

Working Paper 499

**The Implementation of
Domestic Violence Act in
India: A State-Level
Analysis**

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THE IMPLEMENTATION OF DOMESTIC VIOLENCE ACT IN INDIA: A STATE-LEVEL ANALYSIS

Anamika Das¹ and C M Lakshmana²

Abstract

To protect women against discrimination, the law empowers women through various ways by equipping them with right and power to enable them to fight against the patriarchal nature of society. The main purpose of this paper is to probe into the provisions made under the Protection of Women from the Domestic Violence Act, 2005 (PWDVA, 2005) and to explain the roles and responsibilities of different authorities under this Act. This paper analyses secondary data to find the reasons for the failure of the PWDVA which includes highly uneven state-wise budgetary allocations, delays in passing orders, lack of clear directions to stakeholders about their roles and responsibilities for effective implementation. There is an urgent need to strengthen the PWDV Act for the victims to get fruitful justice on time.

Keywords: Domestic Violence, Protection of Women from the Domestic Violence Act (2005), Budgetary Allocations, Vulnerabilities

Introduction

Domestic violence against women is a very common and emerging issue and it exists everywhere irrespectively of the socio-economic and demographic status of a country. Although, there is no gender-specific profile of victims of domestic violence it is generally seen that the victims are mainly women. Almost, every class of women -- upper class to lower class, from educated to uneducated -- are victims of domestic violence for various reasons. They are tortured physically and mentally by their husband, in-laws in their matrimonial homes.

For the protection of women from discrimination, the Indian Constitution has guaranteed in many ways to safeguard them and also to raise the dignity of and strengthening the empowerment of women. This constitutional provision besides a huge body of domestic legislations guarantees protection of women from male domination and act of supremacy due to patriarchy. These include the protection offered to women through promulgating laws such as the Domestic Violence Act, 2005, The Hindu Succession Act 1956, The Improvement of Nikah 15 Nama Act, 2006, the Maternity Act, 1961, Gender Budgeting Programme, the National Policy of Empowerment of Women Programme and the Indian Penal Code with amendment and revision, i.e. through Article 376, 374 and 498.

The main purpose of this study is to probe into the provisions made under the Protection of Women from the Domestic Violence Act, (PWDVA, 2005) and to explain the roles and responsibilities of various authorities under this Act. The PWDVA was passed in 2005 and came into force on October 26, 2006. It includes actual or threatened abuse against women in their homes, including those of a physical, sexual, verbal, emotional or economic nature. This legislation is critical considering that more than two-thirds of married women, between the ages of 15 and 49, have experienced some form of

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sexual or domestic violence, including being beaten, raped, or forced to provide sex. Hence, this paper intends to study the problems of the judicial process in the implementation of PWDV Act. In this study, the authors highlight the vulnerabilities of the victim towards getting justice under the Act. Therefore, vulnerabilities of women lead to an increase in the emotional, economical, as well as, mental harassment from family and society which leads to the denial of justice for the victim.

Objective

- To examine the implementation process of the Protection of Women from Domestic Violence Act (PWDVA, 2005) in India.

Data Source and Methodology

To find out the ambiguities of the Protection of Women from Domestic Violence Act different secondary data sources were used for analysing the loopholes of PWDV Act i.e., Government of India- National Crime Record Bureau, National Family Health Survey (NFHS-3 and NFHS-4), other available studies/surveys and researches. The data was analysed by using descriptive statistics method.

Present Status of Domestic Violence against Women in India

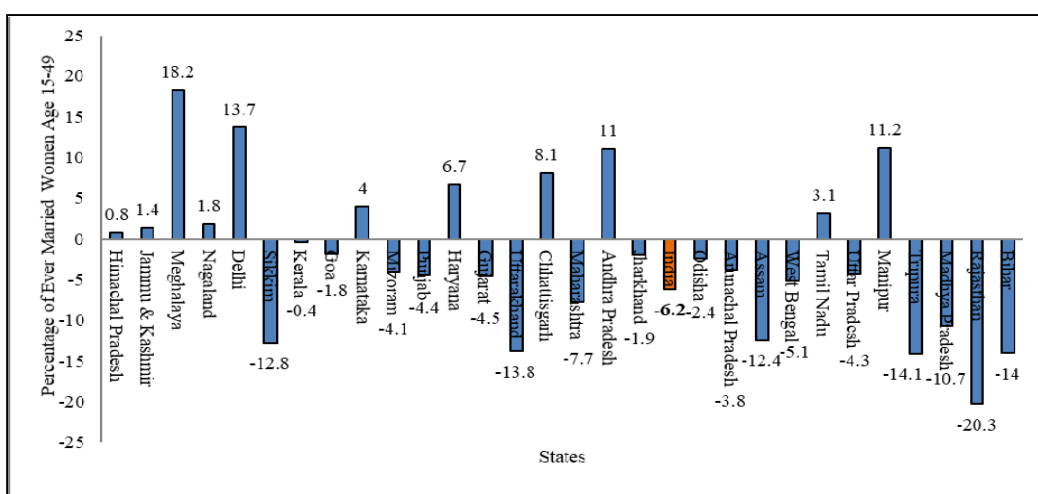
According to the National Family Health Survey (NFHS-4, 2015-16), in India, almost one-third (31 percent) of ever-married women have ever experienced spousal physical, sexual, or emotional violence by their current husband (for currently married women) or their most recent husband (for formerly married women). In the state of Manipur, 55 percent of ever-married women experienced emotional, physical or sexual violence in the age of 15-49 years. It has followed by Telangana (46 percent), Bihar (45.2 percent), and Tamil Nadu (44.6 per cent). On the other hand, women in Sikkim, Himachal Pradesh and Uttarakhand experienced the lowest percentage of emotional, physical or sexual violence in the age of 15-49 years i.e. 4 percent, 7 percent, and 14 percent respectively.

The following figures show the state-wise percentage change in ever-married women who have ever experienced spousal violence between the 10 years interval (NFHS 3 and 4). The percentage of women who have ever experience of spousal or domestic violence by their husband has declined in the 10 years since NFHS-3. Overall, there has been a decline from 37 percent to 31 percent. That means India has seen a 6-point decline in the percentage of women who have experienced domestic violence in their lifetime. According to NFHS-3's 2005-06 survey, Bihar was found to be the most-violent state where domestic violence against women was high compared to other states. It has decreased to 14 percent in NFHS-4. It has followed by Madhya Pradesh (-10.7 percent), Rajasthan (-20.3 percent), Uttar Pradesh (-4.3 percent) and West Bengal (-5.1 percent). On the other hand, North-Eastern states such as, Meghalaya (18.2), Manipur (11.2) and Nagaland (1.8) have shown an increase in the percentage of women who have experienced domestic violence in 10 years. Besides, central and southern states such as Chhattisgarh, Andhra Pradesh, Karnataka and Tamil Nadu have experienced an increase in the percentage of domestic violence, according to the 2015-16 survey.

As we know, National Capital Region of India is a high-performing region in terms of economic and governance, however, it is experiencing an increasing trend in domestic violence, i.e. 30 percentage in 2015-16 as compared to 16.3 percent in 2005-06. Along with this line, Kerala is also one of the exceptions where the literacy rate is very high but there has been no change in domestic violence percentage in the 10 years since NFHS-3.

Hence, it can be drawn from the above that a higher percentage of married women are experiencing spousal violence in the eastern and south eastern part of India i.e. Manipur, Bihar, Andhra Pradesh and Tamil Nadu where more than 40 percent of women are the victim of domestic violence.

Figure 1: State-wise Percentage Change in Ever-married women who have ever experienced Domestic Violence between NFHS-3 and NFHS-4



Source: Authors calculation on NFHS-3 and NFHS-4

Protection of Women from Domestic Violence Act (PWDVA- 2005)

The Protection of Women from Domestic Violence Act (PWDVA) was passed in 2005 and came into force on October 26, 2006. This is civil law aimed at providing immediate support to women facing domestic violence. The PWDV Act is different from criminal law, which is directed at providing punishment to perpetrators of violence (those who commit violence) through imprisonment or fines. The advantage of a civil law is that it is victim-oriented and the woman is not dependent on the police to initiate action and provides legal remedies pertaining to civil reliefs such as injunctions, compensation and monetary relief. There can be no arrests made on a complaint filed under this law.

Domestic violence³

According to the PWDV Act (2005), domestic violence is defined as, "any form of abuse causing harm or injury to the physical and /or mental health of the woman or compromising her life and safety or any harassment for dowry or to meet any other unlawful demand and a threat to cause injury or harm".

³ Section- 3

Domestic Relationship⁴

Domestic relationships are relationships between a woman and a man living in a shared household. Domestic relationships can be through marriage (i.e. wives, daughters-in-law, sisters-in-law, widows etc. with other members of the family), blood relationship (i.e. mother-sons, sister-brothers, daughters-fathers, widows etc.) and other relations through adoption, relationships like marriage (including live-in relationship, bigamous etc).

Aggrieved Person⁵

Aggrieved person means any woman who is, or has been, in a relationship with the respondent who claims to have been subjected to any act of domestic violence by the respondent.

Shared household ⁶

A household where the victim lives or at any time, has lived with domestic violence, either singly or along with the perpetrator, and includes such households whether owned, tenanted, either jointly by the victim and the perpetrator, or owned or tenanted by either of them, in respect of which either of them or both jointly or singly have any right.

Respondent⁷

Respondent means any adult male person who is, or has been in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act and also an aggrieved wife or female living in a relationship like marriage also may file a complaint against a relative of the husband or the male partner. On the other hand, the law explains that a mother-in-law cannot file an application against her daughter-in-law according to Section-2 (q) however, in cases where a mother-in-law is facing violence at the hands of her son and daughter-in-law, she can file an application against her son and daughter-in-law as abetting the act of violence perpetrated by son and she cannot ask for the removal of daughter-in-law from the shared household.

The law provides that if an abused woman requires, she has to be provided alternate accommodation and in such situations, the accommodation and her maintenance has to be paid for by her husband or partner. The law significantly recognises the needs of an abused woman for emergency relief which will have to be provided by the husband. A woman cannot be stopped from making a complaint/application alleging domestic violence. She has the right to the services and assistance of the Protection Officer and Service Providers, stipulated under the provisions of the law. Section 2 also

⁴ Section- 2 (f)

⁵ Section- 2 (a)

⁶ Section- 2 (s)

⁷ Section-2 (q)

defines other commonly-used terms in the PWDVA such as, Domestic Incident Report⁸, Magistrate⁹, Protection Officer¹⁰, Service Providers¹¹, Medical Facilities¹², Shelter Homes¹³, and Police¹⁴ etc.

Right and remedies of PWDV Act:

The PWDVA identifies three important rights, i.e. *"the right to be free from violence, the right to reside, and the right to seek remedies"*.

1. The right to be free from violence means, this law recognises the right of a woman to live in a violence-free home and provides legal remedies if this right is violated.
2. The right to reside in a shared household.
3. The right to seek remedies provided, if a woman, who is the victim of domestic violence, will have the right to the services of the police, shelter homes and medical establishments. She also has the right to simultaneously file her complaint under Section 498A of the Indian Penal Code. Sections 18-23 provide a large number of options for legal redressal. She can claim through the court's Protection Order, Residence Orders, Monetary Relief, and Custody Order for her children.

Protection Order (Section- 18): This can also be termed as 'stop violence' order. Through this order, the court can direct the other party to immediately stop the acts of violence.

Residence Order (Section- 19): The order aims to prevent the aggrieved person's dispossession and to prevent any act that impacts upon her peaceful occupation of the shared household. It means, in cases where the woman has been thrown out of the house (shared household) and she wants to return to her house, this order is to ensure that the woman has a shelter that is safe for her.

Monetary Relief (Section- 20): To reimburse the aggrieved person's actual expenses incurred due to domestic violence, such as medical expenditure and the loss of earning, as well as maintenance and also for mental torture and emotional distress caused to the aggrieved person, which may be in addition to orders for monetary relief, this order also be known as Compensation Order (sec- 22).

⁸ Domestic Incident Report (DIR) is the official format which is used for registering complaints of domestic violence and it has to be signed by the Protection Officer or registered service provider who fills it.

⁹ Section 2(i) Magistrates are empowered to grant orders under the PWDVA and direct the police and Protection Officers to collect evidence and assist in the enforcement of orders. Magistrates may also refer cases for counselling to Service Providers during legal proceedings.

¹⁰ Section 2(n) Protection Officer is the key implementing agency under the PWDVA. They are appointed to receive complaints from victim/survivors and record 'Domestic Incident Reports' (DIR); provide information on available legal rights and remedies; and facilitate victim/survivors' access to justice and support services.

¹¹ Section 2 (r) Service provider is a Non-Governmental Organisation (NGO) or other voluntary association registered with the state government. They provide assistance and support to women facing domestic violence.

¹² Section 2(j) Medical facilities are notified under the PWDVA by State Governments. Notified medical facilities cannot refuse to provide medical aid to an aggrieved person.

¹³ Section 2(t) Shelter homes are notified under the PWDVA by the State Governments. Notified shelter homes cannot refuse to provide shelter to an aggrieved person.

¹⁴ The police have a limited role in the implementation of PWDVA, they are duty-bound to provide information to the aggrieved person about the rights and remedies provided under PWDVA, facilitate her access to the PO, initiate criminal proceedings when needed and act on the directions of the Court to assist in the enforcement of orders

Custody Order (Section- 21): A woman can ask for temporary custody order for children. This is to prevent the woman from being separated from her children.

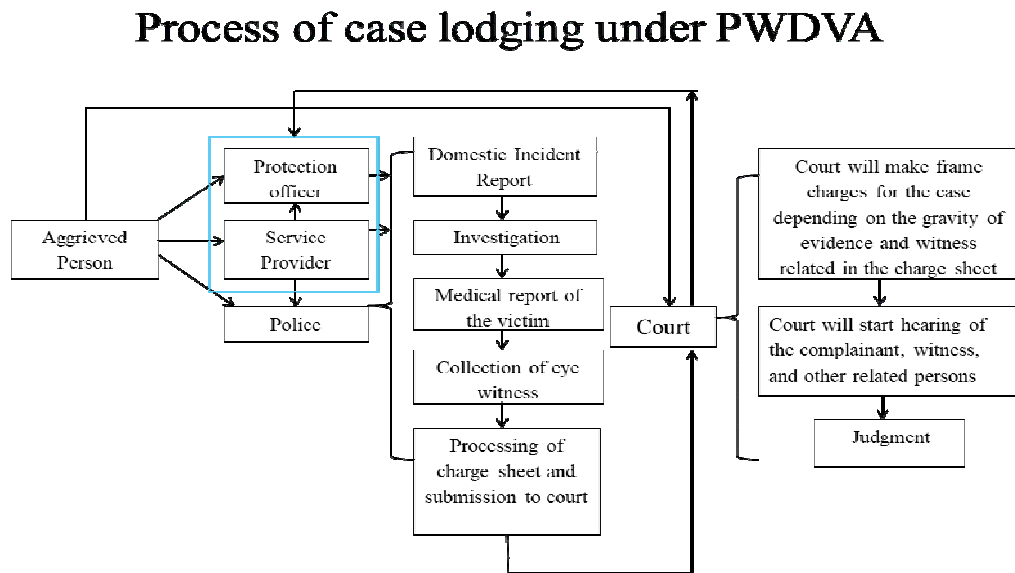
If a husband violates any of the above rights of the aggrieved woman, it will be deemed a punishable offence. Charges under Section 498A can be framed by a magistrate, in addition to the charges under this Act. Further, the offences are cognizable and non-bailable. Punishment for violation of the rights enumerated above could extend to one year's imprisonment and/or a maximum fine of Rs 20,000.

Role of authorities in processing case of domestic violence:

The aggrieved person may make a complaint to the court through NGO, Police Station, and Protection Officer or directly to the court. When a complaint comes before legal authorities, the following steps are to be taken to file a case.

After getting the charge sheet from the legal authorities (i.e. Protection Officers, Service Providers and the police) court will set in motion the procedure of judicial adjudication (to be settled in 60 days) as follows:

Figure 2: Process of case lodging of domestic violence



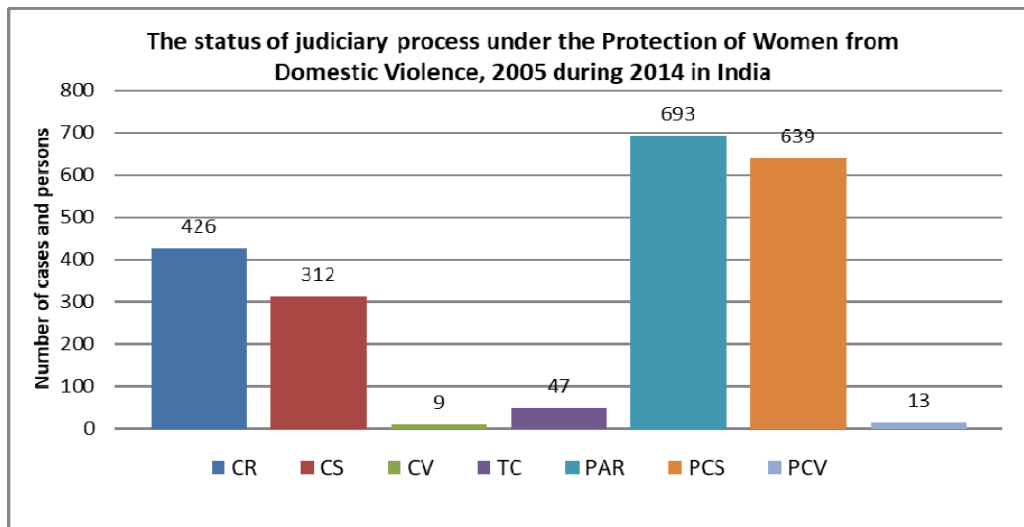
Source: Cited from Sarkar, K. (2015).

Loopholes in the Implementation of PWDV Act (2005):

Implementation process is very slow:

The Government introduced The Protection of Women from Domestic Violence Act (PWDVA) in the year of 2005, but the implementation process is very slow. If we see the following figure, a total of 426 cases were registered under the Protection of Women from Domestic Violence Act, 2005 during 2014. The conviction rate is 19.1 per cent (9 cases convicted out of 47 cases in which trial is completed) under the PWDV Act. Besides, only 13 persons were convicted under the PWDVA. Hence, we can say that the judiciary process creates a delay in according justice and cases are not being addressed properly.

Figure 3:



Cases registered (CR), Cases charge-sheeted (CS), Cases convicted (CV), Cases in which trial completed (TC), Persons arrested (PAR), Persons charge-sheeted (PCS) and Persons convicted (PCV)

Source: National Crime Records Bureau, 2014.

Un-clarified responsibility and Disparities in Implementation:

The protection officers must prepare the domestic incident reports (DIR) in the prescribed form and make an application to a Magistrate. Also, service providers have the power to record the DIRs if the aggrieved person desires so. Therefore, the duty of each role still seems undefined.

There are major disparities in the implementation of the law in various states. For example, while Maharashtra appointed 3,730 protection officers, Assam had only 22 on its rolls, and West Bengal had 20 protection officers.

Table 1: State-wise Number of Protection Officers Appointed and recorded cases under Protection of Women against Domestic Violence Act, 2005 in India

States/UTs	No. of Protection Officers Appointed
Andaman and Nicobar Islands	6
Andhra Pradesh	104
Arunachal Pradesh	15
Assam	22
Bihar	32
Chandigarh	3
Chhattisgarh	181
Dadra and Nagar Haveli	1
Daman and Diu	2
Delhi	17
Goa	13
Gujarat	45
Haryana	17
Himachal Pradesh	358
Jammu and Kashmir	Nil
Jharkhand	136
Karnataka	214
Kerala	31
Lakshadweep	9
Madhya Pradesh	368
Maharashtra	3730
Manipur	8
Meghalaya	7
Mizoram	9
Nagaland	30
Odisha	30
Puducherry	7
Punjab	154
Rajasthan	574
Sikkim	4
Tamil Nadu	33
Tripura	60
Uttar Pradesh	71
Uttarakhand	13
West Bengal	20
India	6306

Source: Lok Sabha Unstarred Question No. 4733, dated on 04.05.2012.

Problem of Budget allocations:

The overall budget allocations shown in Table 2 are unevenly distributed across the states for the implementation of PWDVA in 2008-09, 2009-10, and 2010-11 and it also shows the corresponding expenditure in the same years. Over the 28 states, states such as Andhra Pradesh, Arunachal Pradesh, Orissa, Assam, Delhi, Haryana, Karnataka, Kerala, Madhya Pradesh, Meghalaya, Punjab, Sikkim, Tamil Nadu, Uttarakhand, Gujarat and West Bengal have provided separate allocations for the Act. Apart from this, Orissa lagged in allocation of budget for implementation of the PWDVA since 2008. On the other hand, rest of the states still do not have a separate budget for implementation of the PWDVA. These include Bihar, Chhattisgarh, Goa, Himachal Pradesh, Jharkhand, Maharashtra, Mizoram, Nagaland, Rajasthan and Uttar Pradesh.

Table: 2 Budget Allocations by States for Implementation of the PWDV Act

State	Budget Allocation (in lakhs)			Expenditure (in lakhs)			Expenditure (in percentage)		
	2008-09	2009-10	2010-11	2008-09	2009-10	2010-11	2008-09	2009-10	2010-11
Andhra Pradesh	100	100	111.28	99.61	100	111.28	100	100	100
Arunachal Pradesh	0.1	84	76.5	Nil	84	nil	Nil	100	nil
Bihar	Nil	Nil	nil	Nil	nil	nil	Nil	nil	nil
Chhattisgarh	Nil	Nil	nil	Nil	nil	nil	Nil	nil	nil
Daman And Diu	Nil	Nil	nil	Nil	nil	nil	Nil	nil	nil
Gujarat	60	25	15	1.67	12.99	3.95	2.7	51.5	26.3
Haryana	25	80	80	23.7	74.9	67.25	94.8	93.62	84.06
Jharkhand	Nil	Nil	nil	Nil	nil	nil	Nil	nil	nil
Karnataka	150	205.48	361.6	146.61	180.7	348.18	97.3	87.94	96.46
Madhya Pradesh	Nil	Nil	nil	Nil	nil	nil	Nil	nil	nil
Maharashtra	Nil	Nil	nil	Nil	nil	nil	Nil	nil	nil
Mizoram	Nil	Nil	nil	Nil	nil	nil	Nil	nil	nil
Manipur	Nil	0.45	8	Nil	0.45	nil	Nil	100	nil
Meghalaya	3.2	3.5	2.3	3.2	3.5	nil	100	100	nil
Sikkim	10	8	2	0.51	6	nil	5.1	75	nil
West Bengal	26.31	32.15	nil	26.31	26.2	nil	100	81	nil
Odisha	Nil	Nil	25	Nil	nil	25	Nil	nil	100
Pondicherry	Nil	Nil	nil	Nil	nil	nil	Nil	nil	nil
Punjab	Nil	Nil	50	Nil	nil	25	Nil	nil	50
Delhi	5	221	33	4.04	6	nil	80	27.3	nil
Rajasthan	Nil	Nil	nil	Nil	nil	nil	Nil	nil	nil
Kerala	100	115	250	99.97	114	nil	100	99	nil
Tamil Nadu	97.54	84.9	78.12	97.54	25.96	nil	100	30.5	nil
Uttarakhand	50	50	50	Nil	nil	nil	Nil	nil	nil

Source: LCWRI, (2013)

Shaking Responsibilities:

The Act has, by and large, affected those who have access to quality legal aid. Though the Act provides for state legal aid, the quality of services in such cases is really poor. The state has passed on all responsibility to the service providers. They have to provide medical aid to abused women, arrange for short-stay homes and arrange for compensation. It becomes a burden on these providers who do not have the proper finances.

On the other hand, most lawyers are not aware of the concept of service providers (SP) and therefore do not coordinate with them in providing adequate legal services, according to the Lawyers Collective report (LCWRI, 2013). Furthermore, the judiciary is hardly aware of the role of the SPs, for either filing in the Domestic Incident Report (DIR), or counselling.

Vulnerabilities of the victim:

According to the Lawyers Collective Report (LCWRI, 2013), none of the Courts has been able to achieve the PWDVA provision of a timeline of 60 days for passing of orders and this creates a delay in delivering justice. Therefore, the victim finds herself in a helpless condition. This condition leads to an increase in emotional, economical as well as mental harassment from family and society which weakens the victim's case and increase the vulnerabilities of the victim towards getting justice under the Act.

Conclusion

Though the Government of India has passed many legislations to protect women, yet they are oppressed from time to time and it has become a complex problem. As such, the efforts of educators, social workers, health workers and members of women groups, government authorities, NGOs, police, people from different professional backgrounds and the community in general, are required to combat the domestic violence to a greater extent. Further, there is an urgent need to strengthen the PWDV Act and also need to provide family counselling services and set up separate shelter homes for women and children in all districts. Sufficient budget allocation is necessary for effective implementation of the Act. All officials and stakeholders working under PWDVA 2005 should be given an adequate budget on time.

The budget has to be allocated for wider legal awareness among the public about the PWDVA, training for capacity building and creation of proper infrastructure. There is an urgent need to strengthen the PWDV Act for the victims to get meaning justice on time.

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