Protection of Women from Domestic Violence

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After a prolonged campaign for criminal and civil laws to curb domestic violence, the Protection of Women from Domestic Violence Act, 2005 came into force. However, lasting solutions to the problem continue to be elusive, as the grim statistics of wife murders and suicides by married women record a steady rise. This article takes a close look at the manner in which this law is being implemented on the ground, and the many shortcomings, even as women continue to be blamed—earlier for "misusing" the law and now for not wanting to approach the courts because the justice delivery system is tardy. The crux of the issue is the support network that the victim of domestic violence needs and it is here that the implementation of the domestic violence law has failed most spectacularly.

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Going Round in Circles

In the 1980s "domestic violence" was about the gruesome murder of wives by setting them aflame, with dowry as the root cause. Not surprisingly, various provisions were enacted to address dowry-related violence. As the campaign took off and the realisation of the broader nature of domestic violence dawned, a renewed campaign was launched to protect women from all types of domestic violence. After two decades, this culminated in an enactment meant to revolutionalise family relationships in India, namely, the Protection of Women from Domestic Violence Act (PWDVA), 2005. It expanded the definition of domestic violence to include not just physical, but also verbal, emotional, sexual and economic violence. It aimed to protect all women through a one-window remedy, encompassing within it pre-litigation support services and expeditious civil reliefs through court orders.

As we complete a decade of this enactment, the Bombay High Court in a Public Interest Litigation (PIL No 104 of 2015), has once again split "violence" down the middle. It has stipulated that women facing "severe physical" domestic violence must be brought before the court for securing a protection order, but for all other types of violence, pre-litigation "joint counselling" may be conducted by the police and non-governmental organisations (NGOs) to amicably settle the dispute, even while conceding that the "assurances" have no legal binding. Indeed this is a dark day for all those who campaigned for this legislation.

But given that this act has been plagued with myriad issues, which can no longer be brushed aside as "teething problems," these guidelines to the police and NGOs have come as a huge respite for women forced to compromise in pre-litigation settlements with the complacency and callousness of those mandated to ensure their safety. The guidelines state that these agencies shall display prominently in their office that joint counselling shall commence only with the informed consent of the woman without any pressure on her to "settle" and with full knowledge of all options available to her. The fact that the carefully crafted act had no guidelines for pre-litigation joint counselling, an intervention that is often quoted as the preferred choice of victims, is in itself, a telling comment.

Throughout the last decade, budgetary constraints have been projected as the main reason for the failure of this act, while other inherent problems have remained invisible. The failure of state governments to evolve holistic and long term support services for victims, lack of a convergent model and clear directions to all stakeholders about their roles and responsibilities and ill-conceived mechanisms for monitoring have posed major roadblocks for effective implementation. Delays in passing orders, lack of sensitivity of judges, and narrowing of the scope of the act by

judicial pronouncements, have been the other major setbacks. The difficulties faced by the very NGOs who had campaigned for the act, and were designated as "service providers," have driven them back to offering pre-litigation "joint settlements" and this forms a major barrier for victims to access their rights in courts.

It does seem that despite its lofty proclamation to protect women from violence, and after spending massive amounts of money on a decade long campaign leading up to the enactment, followed by creating jobs, trainings, and holding high profile consultations on monitoring the implementation of the act, we have in fact not made much progress to actualise its avowed intent. There seems to be a gap which needs to be identified, if we are serious in our intent of stopping violence against women.

While this paper attempts to track the history of the campaign which has spanned well over three decades, and address the overall situation in the country, the primary focus is Maharashtra, and more specifically, Mumbai, where the work of our NGO, the Majlis Legal Centre, is located.

Formulation of a Culturally Specific Crime 'Dowry Violence'

"Domestic violence" is a relatively new term. The more common term during the early 1980s was "dowry death."[1] The issue first hit the headlines through images of gruesome charred bodies of young married women in Delhi and some North Indian cities, initially dismissed as "accidental deaths" caused by kitchen fires (or, as popularly referred to, "stove burst" cases) by investigating officers. The initial protests were organised by local women's groups against police inaction. These incidents occurred in urban areas, in middle to lower middle class families, as could be discerned from photos of the victims in their wedding finery which appeared alongside the images of their burnt bodies. Most were newly-wed young brides. The cause of death was attributed to "dowry" and the cases came to be referred to as "dowry cases." Soon "dowry" became a metaphor for describing the violence suffered by women in their marital homes.

Initially, the murders and the protests received wide media publicity. It came to be accepted, both nationally and internationally, that women in India were being subjected to a culturally specific form of violence—"dowry violence"—which eventually culminates in "dowry deaths." It almost seemed that urban India was divided into two sets of mutually exclusive households, "the bride givers and the bride takers" or, in other words, "the dowry givers and the dowry takers." The fact that most families are both dowry givers and takers seemed to elude public debate. Hence it was hoped that stringent laws against dowry would, in effect, prevent wife murders.

The focus of the public protests was state culpability and police apathy. Hence, the underlying but critical concerns, such as the subordinate status of women within their natal and marital homes, the issue of property ownership and control of women's sexuality, the stigma attached to divorce and the lack of support for the girl in her natal home after she is "married off"—these could not get sufficiently articulated within the emotionally charged atmosphere of the anti-dowry protests. It was easier to focus on "dowry," an external element and project the mother-in-law as the main culprit, than address issues of sexual control, lack of property rights in the natal home and the stigma of divorce. The campaign did not adequately foreground the violence inherent within the power structures of patriarchal families.

Ironically, as the campaign was galvanised, dowry murders became a routine occurrence. No longer confined to a few cities in North India, they became a pan-Indian syndrome. Cases of dowry deaths were being reported from not only all major cities but also smaller towns and rural areas. Public protests against them also became the norm. After a while, the incidents lost their news value and were relegated to crime sections of newspapers. It appeared that dowry had spread its tentacles across the nation. A stringent legislation seemed to be the need of the hour which could save the lives of thousands of women.

The state response was prompt, and certain provisions were included within the Indian Penal Code (IPC) to address this issue—Section 498A (cruelty to wives—1983), Section 304B, (dowry death—1986) and stringent punishment for abetment to suicide due to harassment for dowry (Section 306). Despite this, each year the number of reported cases under these penal provisions increased as can be seen from Table 1.

Table 1: Reported Cases of Dowry Deaths (Section 304B) 1990–98

1990	1994	1995	1996	1997	1998
4,836	4,935	5,092	5,513	6,006	6,917

Source: *Crime in India*, 1996 and 1998, National Crime Records Bureau, Ministry of Home Affairs, Government of India.

Rather disturbingly, the visibility in the number of reported cases did not lead to more convictions as a study conducted by the Centre for Social Research, Delhi (CSR 2005), revealed. The following were the highlights of the study:

- Out of 100 cases which were ordered for investigation under Section 498A, only in two cases did the accused get convicted.
- The only cases which ended in conviction were those where the woman had died and the case under Section 498A was registered along with Section 304B (dowry death) or Section 302 (murder).
- There were no convictions in any of the cases registered only under Section 498A.

'Counselling' as a Remedy and Setting Up Family Courts

The penal provisions with stringent punishment were not helping to curb domestic violence experienced by most women as the IPC amendments which linked domestic violence to dowry, proved to be counterproductive. Since there were no protective measures to safeguard the rights of women, there was a need to find alternate solutions. Some women's groups started providing counselling services to help women who approached them. Counselling soon caught on, and other civil society organisations started providing psycho-social support, referrals to services such as medical or legal aid, shelter, skill training, job referrals, etc, and where required, joint counselling.

In 1984, the Department of Family and Child Welfare of the Tata Institute of Social Sciences (TISS) started an initiative called the Special Cell for Women and Children in the office of the Commissioner of Police, Mumbai, and placed two social workers there with the objective "to make the law enforcement system both more accessible to and attuned to the needs of

women." In the following decade, the number of these special cells was increased to three, and in 2001 seven more were started outside Mumbai.[2] However access to the criminal justice system proved to be an uphill task. So they too started negotiating settlements on behalf of women with their husbands and family members. This is apparent from their 11-point reporting format, where there is no mention of the number of women they have helped to access the criminal justice system to file a case.

The informal settlements did not offer a lasting solution. When violence escalated, or when the woman was dispossessed from her matrimonial home, the only option left was to approach the police. The police refused to register the complaint if the violence was not linked to a dowry demand. They would merely register a simple non-cognisable (NC) complaint and send the woman back. At times, they would call the husband and chastise him or even lock him up for a night or two for causing a disturbance. When he returned, the intensity of the violence escalated and, in some cases, the woman would be thrown out of her matrimonial home, with or without her children.

Around this time, in 1984, the Family Courts Act was enacted which shifted the jurisdiction from the more formal district courts to a less formal mechanism for speedy settlements of matrimonial disputes. The jurisdiction for claiming maintenance under an age-old summary procedure (Section 125 of the Criminal Procedure Code (CrPC) was shifted from the magistrates' courts to family courts so that women could access the remedies of divorce and maintenance under one roof.

Since the role of lawyers was perceived to be exploitative and a hindrance to speedy settlements, the act limited their role and counsellors were made an integral part of this new adjudication forum, to help the parties to arrive at speedy settlements. Though the intention was to provide women with easy access to justice and greater protection through expeditious orders, this objective was not clearly stated in the aims and objectives of the statute. Instead, the act emphasised "preservation of the family" as its primary aim. Hence, after a case is filed, it is mandatory for the parties to attend sessions with counsellors, and only upon the failure of these efforts, would the case proceed before the judge.

The first family courts in Maharashtra were set up in Mumbai and Pune in 1989 (and later in Aurangabad and Nagpur in 1995).[3] Trained counsellors were made an integral part of this institution. However, through a high court ruling, lawyers could not be denied permission to appear as this would violate their right under the Advocates Act (*Leela Mahadeo Joshi vs Mahadeo Sitaran Joshi*—1991).[4]

Since gender justice was not mentioned as the stated objective, justice continued to elude women. As litigation became technical and long-drawn, the space was increasingly taken over by commercial lawyers, and the backlog piled up, leading to disenchantment with the functioning of these courts. There was hardly any NGO or social work organisation (not even TISS) that had helped to frame the guidelines for counsellors, or that was willing to stake a claim to improve its functioning and redeem it to be a gender just and women friendly space for the adjudication of family disputes. It seemed easier to launch a fresh campaign for another statute and a newer forum.

Campaign for a Law on Domestic Violence

Women's groups across the length and breadth of the country began campaigning for a new law which would provide urgent civil remedies through easy access to courts. The campaign spanning over a decade was spearheaded by the Lawyers Collective which drafted the legislation and negotiated with the government for its enactment. The hope was that this time around it would be a better law which would protect women through binding court orders.

The definition of "domestic violence" would be broad, its scope wide enough to include all types of family relationships, it would be an emergency "stop violence" law and would ensure that women are not rendered shelterless during or after the litigation. The act would be based on a convergent model where state functionaries and civil society institutions would work in collaboration to bring women under the protective mantle of the law. Dependency on lawyers would be reduced as designated social workers, NGO functionaries and women's organisations would be able to help women access the courts and secure the orders by using simple formats.

After a sustained campaign the PWDVA was enacted in September 2005, a significant moment in the history of the women's movement in India.

Acknowledging that domestic violence is a widely prevalent and universal problem of power relationships, the act made a departure from the penal provisions, which hinged on stringent punishments, to positive civil reliefs of protection and injunction. Victims would now be able to access the legal system without having to establish links to "dowry harassment."

The act provided the scope for urgent, protective injunctions against violence, dispossession from the matrimonial home or alternate residence. It also provided for economic rights, including maintenance and compensation. The wide definition of domestic violence—physical, mental, economic and sexual—brought within its purview the invisible violence suffered by women and entitled them to claim protection from the courts.

While this was a major victory, the reliefs by themselves were not as new or path-breaking as was projected. They were available to women under the provisions of matrimonial, civil or maintenance laws. But the new statute articulated the problems faced by millions of women and the hope was that it would lead to greater sensitivity among the judiciary. A judge called upon to provide relief to a woman under the new act was bound not just by the wordings but the ideological framework, which underscored the enactment. Due to this there would be greater credence to women's testimonies.

The single-most significant achievement was the widening of its scope beyond "wives." Aged women, unmarried girls and widowed/divorced sisters could now seek protection from their relatives. Also, women whose marriages were suspect due to some "legal defect," such as either of the spouse having an earlier subsisting marriage, would be able to seek reliefs. The invalidity of a marriage could no longer be used as defence by the men to deny maintenance to this vulnerable section of women.

The key wordings were "expeditious civil remedies" located within magistrates' courts with criminal consequences for

violation. It was premised on a convergent model between designated stakeholders who would work in coordination with each other. A new office was to be instituted under the act that of the protection officer (PO) to assist women to approach the courts and other support services, which would be situated within the Department of Women and Child Development (DWCD).

It brought services which an aggrieved woman would need during the pre-litigation stage, such as emergency shelter, medical aid, legal aid, etc, as well as multiple entry points to access the law beyond the conventional route of a private lawyer so that women from the disadvantaged sections would not be restricted from claiming remedies under this law. Taking note of the fact that most aggrieved women, particularly from the disadvantaged sections, would not directly access the courts, and would need the help of support persons, the act mandates all agencies—the police, POs, service providers and magistrates—to inform women about their rights and availability of the services.

The role of the police was minimal: to provide information about the act to women, guide them to the PO and provide help in enforcing orders. This was based on the premise that women do not feel comfortable approaching the police for help, and the police are patriarchal in their response to women.

Apprehensions

Doubts and apprehensions were expressed about the viability of this revolutionary new act and its lofty aspirations. The first was about locating the remedy in the magistrates' courts; the second was regarding the wide definition of violence and the danger of dilution; the third was about how a legal remedy would help when it was not backed by viable social and economic alternatives for battered women. Also, difficulties were expected to arise due to the term "relationship in the nature of marriage," without specifying that Hindu women in invalid bigamous marriages would be entitled to reliefs.

The jurisdiction for maintenance under Section 125 CrPC had been shifted from the magistrates' courts to family courts on the basis that the magistrates' courts are not sensitive to women and criminal courts are not spaces where women feel comfortable, where the accused are produced for remand, and trials for petty offences take place. The PWDVA located the jurisdiction for remedies of a civil nature in these very courts. How were these criminal courts a better space than the family courts? If a family court judge (of the rank of a district judge) could not pass timely maintenance orders, how would a lower ranking magistrate, with even lesser degree of exposure, be able to deal with civil claims in the nature of urgent injunctions and protective orders? While technically it would be possible to approach a civil court or a family court for these reliefs, due to the publicity which the new act received, the bulk of family litigation would now be located in the magistrates' courts, ill-equipped to deal with civil claims. It may also lead to multiplicity of proceedings as divorce and custody of children would still be located in the family court.

For effective implementation of the act, state governments would have to set up a new mechanism, the office of the "protection officer," entrusted with the duty of assisting the magistrate. Since the number of magistrates' courts is far greater than family courts, the number of protection officers required for effective implementation of this act would be huge. If marriage counsellors who were appointed under the Family Courts Act failed to bring respite to women, what assurance was there that the POs would function with greater efficiency, honesty and gender sensitivity? Would their appointments be cursory, a token gesture of allocating additional responsibility to an already overburdened lower rung of the state bureaucracy?

Well, one had to wait and watch as to how the act would unfold on the ground, for after all, an act is as good as its implementability (Agnes 2005).

Problem of Extreme Domestic Violence Persists

Notwithstanding the doubts expressed by critics, there was great jubilation among groups that had campaigned for this enactment, along with the faith that the difficulties would gradually be ironed out. The new act was hailed as an indicator of success for the campaign against domestic violence even by international bodies who had supported the campaign. However, despite the euphoria, the incidents of wife murders and suicides by women, continued unabated in the decade that followed (Table 2).

The official statistics reflected in Table 2 underscore the disturbing reality that the enactment did not impact the number of women who are killed due to domestic violence.

Table 2: Dowry Deaths and Murders of Women, 2006–14

Year	National		Maharashtra	
	S 302 (Women)	S 304B	S 302 (Women)	S 304B
2006	7,686	7,618	995	387
2007	8,106	8,093	1,014	436
2008	8,186	8,172	1,049	390
2009	8,718	8,383	1,000	341
2010	8,742	8,391	1,047	393
2011	9,377	8,618	1,034	339
2012	9,457	8,233	1,013	329
2013	9,180	8,083	895	320
2014	9,224	8,455	899	279

Source: *Crime in India*, Reports for 2006–14, published by the National Crime Records Bureau, Ministry of Home Affairs, Government of India.

Table 3: Reported Cases of Women Dying Unnatural Deaths under Various IPC Sections in Mumbai, 2004–14

Year	S 302 (Dowry Rel Deaths of Women)	S 304B	S 306 (Dowry Rel Suicides)	Total No of Unnatural Deaths of Women
2004	13	13	43	69
2005	3	8	53	64
2006	5	17	45	67
2007	6	17	49	72
2008	1	10	52	63
2009	11	14	59	84
2010	5	21	53	79
2011	3	10	41	54
2012	8	11	53	72
2013	2	21	65	88
2014	NA	23	64	87

Source: Office of the Commissioner of Police, Mumbai.

As Table 3 indicates, the number of women who commit suicide, as compared to the figures for dowry deaths and wife murders, is alarming. Thirty years after the campaign against domestic violence was first initiated, women continue to die in utter despair. The lives of at least some of these women could have been saved if they were provided with adequate state protection and social support. We are reminded of a particularly poignant incident which took place on 8 March 2011 when we were celebrating International Women's Day. A young educated woman jumped from the terrace of her building along with her two young children in a Mumbai suburb, the pink school bag and the tiny pair of pink shoes of her three-year-old daughter left behind as a stark reminder.

The problem of extreme domestic violence in India has been highlighted through various national and international studies. The most significant among them is the National Family Health Survey–III (NFHS-III) conducted in 2005–06 which stated that more than 54% of men and 51% of women responded that it was okay for a man to beat his wife if she disrespected her in-laws, neglected her home or children, or even over something as trivial as less or more salt in the food. This important study revealed that 31% of married women were physically abused and 10% were subjected to "severe domestic violence" and 12% of those who reported severe violence suffered at least one of the following injuries: bruises, wounds, sprains, dislocation, broken bones, broken teeth, or severe burns and 14% experienced emotional abuse.

Lack of Support Services

Despite clinching evidence of the wide prevalence of domestic violence in the country, support services for battered women, such as emergency shelters, medical aid, halfway homes, skill training, job re-entry programmes, financial schemes, a specially trained and sensitive police machinery, timely and effective legal aid, etc, are sadly lacking. The existing shelter homes, the *sudhar gruh* and *aadhar gruh*, short stay homes, etc, are meant for trafficked girls or destitute women. There are hardly any homes which cater to the needs of a battered woman with children. The only one in Mumbai which was set up in 1952 and is run by the Maharashtra State Women's Council is named Bapnu Ghar (father's home), where, the underlying premise is reconciliation. We are not aware of any home that was set up to provide shelter as per the provisions of the new act in Maharashtra.

The only response to the problem has been to provide "counseling" by both state and non-state agencies, not just women's organisations and trained social workers, but all and sundry, since it has become the buzzword for solving marital problems. They include the local police station, the social security branch, *mahila mandals*, panchayats, community-based organisations, women's wings of political parties, religious leaders, academic institutions, lawyers, and the state legal aid machinery. Most counselling is based on a patriarchal premise and is laden with anti-women biases, where women are advised to return to their husband's home on terms dictated by him and his family members. They are not only incriminatory, but at times, deny the violated woman basic dignity and freedom. She is advised to "save the marriage" even at the cost of danger to her life.

However, it is not just the patriarchal premise that drives the counselling process, but also the fact that little else exists for her outside the institution of marriage, if her natal family does not accept her or lacks the financial resources to support her. It is far more economic for the state to provide salaries for counsellors, social workers and POs, than explore innovative solutions of a lasting nature. In a society where marriage is perceived to be the "be all and end all of a woman's life," a woman who wishes to change the equation and approach the court for an effective remedy, is castigated by the very same agencies designated to help her.

So despite the lofty proclamations, the ground reality continues to be dismal for women trapped in violent marriages. Only when courts function as a viable and inviting institution for protecting the rights of violated women, and when women's decisions are backed by social and economic support systems would women be able to explore options beyond the "save the family" formula.

Unfolding of the Act and Disenchantment

Soon after the initial euphoria, the disenchantment with the act set in as multiple problems identified by the critics began to surface.

Lack of Budgetary Allocations: Though enacting the statute was challenging enough, it soon became evident that the elaborate act had no budgetary allocations. A completely new machinery had to be put in place and a convergent model between stakeholders had to be evolved. Both the centre and the states were not ready to take on this additional expenditure. By the time the halfway mark of the decade was reached, 12 out of 28 states had not made separate budgetary allocations under it. The meager budgets that were allocated by other states were spent on training and awareness about it rather than guiding stakeholders about their role and functioning. Lack of budgetary allocations was projected as the main reason why the act failed to deliver (Jhamb 2011). The demand for a centrally-sponsored scheme with an annual budget of around Rs 1,100 crore was articulated, while myriad other problems of implementing the act were swept under the carpet.

Lack of Clarity and Failure to Establish a Convergent Model: No linkages had been set in place between the police and the PO or the PO and the legal services authority. The legal services authority was not even notified as a service provider. The only exception was Andhra Pradesh, where the police, POs, service providers, and the legal services authority coordinated to facilitate women's access to courts. The police were trained to set the act in motion and to help women approach the courts through a convergent model (Jaising 2009).

Government and government-aided shelter homes, public hospitals and healthcare providers, those offering medical or legal aid, were all mentioned as stakeholders under the act, with a mandate to fill the domestic incidence report (DIR) when a violated woman approached them. In Maharashtra they were designated as "service providers" in a cursory manner, but guidelines and reporting formats had not been prescribed, with the result that there was no change in their roles and responsibilities, post the enactment. They were not even included in the training programmes.

Protection Officers

Some states have yet to appoint POs, others assigned this additional charge to already overburdened officers. In Maharashtra, officers of the revenue department, *tehsildars* and nayib tehsildars from the finance department were initially designated as POs. In the few states where independent POs were

appointed, their number was small and they had no clarity about their roles and responsibilities. Worse, aggrieved women as well as other stakeholders such as the police or service providers had no clue who the POs were or where they were located.

The POs, who were not lawyers, received no training about initiating legal proceedings, as the trainers themselves were not familiar with this. While the act mentions that the State Legal Services Authority would provide free legal aid, there was no mechanism in place to transfer a case from the PO to the legal aid lawyer. With no one to guide them about legal proceedings, the POs transferred their own fears about courts to the aggrieved women. It was safer and quicker to settle the dispute outside the court.

As there were no success stories about the prompt relief which an aggrieved woman had secured through the innovative mechanism stipulated under the act, it is no wonder that most women were afraid of approaching the courts as they feared exploitation from lawyers and the inevitable delays in securing even a minimum order of interim relief of protection or non-dispossession from the matrimonial home.

Multiple Entry Point a Non-starter

The NGOs and counsellors who were designated as service providers had initially felt empowered, as they could take their beneficiaries directly to court since the law provided multiple entry points. They could fill up the simple DIRs and application forms provided in the statute, approach the courts and in 60 days the woman could secure the necessary orders of—residence, protection, maintenance, interim custody of children—almost the moon! Faced with the hard reality of a criminal court, they were soon disillusioned and the carefully designed scheme soon broke down, as the social workers could not grasp the court procedures. Since they were not lawyers and could not effectively defend women, if the opposite side was represented by a criminal lawyer well-versed with court procedures, women were at a disadvantage without adequate legal representation. So, the magistrates insisted that women must only be represented by lawyers, leaving women to the mercy of private lawyers who charged exorbitant fees.

A Boon to Private Lawyers

Since the vital link between the legal aid lawyers and other stakeholders had not been established, the only way the remedies under the act could be accessed was through the conventional mode of private lawyering. The magistrates also found this the most convenient way of dealing with cases filed under the PWDVA. It thus turned out to be a boon for lawyers practising in criminal courts who were not even well-versed with civil litigation, leave alone the innovative provisions of the newly enacted PWDVA.

Difficulties Faced by Magistrates

The magistrates were confused about their role and, instead of passing orders of protection, were sending the parties for reconciliation. The following comment by Indira Jaising helps to shed light on the prevailing situation:

> Even courts, rather than passing an urgent order, send the parties for counselling as a first resort, with the objective of reconciliation. Where the issue at hand is domestic violence, an approach prioritising conciliation could adversely affect the safety and security of the woman facing violence. …there is lack of clarity regarding the role of the protection officers. Some protection officers (also the police and magistrates) have the mistaken impression that their role is to mediate between the parties in a dispute, rather than to prevent violence from occurring and safeguarding the interests of the aggrieved women (Jaising 2009).

Magistrates, during training sessions at judicial academies pointed out the difficulty they faced in passing orders based on the DIRs which were callously filled with several internal inconsistencies. In such a situation, they conceded that the only relief the courts were passing was that of maintenance, as they were familiar with the proceedings under Section 125 of CrPC. They lamented that the act had led to an increase in litigation as it provided for filing multiple applications for the same relief in different courts (which turns out to be beneficial to lawyers and a nightmare to aggrieved women).

Lacunae in Training and Awareness Programmes

The only way the new act could reach women from marginalised communities, the expected major beneficiaries of this innovative legislation, was through awareness programmes. So an innovative programme had to be devised and the POs and service providers had to be given posters, kits, etc, to conduct these programmes in the communities. Instead, time was spent in explaining the wide definition of domestic violence (as though a violated woman has to be explained what is domestic violence) and in explaining the basics to develop gender sensitivity among the participants. There were no technical sessions to address the roles and responsibilities of each stakeholder, and the convergent models and reporting formats to monitor its implementation.

The initial trainings which were conducted by various NGOs, addressed the police who were not even major stakeholders under the act. The only message they received was that they had no role to play under it. Though violated women perceive them as the first point of contact, they could wash their hands off and ask women to find a PO or a private lawyer to help them, since the remedies under the act were of a civil nature.

Judicial Pronouncements Narrowed the Scope of the Act

Apart from the practical difficulties on the ground, the conceptual framework of the act itself received a major setback through negative interpretations from the higher judiciary which constrained its scope.

The first was the ruling in the *S R Batra vs Taruna Batra* in 2007, soon after the act came into force. The litigation had commenced long before the enactment but judges of the apex court interpreted the provisions of this act, and constrained its scope by holding that the woman's claim to residence under it is confined to the residence of her husband. Since the premises belonged to the mother-in-law it was held that the wife could not claim a right to the same and since the wife had already left the matrimonial home and was living with her parents, it was further held that there was no question of dispossession under the PWDVA and that the premises do not constitute "shared residence" as defined under the act. The fact that she

was previously in possession was irrelevant. Further, it was held that alternate accommodation under it could be claimed only against the husband and not against the parents-in-law.

Subsequent high court judgments tried to contain the harm caused by this ruling by providing positive interpretations in keeping with the mandate of the act. In *P Balu Venkatesh vs Rani* (2008), the husband, after dispossessing the wife, had transferred the premises in the name of his father. Thereafter, relying on the Batra ruling he pleaded that his wife was not entitled to claim relief against his parents. The single judge of the Madras High Court observed that if this contention is accepted, every husband will alienate his property in favour of someone else after the dispute has arisen and plead that the premises do not constitute "shared household" under the act and hence the wife would not be entitled to claim the right of residence. In subsequent years there have been a few other similar rulings, but they require a great deal of effort and interventions of reputed lawyers to argue against the overbearing Supreme Court ruling. Also, positive rulings do not filter down to magistrates as they do not receive much publicity, with the result that magistrates are aware of only the negative interpretations. So what should have been an effortless remedy under the statute, now takes a great deal of effort and needs a lawyer to argue the legal point.

Perhaps it needs to be pointed out that in the course of matrimonial litigation, we have been able to secure the right of residence of wives in their matrimonial homes through urgent interim and ad interim orders, much before the PWDVA came into force. In situations of extreme domestic violence we have also been able to secure injunctions restraining the husband's entry into the premises owned by the husband.[5] This procedure needed to be simplified but it has taken the reverse course.

The *D Velusamy vs D Patchaiammal* (2011) ruling where the Supreme Court denied maintenance to women who are in a "marriage like relationship" with married men was another major setback. To add insult to injury, Justice Markandey Katju termed such women as "mistresses" and "keeps" which invoked a great deal of adverse publicity in the media. Due to this it has become extremely difficult for women to claim maintenance even under Section 125 of the CrPC. In *Chanmuniya vs Virendra Kumar Singh Kushwaha* (2011), another bench of the Supreme Court had upheld the right of women in technically defective marriages by holding that the term "wife" must be given a broad and expansive interpretation and had referred the issue to a larger bench. The Velusamy ruling, pronounced in the same month as the Chanmuniya ruling, by the stroke of a pen undid the gains laboriously upheld by several earlier rulings which had held that since Section 125 of the CrPC is a beneficial provision, women in bigamous marriages cannot be denied its benefit. Though the case was under Section 125 CrPC, the Court examined the remedy under the PWDVA which was supposed to bring redressal to precisely this category of women and held that a woman whose husband had a previous marriage subsisting, cannot claim reliefs under this act (Agnes 2011).

Subsequently, in *Badshah vs Urmila Badshah Godse* (2014), the Supreme Court upheld the right of a Hindu woman in a bigamous marriage. The husband had not disclosed his first marriage and thus it was held that he cannot be permitted to deny the benefit of maintenance to the woman by taking advantage of the wrong committed by him. The Court emphasised that while dealing with the application of a destitute wife under Section 125 of the CrPC, the Court is dealing with the marginalised sections of the society. There is a non-rebuttable presumption that the legislature while making a provision like Section 125 to fulfil the constitutional duty of social justice, had always intended to provide relief to such women, the court clarified. But the adverse publicity of the Velusamy ruling has made it impossible to claim rights in magistrates' courts as the courts decline to entertain these applications.

Creating a Convergence Model in Maharashtra

As feminist lawyers providing legal services to women, we have been able to use the act effectively to provide reliefs for women from the marginalised sections, including Muslim women, where it was constantly challenged that divorced Muslim women are not entitled to reliefs under it. Our strategy of clubbing the Muslim Women (Protection of Rights on Divorce) Act (Muslim Women's Act) 1986 with the PWDVA to secure urgent interim reliefs of maintenance and residence (when required) worked well.

Since we were keen to share our experiences of securing expeditious orders under the act, we accepted the invitation from the government to work closely with the DWCD, the designated nodal agency for implementation of the PWDVA in Maharashtra, to help in its implementation. So MOHIM (which means campaign in Marathi) was launched as a collaborative project between the DWCD and Majlis Legal Centre in 2012. Though considerable resources, both state and non-state, had been spent we realised that there were no mechanisms in place for accurately documenting the work done by stakeholders. This led to the generation of random and inaccurate statistics which were relied upon at the highest level of planning and monitoring the implementation of the act.

Our first attempt was to streamline this process. We conducted an in-depth study of the roles and responsibilities of each agency as prescribed under the act and scrutinised various monitoring and evaluation reports produced over the previous six years. Then we set out to examine the ground reality against these reports. We recorded the observations regarding stakeholder interactions with aggrieved women across various districts, and examined the existing reporting formats. Thereafter, draft guidelines for each agency were prepared and the same were discussed with the higher officers in each department and the judiciary. The outcome was the *Maharashtra State Handbook on Domestic Violence-Protocols, Best Practices and Reporting Formats* (DV Handbook) which was approved by the Bombay High Court and officially released by the Minister, Women and Child Development, in August 2014 which attempted to connect the dots and fill the lacunae.

It contains guidelines for all stakeholders, including the judiciary, healthcare providers, the police, POs, shelter homes, service providers and legal aid lawyers. It has laid down a

yardstick to assess the effective implementation of the act and will help to generate accurate data to assess the impact of the act, identify gaps in implementation and bring in policy level changes.

As part of these efforts a three-tier system—monitoring committee to check the implementation of the act has been introduced. The first, is at the taluka/ward level (under the tehsildar); the second, at the district level (under the district collector); and the third, at the state level, the Sukanu Samiti (under the additional chief secretary, home department). The aim is to ensure that ground level concerns, if not resolved at the lowest level, can be brought to the next level, and from there onwards, to the state level monitoring committee.

In the process of preparing the *DV Handbook*, the absence of guidelines for pre-litigation "joint counselling" was brought to the notice of the concerned authorities with a request to frame guidelines. As lawyers providing legal services to women facing domestic violence, we were aware of cases where women who were sent back without any protection had immolated themselves, unable to cope with the trauma of continued violence. Some others had approached us with broken skulls, fractured bones or bleeding injuries, a few months after the consent terms had been signed with service providers or the police.

The department, in turn, sought the opinion of the Advocate General, who opined that since pre-litigation "joint counselling" was not stated as a "service" and no guidelines were framed under the act, it would be beyond the purview of the department to frame these. On the other hand, since clear guidelines had been framed for post-litigation "joint counselling," the intention of the legislature was clear that the same ought to be restricted to the post-litigation stage. As part of the process of drafting the *DV Handbook*, the Bombay High Court had already framed guidelines that prior to referring the aggrieved woman to joint counselling, interim and ad interim reliefs must be granted, even without notice to the husband, if required. Since this provision would adequately protect women, the DWCD issued a circular prohibiting joint counselling at the pre-litigation stage since any reconciliation arrived between the parties as an outcome, might endanger the safety of women.

Startling Observations

Even while quashing the circular that prohibited pre-litigation "joint counselling," the Bombay High Court (No 104 of 2015) directed that all cases of "serious" physical domestic violence must be brought before the court for protection and relief prior to engaging in joint counselling and restricted the wide and unrestrained scope of such counselling by all service providers—the police, the counsellors and NGOs—and filled the vacuum.

While this is a welcome move, some observations about the ground reality reflected in the judgment are a cause for serious concern.

The interveners, who were designated as service providers under the act, stated that women do not desire to take recourse to law. "All the interveners including TISS have set out their experiences of several women preferring joint counseling to settle their disputes to the *tardy judicial process*," the judgment stated (emphasis added). However, the bench did not pause to explore the nature of the "tardy judicial processes" which poses obstacles to women's access to the litigation arena and the curative steps needed to remedy this, or the action initiated by service providers to ensure the smooth access of the aggrieved woman to the court to secure expeditious remedies, as they were mandated to do under the act.

The court also expressed its own anxiety regarding "saving marriage before or soon after violence commences or pervades in a woman's life which would result in *continuation of the family bond and social peace*."…

> Though the DV Act provided the violated woman access to expeditious and simple procedures…here is the wholesome need of the woman to be *correctly guided through her journey into litigation against her own family and persons otherwise closest to her*. …The very spirit of the legislation would require the service providers to go that extra mile in negotiating and providing for her precisely what, in the facts of her case, would be the most efficacious remedy—cases of DV are like snowflakes.

This is based on an erroneous presumption that police officers, counsellors in zilla parishads and family counselling centres, and 250 odd appointed social workers in special cells—mostly men, would be providing "specialised feminist counselling" to victims of violence, and it would be the course of action most beneficial to victims than the provisions of a statute specially designed to protect women against patriarchal power structures.

Despite the elaborate definition of domestic violence contained in the act, the judgment revealed that most applications are made only for maintenance and these are best suited for settlement by joint counselling and even the residence can be worked out through negotiations. So the idea that the age-old provision of maintenance under Section 125 of the CrPC which has been in the statute books since the 19th century, and women's difficulties to execute orders of criminal courts, are more amenable for resolution through "joint counselling" than an enforceable court order, seems to be a deliberate attempt at judicial myth-making.

While the counsellors and NGOs were concerned that prohibiting pre-litigation "joint counselling" would infringe on their right to carry on their profession, the underlying concern for the bench was that the courts should not be clogged by providing easy access to violated women to secure protection orders to stop the violence. It almost seemed as though the right to carry on the profession through pre-litigation "joint counselling" and the concern for overcrowding of courts, superseded the more fundamental right to life of the violated woman.

The following critical points can be extracted from this judgment:

(i) Women do not wish to approach courts to enforce their rights.

(ii) Courts do not work. They cannot be perceived as an "emergency stop violence" forum, but only as the very last bastion of justice for violated women.

(iii) Saving a marriage and continuation of the family bond is the most desired social goal.

(iv) Informal negotiations between the victim and the abuser is the only way to address domestic violence and ensure

maintenance and residence, as they provide gender-neutral safe spaces than the vagaries of litigation.

(v) Our age-old system of panchayati settlements and informal arbitration forums are far more desirable than clogging our formal court systems.

(vi) Though the stamp paper assurances are not binding and can be violated, the same is true also for court orders. (This, from a bench presided over by the Chief Justice of the Bombay High Court!)

It is indeed shocking that the judgment places violation of informal assurances, an avenue which the violated woman would have already explored prior to approaching a state agency, on the same scale as violation of an enforceable court order which has criminal consequences attached to it.

Where Do We Go from Here?

At one end, Section 498A has been badgered by adverse comments from the Supreme Court regarding its misuse. In 2009, while commenting on its misuse by "disgruntled wives," the apex court held "due to misuse of the provision, a new legal terrorism has been unleashed." Thereafter, the Ministry of Home Affairs issued an advisory, "as per the guidelines of the Supreme Court, in cases under Section 498A *recourse may be initially taken to settlement mechanism such as conciliation, mediation, counselling of the parties, etc,* prior to registering a case." We are barely holding on by a thread to this provision as men's rights groups, increase their pressure to dilute this section.

The family courts which were supposed to provide expeditious relief to women in matrimonial litigation have resorted to "preservation of the family" as its primary aim. Litigation in family courts has become technical, contentious and long-drawn, and has increasingly been taken over by commercial lawyers. A gender just and women friendly space for adjudication of family disputes is no longer amenable to claims of women in matrimonial disputes.

We seem to have come full circle in addressing domestic violence from penal provisions to civil reliefs as emergency measures to stop the violence, and none of these has proved to be effective in securing the rights of women, except informal negotiations to save the family. Apparently, the campaign has fallen short of its avowed intent of protecting women from domestic violence. Is there a vital missing link here?

Are we to believe that women prefer to live in violent homes without protection, if there are options to secure legally binding protective orders available? Our own experience does not validate this. Women are stepping out of violent homes to seek effective solutions from the state machinery, after exhausting all other options. If the litigation process is tardy, the challenge is to remove the obstacles and transform it to a gender friendly space, rather than abandoning it.

The crucial gap seems to be the notion of support. While the criminal justice system has no room for it, the PWDVA attempted to fill the vacuum by roping in many institutions which could play the role of a support person to help women to access their rights and seek protection, but each one seems to have fallen short of expectations.

Perhaps, it is the failure to unpack the true meaning of support that a victim of domestic violence needs to make the transition to a violence-free life that is pushing them back. So what kind of support would a victim need to transform herself into a survivor? An emergency safe shelter home which caters to the specific needs of victims of domestic violence, a confidante who helps her chalk out a plan on how to make the transition keeping in mind her own limitations, to clear her doubts, allay her fears, build up her confidence, and be present with her to help her access services she needs. More importantly, it is about being with her and helping her to walk the legal journey so that the justice system does not seem daunting.

We have seen that wherever social workers, lawyers, friends or the natal family have been able to provide such support, women have been able to walk this journey and make the transition to a violence-free life. We at Majlis have several such positive examples, but we are also acutely aware that in terms of numbers, they do not even add up to a drop in the ocean, when confronted with the magnitude of the problem facing us. What is needed is to scale up this initiative. As incidents of domestic violence spiral, do we have the political will to take on this challenge?

NOTES

1 Though some of us did raise objections against this term and pleaded for a more generic term, "domestic violence" there were no takers then. One of the earliest writings which dealt with this concern is the autobiographical essay by Flavia Agnes, first published informally in 1984, *My Story …Our Story …Of Rebuilding Broken Lives* which clearly brought out the problem of domestic violence faced by middle class women. Subsequently this became an important marker of the women's movement in India.

2 Today there are 136 counselling cells across Maharashtra. Of these TISS runs 14, while the rest are run by local NGOs in districts. Most are recent appointees, their appointment and monitoring is done by the Department of WCD. with a salary of Rs 15,000 – Rs 18,000. Due to allegations of corruption and misuse of their position in police stations, a few had to be closed down.

3 Today there are family courts in 10 cities of Maharashtra and in most metropolitan cities in India.

4 Around the time, Majlis Legal Centre was set up under the Public Trust, *Majlis Manch,* an initiative to provide access to justice to women across class. The work during the initial phase was located within the newly set up family court in Mumbai. Over the years, the work has expanded to other areas, but this work still forms one of its core activities, where lawyers and social activists continue to help women from poor and marginalised communities to access their rights. Apart from matrimonial remedies such as divorce and separation, we have been able to secure maintenance, custody of children, protective injunctions, and residence orders in these courts, despite the odds, much before the PWDVA was enacted.

5 See the ruling of the Bombay High Court in *A F vs A F* dated 14 August 1998 (Suit No 3263 of 1994 (unreported) in a litigation initiated by us on behalf of a poor Christian battered wife.

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