



Strengthening response to violence against women and girls

Handout: session 2 – Protection of Women from Domestic Violence Act, 2005

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“Violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women, and that violence against women is one of the crucial social mechanisms by which women are forced into subordinate position compared with men”.

Declaration on Elimination of Violence Against Women, 1993

‘Domestic Violence (DV) is commonly understood as violence within the home or violence within an intimate relationship. Though widely prevalent, the issue of domestic violence, till very recently remained largely invisible in the public domain. It may be seen that, world over 35% women (one in every three women) have experienced either physical and/or sexual intimate partner violence or sexual violence by a non partner at some point in their lives (<http://www.unwomen.org/en>). The National Crime Record Bureau (NCRB) and National Family Health Survey (NFHS) reports also substantiate the same. The NCRB data show that for a decade from 2005 to 2015, 88,467 women, or an average of 22, died each day in dowry-related cases. In 2015 alone, 7,634 women were killed over dowry. While the NCRB 2018 report recorded crime against women in India every 1.7 minutes and a woman is subjected to domestic violence every 4.4 minutes. According to the NFHS-4, conducted over 2015-2016, almost 30% of married Indian women between the ages of 15 and 49 years reported experiencing spousal violence at least once. These statistics clearly show that domestic violence is a global issue and that it is an issue that transcends class, caste and religion.

It is observed that lack of family and societal support, norms around shame and family honour, financial dependence on husband/partner, perceived bias of police and justice system are common factors that make women particularly vulnerable to violence within the home or in intimate relationships, and are also some of the key reasons for non-reporting. Recognizing this

aspect of women facing violence at home, the Protection of Women from Domestic Violence Act, 2005 (PWDVA 2005) was enacted as a gender specific law. This Act was the first to grant formal recognition of a woman's right to live in a home free from violence.

A. Some of the key features of the PWDVA 2005 are as follows:

- A clear and unambiguous statement of the right of the women to be free from DV and the recognition of DV as violation of the human rights of women.
- A declaration of the basic intent of the law, i.e. securing reliefs for and protection of the aggrieved woman from DV.
- A definition of DV that captures women's experience of abuse in its varied forms.
- A recognition of women's right to reside in the shared household and her protection from illegal dispossession.
- Access to immediate orders to prevent further acts of violence, to provide remedies for violence faced and to prevent destitution of women.
- Infrastructure available to women to facilitate access to justice both in terms of court – mandated remedies and other support services.
- Provision for coordinated effort to DV by recognizing and building upon the experience of other agencies that have traditionally provided assistance to women in distress.
- This Act created the Office of Protection Officer ('PO') to facilitate a woman's interaction with justice system. Also non-government organizations were given statutory recognition as Service Providers. Both Medical Facilities and Shelter Homes too were under legal obligation to provide medical aid and shelter to distressed women respectively. Legal Services Authorities to provide free legal aid to aggrieved woman seeking justice and police to take cognizance under section 498 A of IPC and make daily diary entry. Magistrates too have a legal mandate to provide immediate reliefs to the woman, speedy disposal of the PWDVA cases within two months of the filing of the case through its discretionary powers of adopting appropriate procedure.

B. The PWDVA 2005 talked about five major components:

1. Domestic Violence - It recognized and defined all forms of DV faced by an aggrieved woman especially, physical abuse, verbal/mental/psychological abuse, economic abuse, sexual abuse, threats, dowry related harassment and others.
2. Aggrieved person (AP) - It covers women both in marital and non- marital context and hence is applicable to married women, women in a relationship in the nature of marriage, sisters, daughter, mothers, widows, etc.
3. The Respondent in PWDVA cases includes any adult male who has been or is in a domestic relationship with the aggrieved woman, and against whom the woman has

sought a relief or any male or female relative of the husband or male partner of a married woman or a woman in a relationship in the nature of marriage.

4. **Domestic relationship** – Relationship between two persons (Aggrieved woman and Respondent/s) must be related through marriage, a relationship in the nature of marriage, consanguinity, adoption or are family members living together as joint family.
5. **Shared Household** – It is a place where the aggrieved person lives or has lived in a domestic relationship, either singly or along with the respondent. Ownership of the household is irrelevant.

C. Rights and remedies to aggrieved person:

The PWDVA 2005 ascribed certain rights and remedies to the aggrieved woman. It endorses women's right to live in a home free from violence, her right to reside in a shared household, not to be evicted from the house or any part of it and her right to seek remedies.

Remedies include Protection Order, Residence Order, Monetary reliefs, temporary custody and compensation order.

1. **Protection Order** - An aggrieved woman can seek Protection Order against Respondent prohibiting him from committing, aiding or abetting any act of DV; entering the workplace or any other place frequented by the AP; alienating assets, operating bank lockers or bank accounts enjoyed by both parties, including her stridhan and even causing violence to dependants, other relatives & persons who give the AP assistance from DV.
2. **Residence Order** - to prevent the aggrieved woman's dispossession as well as to prevent any act that adversely affects her peaceful occupation of the shared household.
3. **Monetary Reliefs** - To meet actual expenses incurred and losses suffered by aggrieved woman and her children as a result of domestic violence.
4. **Temporary custody of children** – Aims to protect the child's welfare, safety and interest.
5. **Compensation Order** – An aggrieved woman is entitled to compensation and damages for physical (injuries) and mental harm caused due to domestic violence.
6. **Interim/Ex-parte order** - The Court can pass interim and/or ex parte orders considering the overall facts and circumstances of the case.

D. Multi-agency Coordination system:

The PWDVA 2005 envisages a multi-agency Coordination system of which the key stakeholders are the Protection Officers, Service Providers- Medical Facilities, Shelter Homes, counselors,

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Welfare Experts, Police, Legal Services Authorities, lawyers and Magistrates. In order to achieve this coordination, convergence among the Women and Child development Department, Health department, Home Department, Law and Judiciary Department is essential. All the stakeholders through its departments must assist the women in seeking immediate reliefs.

E. Some other key features under the PWDVA 2005:

Counselling services is of paramount importance to women in distress and this service can be accessed by her at any stage of the proceedings. Her sole testimony is vital to the case. Breach of any order can invoke criminal action against the respondent/s. Also the Protection Officers are accountable and any dereliction of duty on their part can lead to punitive action.

Understanding PWDVA in the context of COVID 19

The PWDVA is a social legislation and places responsibility on Protection Officers, Civil society Organizations, courts, Police, Shelter Homes, Medical facilities to assist aggrieved women to access justice.

We need to accept that 'Home' and 'Safe' are not synonymous. We have seen that there has been a rise in domestic violence cases following the lockdown enforced to maintain physical distancing because of the COVID pandemic. In the given situation, women and children have become vulnerable to violence, both domestic and sexual. Further, with priorities of Government officials having shifted to respond to the COVID crisis, violence against women and girls has taken a back seat on all fronts like Courts; police, who are on the field ensuring physical distancing in public spaces; medical facilities being overly burdened with COVID patients; NGOs rendering support services to women and children being closed down, etc. Although many Help lines have been made operational to meet the psychological needs of women and children, there are many cases where immediate protection and residence orders need to be sought.

In the given scenario, the Protection Officer is under legal obligation as per Rule 9 of the PWDV Act to connect a woman facing violence to required services and ensure her safety and security. The Protection officer on receiving a complaint by phone or mail from the aggrieved woman or any other person is duty bound as per the Rule to seek help of police and pay a visit at the place of occurrence of violence and fill a Domestic Incident Report and also assist the woman to file an affidavit in the Court. Even if the Protection officer is not in a position to have the woman sign, he/she can for reasons to be recorded in writing forward the copy of the DIR to the police, magistrate and service provider to seek immediate assistance.

Similarly the Civil society Organizations, Counsellors, mental health Organizations and all other service providers should come to the aid of women and children facing domestic violence. Also

greater social awareness, sensitive policing, improving access to daily needs, abortion services, providing safe shelter for victim of violence can help deal with domestic violence.