and have found it to be a staggering burden for households and economies.¹²

Recommendations

- ▶ **The Union Government should conduct periodic surveys to monitor VAWG and make available timely, reliable data, disaggregated by social categories and up to the district level.**

In India, NCRB is the primary data source documenting crimes related to VAWG. The Indian Penal Code (IPC) provides for sex-disaggregated data on rape, kidnapping, dowry deaths, torture (both mental and physical), molestation, sexual harassment and importation of girls.¹³ Data on VAWG has also been collected by NFHS with the latest being Round 3 in 2005-06. NFHS is limited in terms of its coverage; its total sample size is only 83,000 and is yet to report district level data.¹⁴ The NFHS-4 is currently ongoing and results are not expected before end of year 2016.

The NCRB has for the first time published data on PWDVA in 2014 and report a paltry number of 426 cases under the Act for the entire year.¹⁵ Given the extent of under-reporting of VAWG, there is a need to complement the existing administrative record-based system with periodic household and institutional surveys. Related to this is the need to correct the formats used to capture and present data. The United Nations Statistical Commission notes that, in principle, population-based, specialised, stand-alone statistical surveys are the instruments of choice for collecting statistics on VAWG¹⁶. However, resource constraints have led most countries to add a module on violence in other surveys, as was done in NFHS 3 in India.¹⁷

Thus, it would be useful to conduct specific and periodic surveys in order to monitor and address VAWG. Further, timely, accurate data should be made available for all age groups, capturing all social categories and up to the district level to ensure comprehensive reporting. Additionally, independent micro studies to validate and cross-check the data presented are useful. Assessment of other key inputs such as human resource, infrastructure, support structures and inter-departmental coordination also need to be measured and reported to effectively implement the Act.¹⁸

Finally, a uniform monitoring and reporting process (discussed in detail in point 5) will enable streamlining data collection at the state and national level. This will ensure reliable access and retrieval of data by stakeholders and timely availability of data

for evidence-based research. Such a process will also bring about transparency and accountability in the functioning of the implementing agencies and help ascertain expenditure incurred in the implementation of the Act.

- ▶ **The Union Government should earmark financial allocations and release funds in a timely manner with a clear specification of purpose.**

An analysis of the budgetary allocations in the last eight years show that the outlays for women as a proportion of the total budget have remained constant at about 5.5 per cent.¹⁹ Lack of adequate funds has remained a major gap in the implementation of the Act. Enacted nine years ago, the DV Act was provided with Rs. 20 crore in 2012-13. Revised Estimate allocations for 2013-14 show zero allocation and indicate that the scheme launched to operationalise the Act did not take off that year. Renamed SAAHAS²⁰ in the subsequent Union Budget, the scheme was allocated Rs. 50 crore in 2014.²¹ Despite unutilised funds under the Nirbhaya Fund, interventions to address VAW in domestic spaces are missing in the 2015-16 budget.²²

The Nirbhaya Fund was set up with an initial corpus of Rs. 1,000 crore (as announced in Union Budget 2013-14) and aimed at prevention of violence, protection and rehabilitation. Additional outlays in the next two years of Rs. 1000 crore for each year brought it to a total of Rs. 3,000 crore. Available information reveals that as much as Rs. 1,273 crore remains unused under the Nirbhaya Fund.²³ In 2014-15, the Ministry of Road Transport and Highways' proposal for women in public road transport pegged at Rs. 1,405 crore and a proposal by Ministry of Home Affairs to establish emergency response system to attend to women in distress with an outlay of Rs. 321 crore were approved. For 2015-16, two schemes of Ministry of Women and Child Development (MWCD), namely One Stop Centre for Women affected by violence with an estimated cost of Rs. 18.9 crore and Scheme for Universalisation of Women Helpline at Rs. 69.5 crore have been approved.²⁴

Focusing specifically on the One Stop Crisis Centres (OSCC), the initial proposal to set up one OSCC (also known as Nirbhaya Centre) in each of the 660 districts²⁵ was brought down to one in each of the 36 states. This has been justified as checking of "wasteful money" on setting up infrastructure.²⁶ Women's rights activists have criticised this drastic down sizing. Women's groups working to end domestic violence are also unconvinced about the Centres alone being able to deal with cases of DV effectively as the emphasis is currently more on dealing with cases of rape.

Also significant in this regard are two developments related to the Union Budget 2015-16 and their implications for implementation of DV Act. Firstly, the Union Budget 2015-16 reduced Union government outlays for the social sector along with a concomitant increase in the share of central taxes from the Union to the State governments (accepting the 14th Finance Commission's proposal to increase share of central taxes to states from 32 to 42 per cent). While still premature to provide a conclusive analysis, this will have significant implications on the nature and design of interventions planned at the state level.

Secondly, the Union government also proposes a restructuring of existing schemes into three categories. It undertakes to fully support 31 Centrally Sponsored Schemes (CSSs), revamp the fund-sharing between Centre and States for 24 schemes and completely delink eight schemes.²⁷ As per this changed template, the Scheme for Protection and Development of Women is one of the 31 CSSs that are the sole responsibility of the Union Government. It is only logical

then for the Union Government to ensure adequate financial outlays to implement PWDVA. Along with allocation of sufficient funds, measures should also be taken to curb delays in release of funds and other bottlenecks that curtail its utilisation.

► **The State governments should put in place dedicated staff backed by adequate infrastructure and quality services for effective implementation of the law.**

The lack of dedicated staff with clearly-attributed roles and infrastructure is another obstacle to effective implementation of the Act. Protection Officers (POs) play a nodal role in facilitating the aggrieved in filing Domestic Incident Reports (DIRs)²⁸, accessing shelter, counseling and medical assistance. On last count, 21 states and UTs had appointed officers on additional duty as POs.²⁹ The few states that had appointed officers had done so either on a contractual basis or recruited existing staff with independent charge. In this regard, recent research by the Centre for Social Research (CSR) finds that only ten states have POs with independent charge.³⁰ These numbers are clearly inadequate to address the enormity of the issue.

In most instances, existing government officials like Child Development Project Officers (CDPOs), Welfare Officers, Probation Officers, Dowry Prohibition Officers, Child Marriage Prohibition Officers have been given 'additional charge' as POs. They are unable to work effectively as they are over-burdened and sometimes under-skilled for the task at hand. Further, POs do not have the infrastructure or sufficient funds to carry out their duties.³¹ Lack of infrastructure (separate room to receive women, means of transport, computers) and low salaries offered have resulted in declining availability and retention of qualified and trained staff. Similarly, proximity to judicial courts has had varying impact on the efficiency of POs. In Delhi and in some districts of Bihar, POs have been able to perform their court-mandated functions better as their offices are situated close to court premises.³²

The absence of dedicated Service Providers (SPs) and professional counselors also impacts the functioning of POs significantly. To address this, many states have appointed a qualified social worker and a professional counselor to back each of the POs. So far, Karnataka, Kerala and Tamil Nadu have this arrangement.³³ However, the criteria to select and appoint SPs are often obscure, and those selected are poorly integrated with the government system of support. A related concern is under-staffing among judicial personnel resulting in delays in judicial proceedings for many months. The average time taken to complete procedures in Odisha was 275 days as against the prescribed 60 days.³⁴

► **The Union and State governments should create a mechanism to ensure convergence among stakeholders supported by protocols and guidelines for them to function effectively under the Act.**

Although the PWDVA was meant to offer a coordinated, multi-agency response, the lack of convergence among stakeholders responsible for implementing the Act is notorious.³⁵ Cases are settled at the police station without redirecting women to POs; magistrates do not share information with POs who filed the DIR in the first place; and the necessary coordination with medical providers and shelter homes is inadequate, if not absent. The lack of a uniform protocol has led to confusion in follow-up

actions when an aggrieved person approaches the agencies for assistance under the PWDVA.

In this regard, the MWCD and its state representatives should put in place an effective mechanism of coordination and issue guidelines to all relevant agencies from time to time. In Maharashtra, the Department of Women and Child Development (DWCD) and Majlis Legal Centre have proposed guidelines and reporting formats for medical facilities for implementation of the PWDVA.³⁶ The Union and State governments should also formulate coordination committees at all administrative levels to ensure coherent communication between state agencies. States like Kerala, Gujarat, Uttarakhand, Rajasthan and Madhya Pradesh have established such committees that find representation from all relevant departments.³⁷

There exist two models of institutional mechanisms for support and access to justice for women – one is police station-based and the other is hospital-based. The Special Cells set up at the police headquarters of each district in Haryana is an illustration of the first model. Oxfam India funded Support Centres in Gujarat, Odisha, Andhra Pradesh and Uttar Pradesh, and the Special Cells operated by Tata Institute of Social Sciences (TISS) were also located at police stations to counter the notion that VAWG is low priority with inadequate support from the police and administration.³⁸

Examples of hospital-based mechanisms are aplenty. For instance, the piloting of OSCCs set up in 11 government hospitals for survivors of violence in National Capital Territory (NCT) of Delhi³⁹ is largely seen as the inspiration behind the MWCD plan to establish 36 OSCCs across the country.⁴⁰ *Dilaasa* is another hospital-based intervention centre that was initiated in 2001 by Centre for Enquiry into Health and Allied Themes (CEHAT) in a public hospital in Mumbai. This pilot project has been replicated in most hospitals in Mumbai and other cities.⁴¹ Special Cells and Crisis Intervention Centres such as these involve an inter-organisational structure working along with government and implementing agencies combining protection, prevention and restoration measures in responding to domestic violence.

► **The State governments should monitor and document cases of domestic violence by state level Women and Child Development Departments.**

Another critical aspect relates to monitoring of cases under the DV Act. So far, no rigorous system has been set up to monitor its implementation. Since the inception of the law, civil society organisations (CSOs) have monitored the Act through state-wise status reports and an annual national assessment report, i.e. the Staying Alive series by Lawyers Collective.⁴² However, these findings are not widely disseminated, and the extent to which the government has acted upon them is unclear. In this regard, DWCDs in states should institutionalise the process of reporting and monitoring the Act.

Participation of state and CSOs in the monitoring process is imperative in order to build a rich pool of resources. An evaluation study conducted in Odisha by the Civil Society Resource Facility (CSRF) supported by DWCD was able to document progress and challenges in the implementation of the Act.⁴³ Similarly, the Majlis-DWCD joint initiative has led to setting up of the Monitoring Cell (MOHIM Cell) within DWCD in Maharashtra to train, guide and monitor stakeholders to ensure effective implementation of the Act.⁴⁴

With the intent of bringing about uniformity in the monitoring process, the National Mission for Empowerment of Women (NMEW)

along with Lawyers Collective published a Resource Tool for Monitoring and Evaluation of the PWDVA in 2013. This has been widely disseminated among the states and central nodal agencies. The Resource Tool builds a normative framework that can be used by states to comply with obligations under the PWDVA.⁴⁵

This finds resonance with a study done by the UN Special Rapporteur on VAW that indicated that laws, policies and programmes are often not based on empirical data, thereby resulting in a disconnect between state responses and the prevalent pattern of violence.⁴⁶ Thus, monitoring and documentation of cases of domestic

violence is vital to judge whether the law is being implemented in right earnest.

As the country stands poised to complete a decade of implementing the DV Act, it also prepares to usher in the Sustainable Development Goals (SDGs) that have at its core the principle of 'leave no one behind'. In some senses, this lofty principle can be realised only if progressive legislations such as the PWDVA are well implemented and backed by strong political will. Particularly when seen in the context of the growing incidence of violence against women in the country, it is the need of the hour.

Notes

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- 2 Data from National Family Health Survey (NFHS) Round 3, 2005-06
- 3 Government of India, Census 2011, Sex Ratio; available at: http://censusindia.gov.in/2011-prov-results/data_files/india/s13_sex_ratio.pdf, accessed November 2012.
- 4 Ibid, p. 108.
- 5 Round 3 of the National Family Health Survey saw introduction of measures aimed at addressing some of the obstacles that may prevent women from mentioning cases of violence: notably, women were to be surveyed in the absence of their spouse or relatives. The steep increase in reported violence – more than 10 per cent between round 2 and 3 of the NFHS is certainly partially linked to these methodological changes. But the data is likely to remain under reported, given that surveyors were still developing sensitive surveying methods.
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- 7 Dubochet, Lucy (2012), Protecting Women from Domestic Violence, Oxfam India Policy Brief
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- 9 World Health Organisation (2009), "Violence Prevention: the Evidence – Changing Social and Cultural Norms that Support Violence", WHO Press, Geneva
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- 15 http://mospi.nic.in/Mospi_New/upload/Report_crime_stats_29jun11.pdf
- 16 <http://www.un.org/esa/socdev/ageng/documents/egm/NeglectAbuseandViolenceofOlderWomen/Violence%20against%20women.pdf>
- 17 http://mospi.nic.in/Mospi_New/upload/base_paper_on_data_gaps_chiild_women11mar15.pdf
- 18 Ibid
- 19 Centre for Social Research (2015), PWDVA Advocacy Project – Phase I Report, p.7
- 20 SAAHAS was a sub-scheme introduced under the 'Umbrella Scheme on Protection and Empowerment of Women' during the Twelfth Five Year Plan. 'Implementation of the PWDVA' is a sub-component of SAAHAS proposed by the MWCD from the financial year 2013-2014.
- 21 Mishra and Tavares (2015), <http://www.thehindu.com/opinion/op-ed/a-budget-for-women/article6929819.ece>
- 22 Centre for Social Research (2015), op cit
- 23 http://articles.economicstimes.indiatimes.com/2015-04-24/news/61493805_1_nirbhaya-fund-150-crore-wcd-ministry
- 24 <http://pib.nic.in/newsite/PrintRelease.aspx?relid=117250>
- 25 http://www.telegraphindia.com/1150225/jsp/nation/story_5414.jsp#VhvHn0yqqkq
- 26 <http://pib.nic.in/newsite/PrintRelease.aspx?relid=118661>
- 27 <http://pib.nic.in/newsite/PrintRelease.aspx?relid=116152>
- 28 A Domestic Incident Report (DIR) is the official format in which the complaint will be registered. This is an extremely simple format, which is available in Form I in the Rules of the DV Act. A woman can get this Form I from police stations, POs or SPs and fill it herself / ask the PO, SP or Police to fill it on her behalf.
- 29 <http://www.pwdvact.in/images/download/Status-of-Protection-Officers.pdf>
- 30 Centre for Social Research (2015), PWDVA Advocacy Project – Phase I Report, p.8
- 31 <http://pwdvact.in/gaps-in-pwdva-implementation>
- 32 Oxfam India (2015), "Study on the implementation of the Protection of Women from Domestic Violence Act, 2005 in Bihar"; Lawyers Collective (2013), "Manual on the Best Practices under the Protection of Women from Domestic Violence Act, 2005" Delhi: Lawyers Collective and National Mission for Empowerment of Women, P. 12
- 33 Lawyers Collective (2013), "Manual on the Best Practices under the Protection of Women from Domestic Violence Act, 2005" Delhi: Lawyers Collective and National Mission for Empowerment of Women, P. 11
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- 35 This has been established by civil society organisations and government agencies alike. Kapoor, B. Jhamb, F. Agnes, Philarisa, S. Bhowmik, S. Nandi, T. Panchal (2012), "Centrally Sponsored Scheme for the Implementation of Protection of Women from Domestic Violence Act", op., cit.
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- 37 http://www.endvawnow.org/uploads/browser/files/manual_on_best_practices_under_pwdva_lawyers_collective.pdf
- 38 <https://www.oxfamindia.org/sites/default/files/WP10Thorny%20transition%20final.pdf>
- 39 Union Budget Speech 2014-2015, 10th July 2014 (Position reported on 30th January, 2015)
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- 41 Keerty Nakray (2013), "Gender-based Violence and Public Health: International perspectives on budgets and policies", Routledge, p. 192
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- 43 Civil Society Resource Facility (2011), "A Report on the Status of PWDV Act in Orissa, 2010-2011", Bhubaneswar: Friends' Association for Resource Facility, supported by Oxfam India, pp. 8-9
- 44 Majlis Manch Annual Report of Activities April 2013 - March 2014, Available at: http://majlisbombay.org/wp-content/uploads/2014/10/2013_2014.pdf
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