

Reviewing the Implementation of Domestic Violence Act

Report based on interviews of women who had suffered from domestic violence

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Introduction

While violence against women and girls is a problem across the globe, women in developing nations such as India face particular challenges. A large study of India found that 43.5 percent of women reported that they were psychologically abused by their partners, and 40.3 percent reported that they were physically abused. (ICRW, 2003) Under this circumstance, the *Protection of Women from Domestic Violence Act* as known as Domestic Violence Act or DV Act has been brought into force all over India in October 2006, which defines women who have suffered from violence in domestic relationship as aggrieved persons. Also, it clearly aims to protect them. In the third year of DV Act implementation, the practitioners and professionals have started either to criticize/comments on its practice or to assail on its misusing/misuse. Due to the time constraints, the whole picture of DV Act in India would not be addressed in this report; instead, it illustrate personal experiences of the research participants who had suffered from domestic violence and are striving for their right to family life.

This research had been conducted in Delhi and Kerala. The participants were approached either by Human Rights Law Network (HRLN) or local grassroots NGOs. For ethical issues, the written informed consent has not been applied to this research due to the identities disclosure of participants but verbal informed consent instead. In addition, on the basis of confidentiality and anonymity, each pseudonym has been given at the beginning of the interview and through processes of data analysis and presentation.

This report will in the first place briefly describe the basic information of all participants. Secondly, through their experiences in the legal system regarding DV Act, the failure of implementation of the DV Act would be highlighted. Finally, it comes to discussions on the flaws in the existing legal system further.

I. Background information

11 participants join in this research including eight aggrieved women (see Table 1) and service providers such as two NGO workers (SA, SB) and one Protection Officer (PO).

Six participants out of aggrieved women have suffered domestic violence from their husband, one had been abused emotionally and physically by her mother-in-law, and one was aggrieved by her own son. As for their age, it ranges from 35 to 41 years old except the 61-old-mother who has suffered violence from her son.

As the Table 1 illustrates, after violent incidents happened, participants go for different types of accommodation including shelter houses, birth family, company dormitory, daughter's house, or even stay within parents-in-law's house. For legal actions, six has filed or preparing to file DV cases against abusers, while two of them would rather not to take legal action.

Table 1: Basic Information of the Participations who had suffered domestic violence

	Age	Accommodation	Respondent	Legal Actions
DH1	39	Family-of-origin	Husband; mother-in-law	1) Filed the divorce petition which has been done in 2003. 2) Filed the 498A case against mother-in-law since 2000; however, it is in pending status. 3) Filed DV case in 2007 and got maintenance order, however husband has appealed.
DH2	39	Live separately with children	Husband	1) Filed DV case and got maintenance order for herself and two children, however has not receive any payment. It is in pending status. 2) Considering file the divorce petition.
DH3	41	Company dormitory	Husband	Considering file DV case for residence order.
KC1	34	Shelter house	Husband	Take no legal action.
KC2	36	Shelter house	Husband	Take no legal action.
KP1	35	In the same building with parents-in-law but separately	Husband	1) Her husband is filing the divorce petition to her in 2008. 2) She filed the DV case and got the residence order in 2008 November.
KP2	61	Daughter's house	Son	Filing the DV case for protection order against her son.
KP3	41	Parents-in-law's house	Mother-in-law	Preparing to file the case against mother-in-law for protection order.

II. Failure of implementation of the DV Act through the eyes of women

i. Women tend not take domestic violence as problematic phenomenon

There are reasons lie behind violence perpetrators, some are concrete, such as alcohol or drug, while others are more abstract, the economical stress or bad emotional quotient for instance. No matter the aggrieved person sympathizes with the perpetrators, or feels the violence bearable, it is unreasonable and illegal to take violence action against domestic members. However, women tend to rationalization the behaviors of husbands or persuade themselves take those harmful treatments.

1. Only after drink

Alcohol is wildly discussed in the DV issue. Results of several studies have shown that alcohol consumption played a significant precipitating role in incidents of violence, both actual act and threatened. (ICRW, 2000; Koenig et al, 2006) More than half of participants mentioned that their husband has alcoholic problem, in some cases drug-user also. Some participants blame only on the alcohol. One lady expressed that her husband is actually nice only he became unimaginable rude after drink, however he drinks everyday.

He drinks everyday. ...He is really a good man and very loves the kids, but once he drink,

he changes. When he drinks he behaves very badly. At present, all I want to do is to wait and see what's happening and if he would change. (KC2)

2. I could bear it

When talking about violence, one woman's statement of "I could live with it" is strong enough to make us worry. We could hardly image how many of invisible women are at the present of time bearing such suffering and trying to stay with it.

He used to hit me lot whet he got drunk, I thought okay and just take it. I thought I could live with it. ...I didn't do anything. Let him drink, no problem. (KC2)

Drinking problem usually happens along with short of money as reciprocal causations. In these cases, violence happens in the form of economic abuse. Similar, it affects not only wife but all family members. In KC2's case, her husband even had their daughter to drop out from school for earning money, and used the salary to purchase alcohol.

He hurt the kids. So I started to think I might leave, not for me, for our children. ...I could live with him. ...But, I need to think for my daughter. After her 7th degree she need to go out for earning money, and my husband keep drinking and bit us. (KC2)

Only when something bad happen to children, mothers beginning to face the problem.

3. It should not be problem between us

It is a myth that well-educated person would not be violent, either the family without economic stress would not have domestic violence problem. Truly, socioeconomic statue is a meaning factor of domestic violence; husbands facing economic pressure are more likely to have beaten their wives. Higher socioeconomic status was found to be protective against physical, yet not other kinds of violence. Research shows that women married to more educated husbands experienced higher risks of coercive sexual intercourse. (Koenig et al, 2006)

Practically, women among households at higher socioeconomic levels have difficulty accept themselves as violence victim. During interview, one participant kept emphasizing herself as well as her husband is well educated thus she could find no reason why he constantly biting her instead of expressing his thoughts genteelly.

I don't know, he never tell me what's the reason makes him mad on me. We have been married for more than 13 years, and he keeps beating me badly during these years. ...It's not about money, we don't have money problem. I am in a good company and his job is even better than mine. In fact, my husband he is not my type, but it's ok. I don't want to divorce. Since we are married and both of us are well educated, the problem should be solvable via counseling. I always believe that we don't need to go to court. (DH3)

The other participant thought the violence shall not have happened if her husband has not shifted from a nice job to the less-paid one.

He is a collage graduated and used to work for a famous company. After that, he went to a bad company, since then he depends on alcoholic and become very bad. (KC2)

ii. Concerns hold women back from taking legal action

According to the interview data, three major factors lie in that women take no further legal action after domestic violence occurs, social stigma, domestic affairs as private corners, and gender inequality included. Before checking the fault under the legal aspects, the tendency that women prefer “not to take legal action” should be regarded as one phenomena as failure implementation of the DV Act.

1. Social stigma

Women with the fear of the social stress and stigma may prefer not entering legal proceeding. Also, they have no confidence on the legal action in leading them to fair and just treatment.

I didn't go to the lawyer because what will happen in our society is they only try to blame on the women, so whatever the wrong my husband done will never come to the open. And if I file the case in the court, he will try to talk about me in very bad way. (KC2)

2. Domestic affairs as private corners

Other concern might come from long-term influence of socialization. Most of Indian women share the same belief as mainstream that everything happens inside the house should be solved privately rather publicly, and better be covered only between family members.

I didn't discuss this with any friend. Only my family members know my suffering. Both of my husband and me is highly educated person, so I always want to solve the problem by consultation, yet he didn't attend any consultation. (DH3)

Indian women are accustomed not to speak public, especially those things happened between the husband and wife should not be spread out for the honor of the family. The appellants have internalized such kind of social value as theirs. Just like one service provider says,

We make DIR for every woman and keep it in center. As soon as women want to take legal action, her DIR is ready. Sometimes the problem is that women not cooperate; after all they don't want to against her husband. (SB)

3. Gender inequality

The gender inequality of Indian society might be reproduced in the court and makes the proceeding uncomfortable for women. Pressure comes also from the lawyers of respondent and judges, who are male or not in the sense of gender issues most of time.

(For the divorce case) I felt uncomfortable and scared because the judge and the lawyers always ask me very personal and embarrassing questions in public. My husband known that and used this as a strategy to threaten me to make deal with him out of the court proceeding. (KP1)

iii. Women's ideas of DV Act: vague, complex, and uncertainty

Lots of women knew nothing about the DV Act before consulting service providers. Some decided to file the DV case because the husbands filed divorce petition beforehand, wherefore women take DV Act as tool to protect them from been kicking out from their family. No matter what, nearly every woman with experience in court found it such a long process to get the executive order.

1. No ideas

To have any law or policy implemented well, the precondition is to enhance public awareness of it. So many women know nothing about the DV Act, neither what kind of rights they can claim under the Act. In this way, better training programs were urgently needed.

The SB has provided laws/rights issues and counseling. ...I have no ideas about the DV Act until I came to the SB. (KP1)

Probation officer referred us to the SB for family counseling. Then we realized that SB also provides DV Act legal aid. Now I have filed the case on the behalf of DV Act. (KP2)

I visit the SB for counseling assistance. ...There I have been informed the DV Act; therefore, I would file the case against my mother-in-law. (KP3)

I have no ideas of DV Act beforehand. I have been referred to HRLN through a Delhi based shelter organization. I don't know quite a lot in terms of the court defense, so I depend on the lawyer very much. (DH2)

2. Alternative way from divorce

Some women look for legal aid due to the husband has filed the divorce case to them. They get the idea about DV Act and opinions available just after legal counseling.

At first, I got the court notice due to that my husband filed a divorce case. ...My brother lives near here; he saw the board "family counseling" and then he told me this information. So I came to the SB. (KP1)

One participant stated that she filed the DV case not to against her husband, on the contrary, as the alternative way from divorce, she want to get the order to maintain her marriage.

I never think about filing case against my husband. ...It's he filed the divorce case to me, so NFIW (National Federal of Indian Women) introduce me to came here for legal assistance. ...When I come here, lawyer tells me that in my situation I can file the case under DV Act. ... I don't want to divorce, I want to keep my family, and stay in the house. (DH3)

Another participant found her husband who had filed the divorce petition has already got a double marriage in UAE. She decided to file the DV Act for the residence order, thus she could ensure herself accommodation even been divorced in the future.

On the behalf of my statement, the SB has filed the DV Act for me in terms of residence order. ...My father-in-law hit me but I want to stay in this house. ...Due to the residence order, I have right to stay here. (KP1)

3. Long way to go

“It’s such a long procedure.” This kind of statement could be heard in almost every woman going through the legal proceeding. Some of women involve in more than one case, thus make the situation more complex and hard to comprehend for them.

I went for family courts 5-6 times due to the divorce case. For me, it’s a very long procedure. ...Before going to the family court, I have to meet with my advocate 6-7 times. ...It’s a long procedure. (KP1)

I filed the dowry case against my mother-in-law since 2000. Since then, it has been preceded for more than 8 years. Meanwhile, 5 judges have rotated. ...I got every evidence here with me in Delhi, however, the latest judge just refuse to accept and hear my case, she transfer my case back to Karnataka, where my mother-in-law lives, without even tried to hear my prove first. (DH1)

Some women did get some temporarily positive outcome from court, however, husbands could always refuse to pay and appeal the case. Once husband appeal, it seems like starting another round cycle.

(In the DV Act case) ...the judge gave the order 15,000 per month, but my husband refused to pay the money thus the case went appeal. ...I think Judges should have more powers and have more contacts among judges, thus I don’t need to explain the entire thing again and again. (DH1)

iv. Hardly trust the system

The DV Act regulates the specific duties of each role, such as Protection Officers, service providers, police officers, and Magistrate (see Diagram 1). Most of appellants are unfamiliar with such theoretical details. They did not feel it like a systematic procedure, on the contrary, some feel it ineffective due to the absent of follow-up implementation. Also, women could not feel comfortable and safe within the counseling system.

1. No further follow-up action

Lack of further follow-up action after the temporarily outcome of counseling or orders makes the effort in vain. In many situations, the circumstances just replay again and again. Such impression decrease women’s confidence on the Act as well as the system.

I didn’t try counseling. ...In case my husband know we are here, he’ll come and apologies, and tell us that he will never do that again. However, as long as we return the house, he will start drinking and beat me just as usual. It’s a vicious circle. (KC2)

Men initially agreed to change their behavior, but still the same after returning home. (SB)

One case shared from the advocator in Himachal Pradesh says that the order has been

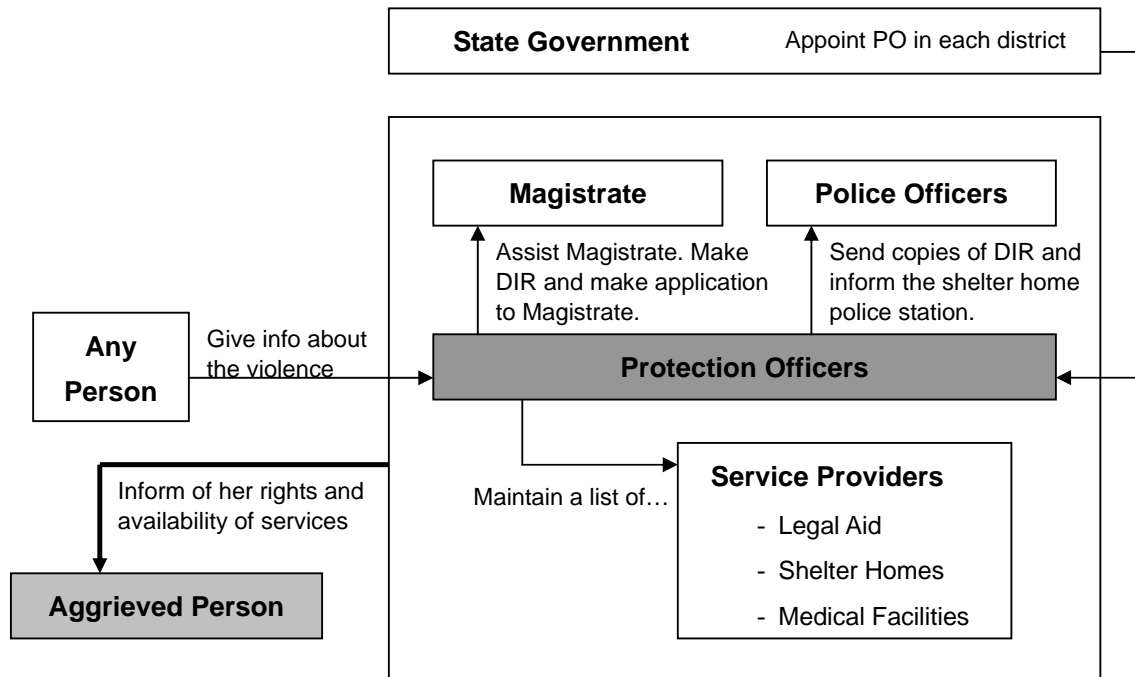
passed and after that the husband set fire to his wife and himself. For domestic violence cases, family counseling should be considered even the case has entered the legal level. And it is very important to set up regulation of follow-up, both for counseling and order delivered.

2. Confidential and safe issue

Also, how to make sure the women during counseling or legal proceeding feel safe from violence is an issue. The connection between NGOs and police system need to be built up sturdy, thus the women come for shelter could get rid of fear.

SA asked me if I want counseling, but I refused. My husband is a trouble maker, he bring weapon with him and hurt people all the time. If he know I'm here, he might come with weapon and cause harm to this place and others who staying here. (KC1)

Diagram 1: Summary of the service procedure of the Domestic Violence Act



III. Flaws in the existent system

i. Un-clarified responsibility and un-sufficient official resource

According to the Domestic Violence Act, Protection Officer has the duty to make domestic incident reports (DIR) in prescribed form and make application to Magistrate. Also, service providers have the power to record the DIR if the aggrieved person desires so. In practice, after two years of implementation, duty of each role still seems ambiguous. One service provider mentioned that “Magistrates don’t accept the DIR format from social workers” (SA). Regarding this, the Protection Officer explain his point of view during the interview,

...service provider could also file the DIR. However, Magistrates want DIR in legal language and specific form. Even the Act mentioned that service providers can do the job, but most of Magistrates would prefer the DIR made by advocates. (PO)

It is also important to recognize the un-sufficient grant from government on domestic violence issue. There were two national level consultations hold in last November, both of which came up some discussion on the shortage of budget. In the Consultation on Strengthening Women's Voices in Budgets and Policies (12th-13th, Nov. 2008), G. Sucharita from Centre for World Solidarity take the budgetary framework for Andhra Pradesh as example to elaborated the present number of Protection Officer is far short than sufficient. Sucharita also pointed out that most of Protection Officers may not possess gender sensitiveness.

In the Consultation on Domestic Violence Act and Reproductive Rights (29th-30th Nov. 2008), advocators around India expressed their worry about the un-specialized of Protection Officers. In many states, government appointed existing Probation Officer to bear the duty as Protection Officer in addition. These officers from various departments in terms of ICDS or social welfare may not in the sense of gender issues either any single DV Act sentences.

For the Protection Officer who holds a concurrent post as Probation Office, it's difficult for him/her to paid appropriate attention on the Protection Officer role. "Protection Officer never has time," sighed one social worker in Kerala.

From the Protection Officer's point of view, the problem lies in the un-appropriate working space. "Look at here, do you feel free to talk here?" the Protection Officer asked us during the interview. There is no individual office for Protection Officer, thus women come to him have no confidential space to tell the detail of her suffering and requirement. Same as NGO workers expressed during consultations, Protection Officers have neither an office/assistance nor a proper set up to function efficiently.

Furthermore, the working hour of Protection Officers is from 10 a.m. to 5 p.m., each woman could only elaborate her situation within 30 to 45 minutes as average. And even there is "Night Court", but no "Night Protection Officer" to assist women in urgent need, nor midnight counseling. That is why during the consultations women groups feel it is necessary to have a 24-hours help-line for domestic violence victims.

ii. Dual system: Family Court and Criminal Court

There are mainly two legal approaches for women who had suffered domestic violence, one is filing for divorce through Family Court, and the other is filing application to Magistrate according to DV Act which might go through Criminal Legal System. While most of clients do not have well awareness of the legal system, how advocates or service providers guide them sometimes make great influences.

The rough ratio between amount of women going for divorce and going for DV Act differs in states. According to the sharing of HRLN Mumbai Unit, most of the cases in Mumbai went to family court and looking for divorce, while most of clients of Delhi Office would rather choose to maintain their marriage, similar as the situation of Kerala.

As the sharing of participants quoted above, the dual system sometimes makes the legal proceeding more complex even tedious for them. Also, the social impression of each approach put some stress on them. For example, it is said that Magistrates in Mumbai would take the appellants who claim the DV Act coming for the purpose of money.

Even some lawyers and judges are unfamiliar with the DV Act. One advocator of HRLN Manipur Unit mentioned that lawyers in Manipur are used to go for Family Court and know not much about how to file the case on DV Act. However, she found the DV Act is useful for women, only if you know how to claim it. She keeps filing the DV Act cases, in this way pushing local Magistrates getting more and more aware of the Act. Women groups find it also necessary to teach the lawyers not just to file the cases to the Family Court, also take Criminal Court in considering.

iii. Misled as a one-way affair

Domestic violence generally seen as a one-way affair, thus the Act was recognized as providing protection only for wives to against their husbands. In fact, domestic violence sometimes happens between consanguinity, like child abuse. Here are two examples of the diversity of DV case:

My son had chased me and my wife out of the house and also demanded money from my wife. As long as my wife refused to give him money, he started to chase us out and abused us verbally. ...Last week, my daughter in-law was in hospital for delivery. My son was not willing to help, thus I went to help my daughter in-law. He was pissed off and burned out all our clothes. (Husband of KP2)

My mother in-law has abused me for long time. ...She wanted to chase me out of the house, so I visit SB for counseling assistance. ...I would file the case against my mother in-law in terms of protection order. My husband is supportive to me. (KP3)

The victim of domestic violence could be male or husbands' side members, too. Also, there are possibilities of daughter-in-law maltreating old in-laws or other vulnerable members. Some opinions address the misuse of the Act and treat the Act as tool for women to against husbands or anti-family; however, it is even important to clarify that domestic violence is not a one-way affair, instead, it could happened to family member at different position. The Act should provide protection to all members to stay safely in the family, not just wives.

Conclusion

Domestic violence is one of the most complex issues in India. Such phenomenon has deep and primordial roots embedded in social-cultural structure of this country; therefore people could hardly deal with the legal aspect separately.

One precondition of improving the implementation of the DV Act is to increase women's awareness of it. Also, effective trainings for each role of departments involved in the implementation of the Act are necessarily. To complete the system, there should be sufficient budget invested with well superintendence.

In social-cultural level, to bring the idea of gender equality to public is one tough mission of the government. The process of socialization is obscure however the effects are obvious. Only in a more gender-equal society, women who have suffered violence could get rid of shame/self-blame and such happenings could be de-stigmatized. Family, school, peer groups, and media are all agencies of socialization, which all together should join the cultural revolution and mental revolution to construct India a more female-friendly society.

Domestic violence concerns so many elements. Low rates of participation in education, lack of economic independence, value biases operating against them, etc, directly and indirectly resulted in the women been given the status of being the secondary gender in India society. Wife abusing is a common phenomenon worldwide irrespective of class, religion and region for centuries. Women in India still have a long way to go in making the ideology of gender-equal into reality. They have to recognize the violence in the structure first, and then stand out for combat.

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