

New Protection against Domestic Violence in India

Biswajit Ghosh and Tanima Choudhuri***

ABSTRACT

Crimes against women is wide spread phenomena across culture and society. Women are most vulnerable and marginalized sections of the society. Most crimes against women go unreported for many reasons: attached social stigma, drawbacks in legal mechanism, fear of retaliation and so on. Institutional indifference makes matters worse. It is almost impossible to lodge a complaint against men in the police and the armed forces, or in government services. Importantly, crimes against women have roots in the patriarchal socio-economic, legal and political order. Assaults on women are often visibly associated with their social status, their communal, ethnic and caste identifies. Against this backdrop present paper purports to examine the socio legal provisions for protection of women against domestic violence.

Introduction

Women in India, like many of their counterparts elsewhere, constantly find themselves in a vulnerable position. They are the soft targets for various unlawful and suppressive activities in different spheres of social life. Sexual violence appears to be an intrinsic part of women's lives. More surprisingly, there is massive rise in the officially counted number of crimes committed against women and particularly wives in matrimonial homes in India. Domestic violence is, however, not new and it is found in all societies across different economic and age groups. It has been argued that any traditional custom or practice that subordinates women has the potential to turn violent (Bhattacharya 2004: 13). Over and above, a strengthening of male-biased norms and values across all castes and classes in India has occurred along with increasing economic development (Kapadia 2002: 4). National Family Health Survey-3 reveals that 34 per cent of all women age 15-49 have experienced violence at any time since the age of 15 in India (IIPS 2007: 499). It is also not a matter of coincidence that despite low registration of crimes committed against women in India, the rate of such crime as per the figure released by the National Crime Record Bureau (NCRB) of Government of India has increased from 13.2% in 2003 to 52.24% in 2013. The rural and

* Professor & Head, Department of Sociology, The University of Burdwan.

** Associate Professor of Sociology, Burdwan Raj College, Burdwan.

illiterate women are more likely to experience violence than their literate or urban counterpart. The women's movement in India during the last few decades has reacted sharply to such escalating instances of violence against women and demanded sharp legal action. According to Menon (2000: 66), these efforts have been successful in that every campaign has resulted in legislative changes. But, these laws are hardly implemented and incorporation of more stringent punishment for a crime in the law book has rather resulted in fewer convictions than before. Consequently, women activists today express doubt about the efficacy of law to prevent violence against women.

The rising instances of domestic violence and pressure from women activists and NGOs have led the Government of India to pass the new protection law called *The Protection of Women from Domestic Violence Act, 2005* (PWDVA)². Though feminist argue that law's treatment of women in relation to men has not always been equal and fair, many activists have hoped that the new law would provide the much needed protection and relief to women victims. This is more so as the new law has been drafted from a new perspective. Based on official statistics, secondary reports and data collected through a qualitative research, this paper tries to assess the extent to which the PWDVA has so far been able to achieve its objectives. The fieldwork was conducted in the district of Burdwan in West Bengal and 20 case histories of the victims of domestic violence out of a total of 320 respondents were analysed to understand the process of implementation of the law. The opinions of other stakeholders were also sought.

Research Setting

Burdwan or Bardhaman is one of the 19 districts of the state of West Bengal. It has three main towns: Asansol, Durgapur and Burdwan. It is considered one of the advanced districts of the state and of the country because of unique blend of agriculture and industry (GWB 2011). This 'rice bowl' of Bengal necessarily contributed to third highest Per Capita State Domestic Product of Rs. 17,538 in 2004 after Kolkata and Darjeeling districts (GWB 2004: 13-14). It is well connected by road and rail with Kolkata and other parts of the state including the eastern region of the country. In 2011, it had a population of 7,717,563 of which male and female were 3,966,889 and 3,750,674 respectively. Density of population in the district increased from 982 people per sq. km in 2001 to 1099 in 2011. Burdwan has 945 women per 1000 men (sex ratio), which is slightly lower than the state average of 950 in 2011. Expectantly, the rates of both male and female literacy in the district in 2011 are 79.14 per cent and 65.86 per cent respectively. The rate of male literacy is slightly better than the state averages of 76.26 per cent though the female literacy rate is lower than the state average of 66.5 per cent.

Efforts of Indian Government to Check Gender Violence

Since independence the Government of India has tried to produce desirable changes in the status of women and control violence against women (and children) through legal reforms. It has been argued that the framers of Indian Constitution have shared a high degree of gender sensitivity at a time when the issue of gender equality was hardly an agenda of socio-cultural reform (Sarkar 2005: 103). They, therefore, affirmed that there would not only be 'Justice Social, Economic and Political' for all citizens, but there would be 'Equality of Status and Opportunity'. Equality before law is a Fundamental Right and discrimination on the ground of sex is legally prohibited in India. However, the goal of 'equal pay for equal work' for men and women could not be realised and it remained a Directive Principal to be implemented at a future date. Again, the long cherished goal of a Uniform Civil Code to secularise and homogenize family laws stated under Article 44 of the Constitution is yet a Directive Principal. The lawmakers have however taken up the Hindu law, also supposed to be personal laws of divine origin like others, for inserting certain changes and making uniformities among the Hindus. At local bodies like Panchayat and Municipality, 33% of seats were reserved for women and a bill to ensure such reservation at the highest level of electoral bodies is lying before the parliament.

Apart from these reforms, the government has also framed more than fifty laws and acts under the Indian Penal Code (IPC) and Special & Local Laws (SLL) having direct or indirect bearing on the life of women. Many of these laws or acts were amended later to make them contextual and effectual. The most prominent among them are: The Special Marriage Act, 1954; The Hindu Marriage Act, 1955; The Hindu Succession Act, 1956; The Immoral Traffic (Prevention) Act, 1956; The Dowry Prohibition Act, 1961; The Indian Divorce Act, 1969; The Indecent Representation of Women (Prohibition) Act, 1986; The Commission of Sati (Prevention) Act, 1987, The Prohibition of Child Marriage Act, 2006. There are specific provisions in the IPC to deal with gender crimes like rape (Sec. 376), Kidnapping & Abduction (Sec. 363-373), Homicide for Dowry, Dowry Death or their Attempts (Sec. 302/304-B), Torture or Cruelty by Husband or Relatives (Sec. 498-A), Molestation (Sec. 354), Sexual Harassment (Sec. 509), Importation of Girls (Sec. 366-B) and the like. The PWDVA has been an addition to this list since 2006.

A detail analysis of the scope and impact of these laws and acts is beyond the scope of this paper. The analysis is restricted to certain laws/acts related to domestic violence. It has however been argued that on the whole the Indian State has maintained contradictory and perplexed positions to ensure or even to maintain gender justice. An analysis of the state response to gender inequality in India has led Sarkar (2005: 111) to conclude that 'the state has

tended to take a step forward and two steps backwards in its support of legal provisions that favour women'. Thus, for instance, The Special Marriage Act of 1954 has provided for a civil marriage of two Indians, without the necessity of renouncing their respective religions. Under this Act, marriage is a secular and civil contract and hence parties opting for it are to be governed by the Indian Succession Act, 1925. The provision of this Act was altered later through an amendment of the Hindu Succession Act in 1976, which stated that even if two Hindus marry under the Special Marriage Act, in matters of succession, they continue to be governed by the Hindu Succession Act rather than the Indian Succession Act. Similarly, The Muslim Women Act of 1986 following the Shah Bano judgement has been projected as the most glaring instance of the defeat of the principal of gender justice for the Indian women, as well as the defeat of the secular principles within the Indian polity (Agnes 2005: 129).

It has also been argued in this context that Indian law subordinated women in complex and subtle form by reinforcing deeply gendered assumptions, relations and roles (Kapur 2005: 153). The law plays a role in legitimating unequal power relations in society through its recognition of familial ideology, the public/private distinction and the sexual division of labour. For instance, the legal regulation of dowry does not challenge the assumption of women's economic dependency on men and says nothing about inheritance rights of women and particularly their right over marital property. Again the laws of succession, across virtually all personal laws, continue to discriminate against women as daughter and as wives and these laws are heavily shaped by assumptions of patrilineal and patrilocal joint family. Moreover, the right to maintenance of a separated wife under the Special Marriage Act is contingent upon their sexual purity and dependent status. Kapur, therefore, writes that 'Laws that apply equally to women and men are often interpreted in and through the lens of familial ideology, and lead to reinscribing women's identities within the family as wives and mothers, with less than equal rights' (2005: 161). Due to the contradictory nature of law, it is better to understand law as a discourse. Law does not always operate in the same way, nor does it always produce consistent results. It is, therefore, argued that any discourse on reforming gender rights needs to contextualise the economic rights of women as central within the marriage contract (Agnes 2000: 136). The performance of the PWDVA should be viewed keeping such a context in mind. Before dealing the new domestic violence law, let us first review, in brief, the functioning of the laws related to dowry and domestic violence in India.

Functioning of Laws related to Dowry and Torture/Cruelty

Dowry legally refers to 'any property or valuable security given or agreed to be given either directly or indirectly by one party to a marriage to the other

party to the marriage at or before or any time after the marriage'. But practically, it refers to a specific category of gifts given by the bride's side on demand to the groom's side at the time of marriage or after marriage notwithstanding regional variations in the practice and differences in people's perception of the term. Despite legal ban in 1961, however, the practice has assumed scandalous proportion and even penetrated into Muslim and tribal communities. Contrary to our expectations, higher indices of social and economic developments as well as growing concern for gender equality could not dissipate volume and intensity of torture of wives.

After Independence in 1947, the steady rise in dowry deaths in India compelled the Government of India to enact the Dowry Prohibition Act in 1961. Under the provisions of this act, dowry practice is officially outlawed. The act not only declares the transaction of cash and valuable items at the time of marriage as illegal but also prescribes punishments for the offenders. Under Section 498 A, physical or mental cruelty to the wife by the husband or his relatives was made a cognizable and non-bailable offense punishable with imprisonment up to three years and fine. Subsequently, Section 304B was introduced in the IPC in 1986 which created a new offence of "dowry death". This section states that whoever commits dowry death shall be punished, with imprisonment for a term, which shall not be less than seven years, but which may extend to imprisonment for life. Yet, from the crime records, it can be noticed that dowry deaths as compared to cases registered under the Dowry Prohibition Act (DPA) (see Table 1) are quite common in every part of the country and it is a pointer to the plights of married women.

Table 1
Incidence of cases under Dowry Death, Torture and DPA in India, 2000-2013

<i>Year</i>	<i>Dowry Deaths</i>	<i>Torture</i>	<i>DPA</i>
2000	6995	45778	2876
2001	6851	49170	3222
2002	6822	49237	2816
2003	6208	50703	2684
2004	7026	58121	3592
2005	6787	58319	3204
2006	7618	63128	4504
2007	8093	75930	5623
2008	8172	81344	5555
2009	8383	89546	5650
2010	8391	94041	5182
2011	8618	99135	6619
2012	8233	106527	9038
2013	8083	118866	10709

Source: Crime in India 2000-2013, National Crime Record Bureau, New Delhi.

Similarly, cases of Cruelty/Torture by Husbands and Other Relatives (Sec. 498A IPC), many of which are connected to disputes originating from dowry transactions, are also reported in huge number.

Data cited in Table 1 show that despite legal interventions, a total of 137658 cases of dowry related violence, torture and even death took place in India in 2013. Conspicuously, these are official statistics and there is every reason to doubt this figure. Interestingly, an analysis of the official statistics on dowry and domestic violence reveals that there is local or regional diversity in police approach to record a crime under different sections of IPC and SLL.

The question that becomes pertinent in this context is how do conflicts over dowry take place without disturbing the domestic sphere in these states? While the contrary trend of recording greater number of cruelty cases as against the number of dowry deaths may be accepted as normal in our socio-economic set-up, the reverse reveals our failure to stand by the sufferings of wives and mothers within the domestic space. Notwithstanding diversity in police approach to record a crime under different sections of IPC and SLL, it may fairly be argued that incidences of domestic violence are kept 'under the carpet' until they reach an intolerable level or become fatal. Yet, cruelty/torture within home accounts for more than 38.40 per cent) of recorded crimes against women in 2013 (118866 registered cases of torture out of a total of 309546 IPC and SLL crimes against women in 2013).

For some people, however, the rise in violence against women may be attributed to only greater reportage of cases caused by the growing awareness about rights as a result of the expanding activities of various organizations. This line of argument seeks to explicate that the incidences of gender violence are common in Indian society and there has not been any spurt of such violence in recent times. It is true that reportage of gender crimes has gone up with increasing literacy and awareness campaign among women. But, it is equally true that in a patriarchal society like ours, assertion of rights by women as well as increasing participation of women in public life may also engender hostile responses from their male counterparts in both public and private spheres. The ever-increasing volume of violence against women in contemporary India is, therefore, a matter of serious concern for all of us.

A cursory look into the official crime statistics would also confirm our apprehension that we are far from realizing a better reportage of crimes committed against women. Thus, very few cases are booked under the Dowry prohibition Act, 1961, to complain against any dowry claim, over the last one-decade or so (see Table 1). This low registration points out that normally, in the Indian society, dowry disputes are not reported outside the domestic sphere. Research has revealed that women perceive an incidence as abuse

only if the beatings are very serious; the odd slap or blow is regarded as routine affair. The logic of 'increasing reportage' also fails to explain the fact that incidences of child marriage or trafficking in women and children are hardly reported to the police. But trafficking is rampant and there is a silent complicity to child marriage in many parts of the country.

There is, therefore, every reason to doubt the official figures on most of the crimes committed against women and children in the country. It is a matter of serious concern that despite problems with our case registration system and the general tendency to hide or suppress women related issues, the cases of violence against women in between 2000-2013 have gone up from 141373 to 309546 (119% increase) in the country. One reason for such a rising trend, apart from the explanations discussed earlier, is the general failure of the police and judiciary to put up adequate resistance through timely and proper conviction of the offender. This is in spite of the fact that police have filed charge sheet in more than 90 per cent of cases related to dowry and cruelty. But, ironically, most of the cases could either be solved or justified in the court of law leading to a very low rate of conviction in dowry related crimes (see Table 2). Such poor performances are mainly due to lack of evidence, delay in taking action, want of community support and in many instances, the poor financial condition of the victims family to pursue the case for punishing the offender. It appears that mere presence of acts in the law books is not enough to curb the crime, unless affirmative actions are seriously initiated.

Table 2
Conviction Rate of Dowry Death, Torture and DPA in India, 2001-2013

Year	Conviction Rate		
	Dowry Death	Torture	DPA
2001	32.3	22.2	29.9
2002	34.0	21.4	28.8
2003	32.4	18.2	21.1
2004	32.01	21.5	25.0
2005	33.4	19.2	25.5
2006	33.7	21.9	27.3
2007	33.0	20.9	23.1
2008	33.4	22.4	23.9
2009	33.4	19.8	21.5
2010	33.6	19.1	20.0
2011	35.8	20.2	20.8
2012	29.5	15.0	19.3
2013	32.2	15.9	14.7

Source: *Crime in India, 2001-2013*, NCRB, New Delhi.

It is worth mention here that during 2005-6, we conducted a survey in the six districts of rural South West Bengal (Ghosh and Kar 2010). It shows that people exchanged goods in the form of 'gift' in 93% of marriages and dowry (cash & kind) was demanded before marriage in 82% of cases. Moreover, dowry, in the form of 'cash with goods', is a major mode of exchange and 61% of marriages are involved such exchange. It is revealing that only 7% of marriages did not involve any transaction of 'gift' at marriage. Interestingly, all sections of the society - the rich and the poor, the upper castes and lower castes, the educated and the illiterates, practice dowry transactions. Dowry payments are made even to arrange marriages for educated, good-looking girls of the respectable families. Moreover, dowry demands do not always end with marriage. In certain cases, they have rather begun after marriage depending on the socio-economic standing of the family. It appears that everyone is against dowry in principle, yet the practice continues for various reasons.

Provisions under the New Domestic Violence Law

Before the enactment of the Act, the term 'domestic violence' was defined narrowly to refer to only cruelty and harassment of wife, and wife's murder under section 498A and 304B of the Indian Penal Code (Ray 2006: 428-9). Continuous struggle by women's groups has changed the situation and ultimately the lawmakers of India have realised that domestic violence mean not only violence related to dowry but several other forms of crimes. PWDVA is a comprehensive law and it addresses all issues related to women in the domestic sphere. Interestingly, as per the judgement of the Bombay High Court delivered on 18th July 2009 provisions of the new Act will apply retrospectively. This means that women can seek benefit of the welfare provisions provided in the new Act even though they have faced violence much before the Act came into force in October 2006.

The act has categorised 'domestic violence' into four categories, namely (a) physical, (b) sexual, (c) verbal & emotional, and (d) economic violence, and attempted to define such violence comprehensively.

The act has laid down stringent rules to prosecute a man for any type of violence committed against women at home. All crimes in the PWDVA are non-bailable. Even though the new law is framed to protect women from domestic violence committed by adult male 'respondents', an aggrieved wife may also 'file a complaint against relatives' including female relatives of the husband. However, 'no order under clause (b) shall be passed against any women' (under chapter 1V, section 19) and remove her from the shared household. A victim also has the right to simultaneously file her own complaint under section 498A of the Indian Penal Code (IPC). For committing

a crime under the domestic violence act, a man can be jailed for one year, or fined up to Rupees twenty thousand. He also faces the risk of being booked under sundry sections of the IPC. The new Act goes beyond the 498 (A) of the IPC and extends protection to wives, sisters, mothers, daughters, single women and even to female live-in partners. The law empowers the court to stop any further acts of domestic violence on the woman or her children. It also prescribes for giving possession of stridhan, jewellery, clothes etc., to woman and stops all transactions of any joint bank accounts/lockers. Further, the act provides for the right of woman to live in her matrimonial or shared household peacefully, her right to property in which she is residing, and stops any disposing off the house without the permission of the court. In other words, an aggrieved wife cannot be harassed for lodging a case against her husband or other male members of the house.

The law also makes a provision for positive entitlements through an interim monetary relief order related to (a) maintenance for the victim or her children, (b) compensation for physical injury including medical expenses, (c) compensation for mental torture and emotional distress, (d) compensation for loss of earning, (e) compensation for loss caused by destruction, damage, removal of any property from her possession or control. Thus, the Act for the first time extends beyond the framework of mere 'punishment' to the offender of crime and tries to help and protect women from violence at home.

The creation of an official cadre called Protection Officers (POs) and recognition of NGOs as Service Providers (SPs) are two other salient features of the new law. The POs and the SPs will also provide free legal, medical, shelter and other assistance to the aggrieved woman. The POs can be penalised for failing to discharge his/her duty with the permission of the state government.

Besides, the law takes into consideration the issues like speedy justice and easy accessibility to justice. First, the cases under this new act will be adjudicated under the magistrate's court, which is located at the sub-district level. Second, there is emphasis on speedy disposal of cases. The first court hearing has to be fixed within three days of the date of receipt of application, and within sixty days of first hearing, the case is to be disposed of. In addition, the act makes provision that the sole testimony of the aggrieved person may be sufficient for the court to reach a conclusion.

Objections against the Act

The non-feminist critiques of the Act are as follows:

First, the act is argued to be highly inclined in favour of women and this has raised fear about its likely misuse to harass the male relatives. There is

apprehension for rise in the rate of divorce if women come forward to register cases under this act. Pandurang Katti and Anil Goebek of the Save Indian Family have remarked (Sharma 2006: 7):

In fact, our fear is that the institute of marriage may end, as it would be viewed with suspicion if the interests of every members are not protected. Preventive measures can be taken by husbands to protect their interests in the face of abuse of the new Act. Perhaps it would be advisable for the men and their family members to read the Act properly, understand it fully before venturing into any relationship leading to marriage. Awareness of this law need not be restricted to women only. Even the men must know and understand its implications for their own good.

Critics have expressed disappointment that the act views domestic violence only from the female perspective as in recent times there are some reports of husbands being tortured by their wives. Organisations like *Save Indian Family* claim that they are approached for help by a large number of males complaining of harassment by women, even violence. In response to this critique, it may be argued that an 'immoral' wife may concoct complaint of domestic violence to get rid of a husband and thereby misuse the act. But, paradoxically, the latest NFHS-3 Survey reveals that spouse violence initiated by woman in India constitutes only a small fraction (1 to 4 % for women belonging to different categories) of violence initiated by men (IIPS 2007: 521).

Secondly, there is reason to believe that some of the offences mentioned in the act cannot be proved. For example, how can one furnish evidences regarding any 'sexual violence' being committed by a husband? The act has also been criticised for lack of clarity. Ambiguity in the law increases the apprehension of its misuse.

Third, the new Act seeks to cover the female live-in partner also and thus it gives, though indirectly, legitimacy to the practice of live together. Some people argue that the practice of live together does not in itself reflect 'women's liberation' in the Indian context. It may rather promote a culture of free sex and may make the position of women more vulnerable in a society that is not known for quick justice.

Finally, the most striking objection against the new law is that it basically targets the male offenders even though the law allows an aggrieved wife to file a complaint also against female relatives of the husband. Consequently, the Rajasthan High Court in *Smt. Sarita v. Smt. Umrao* 2008 (1) R. Cr. D 97 (Raj), has also held that female relatives of the husband are also 'respondents' and hence they also may be booked under the Act (Lawyer's Collective 2009a).

Legal Necessity

These shortcomings should not, however, undermine its necessity. The Act has for the first time provided some legal options to those young women

who are not allowed by the conservative family members to go out for study or for jobs. The provisions of positive entitlements for the victim are also unique. The act also attempts to tackle many other types of violence against women within the family circle, which normally remain unreported. We have noted earlier that domestic violence constitutes the major type of crimes committed against women in the country. This is a pointer to the fact that women in India, irrespective of socio-cultural differences, continue to be exploited, harassed and tortured in domestic sphere. Their capabilities and choices are commonly thwarted by so-called traditions, customs and culture that are legitimised by a patriarchal social order. Surprisingly, certain myths are also prevalent as part of the patriarchal ethos which show that (a) wife beating is an act of love, (b) it takes place among uneducated lower class people, (c) only unsuccessful men beat their wives, and d) some women deserve beating at the hands of their husbands (Ahlawat 2005: 389). It has also been argued that the structure of capitalism keeps women at home, not men; and frustration at the class system is regarded as the determining factor in men's abuse of women (Saunders 2004: 8). Often the abusive man is stereotyped as 'alcoholic', 'mentally ill', or 'very angry in nature', who would normally not commit any violence! These myths are dangerously misleading and research has proved that domestic violence cannot be controlled unless the rhetoric of male domination is challenged seriously. The persistence of different types of social evils like child marriage, dowry or trafficking that prey upon the vulnerability of women and children has plagued and hindered the development of Indian society (Ghosh 2007: 1). Hence the 'female bias' of the recent act or its potential for being misused should not be exaggerated, even though it is necessary to be careful about such deviations.

Nevertheless, the passing of the new act once again reveals our dependency on the administrative and legal machinery to prevent gender crimes within the prevailing patriarchal social structure. It is well known that the legal measures like the Child Marriage Restraint Acts (1929), Immoral Traffic (Prevention) Act (1956) or Dowry Prohibition Act (1961) exist in the country for the last several decades. But the results are not very promising. Undoubtedly, mere passing of acts may fail to guarantee any reduction in the number of violence.

Field Experience from West Bengal

Field Experience from West Bengal proves that the volume of cases filed under the PWDVA is close to only one-third of those of the old 'Torture/Cruelty' law. This proves that even after eight years of its existence, the PWDVA is yet to become an alternative to even those who are currently filing domestic violence cases under Section 498-A of IPC, although the scope of the new act

to provide immediate relief to the victim is much wider and the procedure for filing a case is also 'victim friendly'. Moreover, it appears from the meagre number of PWDVA cases in West Bengal that the law is not implemented equally in all the state districts. In particular, victims from rural Bengal have not been able to take benefit from it. There is hardly any move by any organization, including the government, to popularize the provisions of the law across different sections of our population and particularly among the ruralites. We have noted following problems with several other aspects of the law.

(a) *Belated and Costly Delivery of Justice*

The promise of disposing a case within 60 days from the first date of hearing is hardly fulfilled even though most of the judgments in the lower courts in Burdwan have gone in favour of the victims. It is true that compared to others, domestic violence cases are resolved more quickly at lower courts. One cannot at the same time seriously put the blame on overburdened judiciary lacking infrastructure. There is equally no guideline and training of judicial magistrates on different aspects of the law, in the absence of which subjective interpretations of the law by the judges in different courts are taking place. It may be noted here that Lawyer's Collective's (2012) recent survey also did not find a single court to keep the time line of 60 days for passing orders.

The judicial process of handling a PWDVA case is also not bereft of additional trouble. Thus, the judges in Burdwan expect the POs to conduct an investigation before filing a case. However, the rules do not provide for such option. Also, the quantum of *stridhan* property (property of wife) becomes a matter of serious dispute in the absence of solid evidence. Dependency on the lawyers to file a case is also evident. In many instances, it was the lawyers of the victims who directed them to file another case under the new law. Moreover, a victim is supposed to hire a 'good' lawyer to defend her case well, particularly in higher courts. As domestic battles are dragged to higher and higher courts, there is little reason for optimism. Besides, implementation of interim orders of the Magistrates appears to be a very complicated process, and here the victims face tough legal hurdles. We have seen that delay in implementing protection/maintenance orders has added to the misery of the victims and exposed them to more violence.

The judges are often confused about the amount of punishment to be given to a person who has not complied with the previous order. This is due to the fact that judges consider 'protection orders' different from maintenance, residence, monetary relief, and custody orders, and the Act does list them

under different categories. Again, the legal option to punish an offender for repeating domestic violence following a 'protection order' is limited because victims mostly abandon their matrimonial home before filing a case. Given these complications, victims are often persuaded to reach a compromise with the accused. This supports the contention that the law attempts to settle domestic violence within the existing familial structure, and may not help those who lost all hope of reunion.

(b) Negative Role of Police

The apathetic and often negative roles of the police to stand by the sufferings of the victims and implement judicial orders have been a major hurdle in providing timely and needed justice to women. The experiences of some of our respondents demonstrate this. Ironically, there are charges of corruption against the police. In certain instances, police seem to be reluctant to act against any influential person. Persons with strong political clout or economic standing can influence police to act in their favour. In reality, therefore, women filing cases under the act have to fend for their own safety. PWDVA suggests a new role of police as the 'saviour' of victim. Yet, the perceived notion of police as the 'power to punish' conflicts with this new role.

Moreover, the police often seem to be confused about their duty and obligation in 'protecting' a victim, and seek suggestions from the POs for intervening in the complex and critical domestic sphere. It may be noted that police can also file cases under the new Act and initiate action on their own. Yet, they have not filed a single case in the district of Burdwan and they have in certain cases rather referred the matter to the PO.

(c) Apathy of the Society at Large

The apathy of the society at large to stand by the sufferings of a victim of domestic violence is a major hurdle in resolving any dispute. As we did not find any NGO providing the much needed service to the victims in the district of Burdwan, the role of neighbours and other secondary groups became pertinent. Yet, none of the victims whom we interviewed received timely help from their relatives, neighbours, and even political leaders. Because of the apathy of the civil society, there is little socio-political action in Burdwan to prevent such violence. This forces the victims, as in the case of many of our respondents, to leave the matrimonial home and take shelter in the parental home. In the Indian condition, if a victim fails to garner such support in view of the poor economic conditions of the parents or other relatives, she is at the mercy of the abusive husband to continue a painful life. It is in this context that PWDVA has failed to rescue the victims by implementing court orders or providing expedient justice to the victim.

(d) Administrative Problems

Besides such limitations, the Act is also not very clear about certain other modalities for its effective implementation. As such, the PO, who assists the aggrieved person to file a case, is not informed about the outcome of any case unless a 'protection order' is issued. Again, it is not mandatory on the part of the state governments to employ a sufficient number of POs at the local levels, pay them adequately, or train them. This is discouraging for many POs. Quite necessarily, lack of infrastructural facilities impinges on the process of investigation/ implementation of a case. It is worth noting here that in the survey conducted by Lawyer's Collective (2012: xiv) in Delhi, Maharashtra and Rajasthan found that the 'POs do not have exclusive charge of their work. They are located in police stations, where they can be influenced by the authority of the police. They do not have the privacy to carry out their work, are overworked and are not clear about the protocol of their appointment'.

Absence of NGOs as Service Providers (SPs) in Burdwan has aggravated the problem. Although there are 69 Service Providers in West Bengal, there are none in Burdwan (and many other districts as most of the SPs are located at developed districts like Kolkata). The major reason for this is SPs do not receive any financial help from the Government. It may be noted that out of 28 states, only two – Sikkim and Kerala – have provided some financial support to the SPs till 2011. In the absence of SPs in Burdwan, court orders related to protection/maintenance are hardly pursued. Additionally, the safety of a victim in an abusive matrimonial home cannot be guaranteed if SPs do not stand by them at the local level.

(e) Problems Regarding Right to Residence of Wives in Shared Household

It also appears that the provision of the PWDVA, regarding right to residence of wives in 'shared household', has some limitations. The Act defines 'shared household' as a household where the aggrieved person 'lives or at any stage has lived in a domestic relationship either singly or along with the respondent'. Thus, if an accused sells a matrimonial home or lives in a rented house/ official accommodation after separation, it is difficult for a victim to get 'residential right'. The court may then only force the accused to 'ensure any other suitable alternative accommodation' to the victim. However, here again, legal procedures may complicate and delay the decision regarding 'suitability' of an accommodation.

It may be noted that as per the judgment of Indian Supreme Court (*S. R. Batra v. Taruna Batra*, 2007), an aggrieved wife may only claim her share in the property owned or possessed by her husband. Consequently a wife has no right on property owned by her in-laws or owned by a third party

(company/office) (Lawyer's Collective, 2009b). The apex court has observed that unlike in England, where the rights of spouses to the matrimonial home was governed by the Matrimonial Homes Act, of 1967, no such right exists in India. This judgment has been a major impediment to the effective implementation of PWDVA. The right to residence for a woman does not automatically translate into a right of ownership to the residential property.

(f) Apathy towards Counselling and Other Services

The experience of Burdwan district also demonstrates that not a single of the 320 women seeking 'protection' under the new law sought any counselling service to settle matters. There are numerous domestic issues, which the new law cannot take up unless the aggrieved parties see each other. The denial is due to the fact that the victims have lost all hope to return to their matrimonial family. Neither do they expect the POs or the police to change the situation in their favour. The issue of 'protection' of the victim, therefore, defaults to mainly seeking 'economic compensation' from the separated husband or son. This partially unwraps the spirit of the new law to settle many types of domestic subjugation or exploitation of women/girls through counselling and persuasion.

Again the option of 'free legal aid' to victims remained almost on paper as women filing such cases had approached the PO through their respective lawyers. Similarly, victims hardly sought shelter or medical facilities from the government. It appears that the victims have less faith in the quality of services provided by the state agencies.

(g) False Case Filing

In some instances, however, PWDVA is found to target male relatives even though the offender is female. Filings of a few of such false cases, however, do not represent a trend. Yet, they are a testimony to the fact that provisions of PWDVA may encourage false case filing against male relatives also. It should also be recognized that the new law has led a victim to finally seek divorce to get rid of her abusive mother-in-law even though she wanted her husband to live separately. This proves the limits of the new law to settle domestic issues within the family structure.

Conclusion

It, therefore, appears that in spite of the best intentions, the PWDVA may not be very effective to check domestic violence unless necessary actions are initiated to change the public mindset, including the views and actions of different stakeholders like the police and judiciary. The problem of dowry

and domestic violence cannot be tackled without addressing the basic question of power inequality under patriarchy. This is because domestic violence inflicted upon women is systematic and structural. Violence perpetuates women's dependence and her dehumanisation as 'other', a servant and a form of property.

Like many other acts, the PWDVA too has its weaker sides, but the shortcomings do not erase its necessity. The act has provided new options of maintenance and other types of protections to a large number of women in India who dare to challenge the age-old patriarchal tradition of submission and subjugation. From this perspective, the act has for the first time put up certain challenges to our patriarchal social structure, and consequently it is gaining popularity among the urbanites. While laws do not necessarily end domestic violence per se, they certainly provide victims with resources for survival; allow them to separate from the abuser; hold abusers accountable for their violence; and send a message to the community.

Yet, the Act may not be able to foster any qualitative transformation in the social fabric of Indian society. In a country where women are socialised to consider marriage as 'essential' and domestic violence as 'normal' for the sake of her own and children's interest, no act can help particularly those majority who often fail to recognise even their basic human rights. Furthermore, the dwindling rate of conviction in the dowry and domestic violence related cases might discourage those who hope for justice. It is a fact that even educated and resourceful women have to run from pillar to post to get justice. Hence, there remains serious concern about how any law can be made effective to provide much needed justice to women coming from weaker sections. If the lawmakers are serious about protecting the rights of women in the domestic sphere, they should create appropriate institutions and mechanisms to realise the goal. Also our concern for gender equality and gender justice may remain on paper unless otherwise conceived by the people at large and actualised by prompt civil society actions. There is also no substitute to social, economic and political empowerment of women to challenge the existing socio-structural imbalances.

Notes

1. This is a revised version of a paper presented by the authors at RC-10 of the Indian Sociological Society at 34th All India Sociological Conference held at The University of Rajasthan, Jaipur, in between 27-19th December, 2008.
2. This law has emerged from the criticisms directed against 'The Protection From Domestic Violence Bill 2001', which was drafted by the Lawyers Collective and introduced in the parliament by the National Democratic Alliance Government on 18th February 2002. In the wake of the communal riots in Gujarat, the Bill

could not be introduced for voting in parliament and it got annulled. Later, the United Progressive Alliance Government introduced a new bill – The Protection of Women from Domestic Violence. The Act has come into force with effect from the 26th October 2006.

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