

Functioning of Protection officers and PWDVA 2005

The Indian feminist movement recognized, campaigned and succeeded in securing a robust and strong law, Protection of Women from Domestic Violence (PWDVA) 2005. This is an extremely important piece of legislation for Indian Women. It is a mixture of civil and criminal law aiming to secure a range of remedies quickly for women suffering domestic violence from one court, as opposed to having to run to various different courts. It was also required as part of India signing CEDAW (convention to end discrimination against women-CEDAW links violence against women with the prevalent social discrimination-it is the lesser value and social inequality that leads to acceptance and impunity for violence against women.

The architect of the PWDVA 2005 Indira Jaising included various important provisions to ensure that state provides the required infrastructure support (counselling, shelter, legal aid, service providers and Protection officers to help women access their fundamental right to live a life free of violence.

PWDVA 2005 remains a groundbreaking piece of legislation for the following reasons:

Its recognition that domestic violence impacts women on a number of fronts and **it requires** a coordinated multi-agency approach to provide effective response and remedies to the survivors in the long and short-term. So, an important feature of this law is the way it **imagines** connectivity, communication and involvement of district, state and national level nodal departments (women and Child(overall implementation), Home department (Police), Social welfare/defence department(responsible for recruitment and training of Protection officers, registration of service providers Etc and Health (connected to Counselling and provision of medical facilities) and ofcourse the courts and Judiciary and NGOs to raise awareness , training, monitoring and provision of specific services.

For the first time, it clearly defines Domestic violence in terms that are not limited to physical violence and cruelty only but includes a comprehensive definition of violence including mental, sexual and economic abuse.

It makes it mandatory for the state to develop the necessary infrastructure system to ensure that key facilities exist (counselling, shelter, legal aid) and key persons (protection officers, counsellors, service providers) are appointed, registered and trained to carry out their duties and functions as set out by this law.

It recognizes and provides for immediate and emergency multi-agency response to a survivor who has approached one agency, say the police to connect with other services

such as legal aid, shelter, police etc and provides interim and ex parte orders so that the survivor can get immediate protection if required.

It introduces the idea of residence orders based on the reality that many women stayed in violent relationships for fear of becoming homeless.

Unlike previous laws addressing family relationships which were limited to married women, it extends the application of Domestic violence law to live-in relationships and any women living in a shared household in a domestic relationship, not just wives. Daughters, daughter-in-law's, mothers, mother-in-laws, sisters and sister-in-laws can use this law to escape from domestic violence of anyone living in the shared household, be they husband, mother-in-law, father, brother or sister-in-law.

In the first of the series of articles we examine the effectiveness or otherwise of one of the major planks of PWDVA (DV), the post of Protection Officers. It is the protection officers who are supposed to get the details from survivor of violence, investigate and write a Domestic Incident Report to inform the court of the ground realities facing the survivor, details of the violence and the required remedies sought by the survivors.

At present there is no periodic or annual compiled national level data from all states to tell us how many cases were filed in each state, so we simply don't know how many DV cases were filed in 2006 through to 2015. We don't know in any detailed way, how the key stakeholders are functioning year by year in each state. The DV act allows for the aggrieved women themselves, protection officers or service providers to file DV cases-since there is a huge variance in the way in which the states are implementing the DV act, we have no idea how many cases are being filed by women themselves, how many by protection officers and service providers. The NCRB data captures only the criminal cases which includes section 498A (cruelty), dowry death and rape cases. BUT, thanks to Lawyer's Collective incredible and persistent efforts to assess the functioning of the DV act, we have some amazingly useful data, research and information in various published evaluation reports. I rely chiefly on their reports, and the functioning of DV act in Gujarat where I am based. The case study of Gujarat (see below) and the Monitoring and Evaluation efforts of LCWRI concur on some main issues. There are not sufficient, qualified, trained, protection officers with the required three years security of tenure to do their multiple tasks efficiently.

It was 6 years after the DV act came into operation that I and my justice team were very perplexed to find that the very purpose of the DV act was being subverted –women were facing a barrage of obstacles in securing access to a protection officer! We encouraged the women to approach the newspapers who took up the issue and this led to the High Court PIL.

Gujarat PIL re appointment of sufficient, non-contractual protection officers with adequate facilities

The Gujarat High Court took suo moto cognizance¹ of news items published on 5.7.2012 in the Times of India, Ahmedabad Edition) which reported that women wanting to file complaints under the domestic violence Act were asked to wait for three months on account of pendency of complaints ; this was due to shortage of protection officers and the working conditions of protection officers left a lot to be desired-their contracts were temporary, insecure and they were not being provided with the basic amenities and facilities to be able to fulfill their obligations under the act. The substantive order after filing of affidavits by the state notes that the state conceded that a large number of domestic violence complaints were pending and were attended during a special drive and the requisition for appointment of protection officers were submitted to Gujarat State Public service commission before 22nd February 2013. The High court in its analysis examined the objects and reasons behind the act and concluded that the object of the act was to provide effective protection to women suffering any kind of violence in context of family and this would be nullified if the act was not implemented properly and effectively on account of insufficient protection officers and protection officers lacking the facilities and environment to fulfill their mandate under the act. In para 16, it noted that the ***“mischief of violence against women had not as yet received the required priority to bring about sufficient change ,the political will backed up by action and resources was missing”***.

The Court went to express an opinion that all state governments need to take note of to ensure that the Act is not rendered toothless by starving the system of the required number of protection officers.

Para 23 of the Judgement

“..we are of the opinion that the state government should have in place a proper system of manpower planning to assess the needs of each district.Thus in busy districts, one protection officers is simply not enough. To have one protection officer in a district like Ahmedabad, where more than 800 applications have been received in the last seven months is nothing but mockery of the ACT. Therefore, the need of the hour is that the government assess the needs of each district and accordingly, appoint adequate number of protection officers in each district to receive and attend the complaints in time.”

¹ See WPPIL 153 OF 2012

A minimum requirement for each state is to undertake basic district wise analysis to ensure that women in the remotest location can access a protection officer and that protection officers are not so overloaded that women are not asked to wait for months before they can secure the assistance. This must be done as soon as possible and sufficient protection officers must be appointed with the minimum security of tenure of three years to do their duties effectively districtwise in every state and their workload must be reviewed every few months and the data regarding number of cases filed by each protection officer in each district should be in the public domain. In Gujarat, it was simply impossible for one full time protection officer with 800 cases to do her duties in court, conduct home visits, ensure service of DIRs and orders on respondents ! There were delays of over 6 months in cases simply because the protection officers were not able to serve the necessary documentation.

Another issue ofcourse is to ensure that protection officers have the required admin support and private space to hear the survivor. There are instances of protection officers unable to do their job because they do not have the secretarial support, and resources such as computers to word-process. Survivors are asked to get their complaint typed up to submit to protection officers, which basically means paying privately which many women cannot afford. Another option in many states for filing PWDVA cases is to do it through a private advocate, or through registered service providers. Many women cannot afford the legal fees of advocates and are unsure about which service providers to choose.