



PROTECTING WOMEN FROM DOMESTIC VIOLENCE

Progress towards enforcing women's right to a violence-free life remains limited, six years after the enactment of the Protection of Women from Domestic Violence Act (PWDVA) in 2006. Survivors continue to be largely invisible and deprived of support. Faced with lasting resistance against addressing violations that take place in the privacy of homes, underfunded, understaffed, hampered by the difficulties of coordinating stakeholders who rarely interact, the law is yet to live up to its promise.

Summary

Available information highlights the extent of the problem, though the lack of adequate data certainly understates its severity. National Family Health Surveys in 1999 and 2005 are the only large-scale attempts to gather information on the issue: more than 37 per cent of women between 15 and 49 years of age reported having experienced physical or sexual violence in their marriage in 2005.¹ In Bihar, this figure was a staggering 56 per cent; Rajasthan, Uttar Pradesh, Madhya Pradesh and Tamil Nadu follow with figures ranging between 40 and 50 per cent.² 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 the precautions taken by surveyors.³

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.⁴ It links the right to a violence-free home with a structure aimed at facilitating access to justice, through devoted staff and infrastructure. By doing so, it aims to reach out to the majority of women who are not in a position to face heavy criminal procedure. Registered crimes of domestic nature were at 0.02 cases for 100 women in 2011;⁵ the remaining 37 per cent of women who reported facing physical and sexual violence in their homes were left unprotected by criminal law.

Evidence from the 2005 survey offers additional arguments for a strong range of measures under civil law, by pointing at socio-cultural constraints that pressure many women into enduring domestic violence. Women in the lowest wealth quintile were more than twice as likely to report facing domestic violence as women in the highest wealth quintile;⁶ women with no education were thrice as likely to experience violence as those with more than 12 years of schooling; incidence of domestic violence was most acute among Scheduled Castes and Tribes, with 46 and 44 per cent respectively, against 30 per cent for other groups.⁷ Furthermore, the survey highlights the existence of a violence trap. A woman whose mother faced domestic violence was nearly thrice as likely to experience domestic violence herself as a woman whose mother did not.⁸ Less than one in four women who faced domestic violence reported having sought help.⁹ These features drive home the need for adequate measures that reach out to women, protect them and support their livelihoods while they claim a life free of violence.

Widespread tolerance towards domestic violence adds to the challenge. The sex ratio, one of the lowest worldwide at 914 girls per 1000 boys in 2011,¹⁰ highlights the levels of systemic violence that characterize gender relations in India. In a recent survey across five states, a majority of women and men (72 and 68 per cent respectively) felt that a husband was justified in beating his wife for at least one of the following reasons – she refuses to have sex, does not cook properly, is unfaithful or is disrespectful towards her in-laws.¹¹ The belief of stakeholders directly responsible for implementing the law is itself a challenge: the Lawyers Collective's most recent survey shows that an overwhelming majority of police personnel think that domestic violence can be best solved by counselling the woman, and that women should consider the wellbeing of their children before filling a Domestic Incidence Report.¹² The survey also shows persisting gaps of knowledge about the content of the law across all stakeholders responsible for implementing it.

Given the challenges involved, the law will make a difference only if it is backed by real political commitment and adequate resources. But, the central government has not allocated funds so far, and financial resources committed by state governments are scarce and often not released; staffing and infrastructure are grossly inadequate; awareness of the law is limited. It is time for policymakers to show their commitment through a set of tangible measures.

Recommendations

1. The government should lead a public information campaign about women's right to a violence-free home and the protection they are entitled to under PWDVA.
2. The government should guarantee dedicated financial allocations and release funds in a timely manner with a clear specification of purpose.
3. Dedicated staff backed by adequate infrastructure should support the implementation of the law.
4. A mechanism should be created to ensure convergence among stakeholders responsible for implementing the act.
5. Monitoring of the act and reporting of cases should be coordinated by a special unit, under state level Women and Child Development Departments.

History of the Law

The current policy framework is a result of tireless efforts of women's rights groups, progressive lawyers and government agencies. Resistance was strong, as is exemplified by the Delhi High Court statement in a notorious case: bringing "constitutional law into the privacy of home and the married life" is like "introducing a bull in a China shop".¹³

For decades after India's Independence, there was no law dedicated to domestic violence. But mobilisation by women's rights groups from the 70s onwards eventually led to a progressive strengthening of the legal framework. The Indian Penal Code was amended; section 498A on cruelty by husbands and relatives was introduced in 1983 and section 304B on dowry related deaths in 1986. However, women who could afford a criminal procedure, and provide the required proofs were rare. Criminal law also failed to provide immediate protection, temporary measures to support livelihoods, safeguard women from being dispossessed of their homes and lose the custody of their children.

After years of debates and procedural delays, the PWDVA was enacted in 2006. But the law has remained toothless so far. The lack of resources, inadequate staffing and poor infrastructure tremendously limit its impact. It is often poorly understood among stakeholders responsible for implementing it and widely unknown to the general population.¹⁴ As a consequence, the number of women who receive protection under the law remains limited compared to real needs—smaller in fact than those who seek protection under criminal law.

Recommendations

- ▶ **The government should lead a public information campaign about women's right to a violence-free home and the protection they are entitled to under PWDVA.**

The lack of awareness about the PWDVA defeats its central purpose: reaching out to the majority of women who do not seek protection under criminal law. To be effective, it should be associated to a broader public campaign aimed at breaking beliefs that justify domestic violence, and informing women about concrete actions they can take to stop the violence.

More efforts should be made to train stakeholders responsible for implementing the law. While many states have taken positive steps in that regard by allocating budget for training and awareness building, the Lawyers Collective's survey shows the importance of the task ahead: there is "confusion around certain key provisions such as the definition of aggrieved person and right to residency, ... responses seem to be based on assumption rather than on knowledge of the law".¹⁵

- ▶ **The government should guarantee stable financial allocations, and release funds in a timely manner with a clear specification of purpose.**

The lack of financial resources is one of the most concrete impediments for the implementation of the law. The cost of implementing the act is estimated at INR 1,522 crore.¹⁶ In contrast, the overall plan expenditure for PWDVA was about INR 946 lakh in 2010-2011.¹⁷ The central government has not allocated resources so far; 19 out of 33 state governments had no plan allocation for the implementation of the law;¹⁸ states like Bihar, Jharkhand, Chhattisgarh, Gujarat, Rajasthan and Chandigarh had made no allocation whatsoever, claiming that they could cover expenses through existing women's welfare schemes.¹⁹ Even where funds were allocated, delays in releasing them or bottlenecks curtailed their utilization. At least five states spent less than 40 per cent of allocated funds.

In light of the above, the proposition of a Centrally Sponsored Scheme worth INR 1,158 crore for the implementation of the act by the National Commission for Women is a much-needed step forward.²⁰ It will ensure the funding required for the development of a coherent structure, free of the bottlenecks and incoherencies that hamper the current system. In particular, central funding will ensure a number of crucial functions that have so far been neglected – one such function being a strong system to monitor the outreach, quality and timeliness of the protection and support provided under the act. The function is urgently needed at present, as argued under point four below, but will become even more necessary with the allocation of additional funding.

- ▶ **Dedicated staff backed by adequate infrastructure should support the implementation of the law.**

The lack of dedicated staff with clearly attributed roles and infrastructure is another obstacle for the implementation of the act.

Protection Officers play a nodal role in facilitating women's access to justice, by assisting survivors in filing Domestic Incident Reports, accessing shelter, counselling and medical assistance. However, all but seven states had not appointed full time officers by 2011, instead appointing officers on additional duty. The few states that had appointed dedicated officers had done so on a contract basis, for salaries that were too low to attract qualified staff.

Civil society organisations that work with survivors of domestic violence at the grassroots have repeatedly highlighted that these cumulated responsibilities prevent Protection Officers from performing their functions adequately.²¹ Similarly, Protection Officers hired on a contract basis lack access to state

infrastructure and continuity in their engagement. Furthermore, in the absence of dedicated social workers and counsellors, Protection Officers move away from their core responsibility: they frequently act as counsellors and mediators of compromise within the couple, rather than as facilitators of justice. This needs to be rectified by appointing a devoted cadre of Protection Officers employed by the government, each backed by one qualified social worker and one counsellor.

Understaffing among judicial personnel is similarly worrisome, as it results in delays of several months. The average duration of nearly hundred procedures in Odisha was 275 days, against the prescribed 60.²² In the meantime, women are left in complete precariousness, without financial support from the government, and often deprived of basics such as a bed in overcrowded shelters.

Adequate infrastructure is another urgent need. Protection Officers rarely have a dedicated room to receive women, and other supporting material, such as means of transport, computers are equally scarce. The country counts only 260 Swadhar Homes, set up under a government scheme to provide shelter for vulnerable women, about one for every second district.²³

► **A mechanism should be created to ensure convergence among stakeholders responsible for implementing the act.**

The law was meant to be a coordinated, multi-agency response, coherently providing protection, shelter, financial assistance, and legal and medical aid. However, the lack of convergence among stakeholders responsible for implementing the act is notorious.²⁴ The police settle cases at the police station without redirecting women to Protection Officers; magistrates do not share information with Protection Officers, who filed the Domestic Incidence Report in the first place; interactions with medical service providers are even scarcer. This is a major source of trouble for women who, at a time of extreme vulnerability, are in need of coordinated support.

The Ministry of Women and Child Development should take the lead in setting up an effective mechanism of coordination, which should issue and monitor required information, government orders, circulars and guidelines.

The integration of service providers—generally NGOs that offer shelter, counselling, medical and legal services—also needs to be improved. Criteria to select and appoint them are often obscure, and selected service providers are poorly integrated with the government’s system of support. The government should establish transparent criteria, based on proven commitment and effectiveness—Support Centres

supported by Oxfam and Special Cells for Women supported by the Tata Institute of Social Sciences for example, which have been tested in numerous states, should be declared service providers. Once selected and their role clarified, they should be strongly integrated with other stakeholders responsible for implementing the act.

► **Monitoring of the act and reporting of cases should be coordinated by a special unit, under state level Women and Child Development Departments.**

So far, no rigorous system has been set up to monitor the implementation of the act. Civil society organisations have somehow filled this gap, with a number of state-wise status reports and the Lawyers Collective’s annual report. However, the findings have not been widely disseminated, and the extent to which the government has acted upon them is unclear. Such reports cannot replace a rigorous monitoring by the government itself.

Women and Child Development Departments in all states should establish a reporting and monitoring unit. One officer, along with a few support personnel, should be responsible for collecting data on the service provided under the act, track cases and monetary allocations. They should give regular feedback to relevant authorities and civil society organisations.

Civil society organisations that are involved in protecting and supporting survivors are another important source of information. The Women and Child Development Department should set up a state-wise forum aimed at providing regular feedback. Projects such as the Civil Society Resource Facility (CSRF), which acts as a research and advocacy body in Odisha, may provide a model for the forum.

Without quality feedback, stakeholders responsible for implementing the act will continue groping about in the dark, unaccountable and without the evidence required to fine-tune the policy. Meanwhile, women who face domestic violence will continue to see their rights violated, far from public attention and government interest.

Notes

- 1 S. Kishor, K. Gupta (2009), “Gender Equality and Women’s Empowerment in India”, National Family Health Survey 3, Mumbai: International Institute for Population Sciences (IIPS), p. 96. Available at: http://www.rchiips.org/NFHS/a_subject_report_gender_for_website.pdf, accessed November 2012.
- 2 Ibid., p. 108.
- 3 Round 3 of the National Family Health Survey saw the 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 underreported, given that surveyors were still developing sensitive surveying methods.
- 4 I. Jaising (2009), "Bringing Rights Home: Review of the Campaign for a Law on Domestic Violence", *Economic & Political Weekly XLIV* (44), p. 52.
 - 5 The 114,373 crimes reported by the National Crime Records Bureau, include cruelty by husband and relatives, dowry death and crimes falling under the dowry prevention act, as well as crimes falling under the sati prevention act. National Crime Records Bureau (2012), "Crimes in India, 2011 Statistics", Delhi: Government of India, p. 81. Available at: <http://ncrb.nic.in/index.htm>, last accessed November 2012.
 - 6 The NFHS wealth index is constructed by combining information on 33 household assets and housing characteristics such as ownership of consumer items, type of dwelling, source of water, and availability of electricity. IIPS (2007), "Key Findings, National Family Health Survey-3, 2005-06", Mumbai: IIPS, p. 2. Available at: <http://www.measuredhs.com/pubs/pdf/SR128/SR128.pdf>, accessed November 2012.
 - 7 IIPS (2007), "Key Findings, National Family Health Survey-3, 2005-06", op., cit., p. 510.
 - 8 S. Kishor, K. Gupta (2009), "Gender Equality and Women's Empowerment in India", op., cit., p. 105.
 - 9 For an analysis of these features see: L. Visaria (2008), "Violence against Women in India, Is Empowerment a Protective Factor?" *Economic & Political Weekly*, p. 64.
 - 10 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.
 - 11 V. S. Sridhar (2010), DFID Supported INGO Partnership Agreement Program of Oxfam, Baseline Survey Report". The baseline covers 3200 men and women across the states of Gujarat, Uttarakhand, Uttar Pradesh, Orissa, Andhra Pradesh.
 - 12 Lawyers Collective (2012), "Staying Alive, 5th Monitoring & Evaluation on the Protection of Women from Domestic Violence Act", Delhi: Lawyers Collective and International Centre for Research on Women, pp. 67, 89, 110. Available at: <http://www.lawyerscollective.org/files/Staying%20Alive%205th%20M&E.pdf>, accessed November 2012.
 - 13 Bench A. B. Rohatgi, in Harvinder Kaur vs Harmander Singh Choudhry, Delhi High Court, 15 November 1983; AIR 1984 Del 66. Cited in: I. Jaising (2009), "Bringing Rights Home: Review of the Campaign for a Law on Domestic Violence", *Economic & Political Weekly XLIV* (44), p. 50.
 - 14 Lawyers Collective (2012), "Staying Alive, 5th Monitoring & Evaluation on the Protection of Women from Domestic Violence Act", op., cit.
 - 15 Ibid., p. 96.
 - 16 Ibid., p. XVIII.
 - 17 Ibid., p. 37.
 - 18 This excludes Lakshadweep and Jammu & Kashmir. Lawyers Collective (2012), "Staying Alive, 5th Monitoring & Evaluation on the Protection of Women from Domestic Violence Act", op., cit., p. 37.
 - 19 B. Jhamb (2011), "The Missing Link in the Domestic Violence Act", *Economic & Political Weekly XLVI* (33), p. 46.
 - 20 A. 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", Delhi: National Commission for Women.
 - 21 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, p. 21.
 - 22 Ibid, pp. 8-9.
 - 23 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.
 - 24 This has been established by civil society organisations and government agencies alike. Ibid.

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