
THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT: SOLUTION OR MERE PAPER TIGER?

Amy Hornbeck, Bethany Johnson, Michelle LaGrotta, & Kellie Sellman[†]

Introduction

After suffering physical violence and emotional abuse at the hands of her husband and his family, an Indian woman sought protection of the law. Her husband and in-laws harassed her for a motorcycle, beat her on several occasions, and after only two months of marriage, the woman's brother-in-law doused her in kerosene and set her on fire. She brought suit seeking protection from her husband's violence. However, the High Court refused to help her. The court concluded that the beatings and harassment were not enough to require protection under the law because they were not done to induce her or her family to fulfill dowry demands or done with the intent to force her to commit suicide.¹

Prior to October 2006, this was the likely outcome for women seeking protection from domestic violence. That may change, however, with the adoption of India's Protection of Women from Domestic Violence Act ("Act").² The Act is designed to provide emergency civil protection for female victims of domestic violence.³ The primary protection the Act provides is a Protection Order prohibiting the alleged abuser from engaging in further domestic violence.⁴ In providing a comprehensive definition of domestic violence and by protecting a woman's right to reside in her household,⁵ the Act is groundbreaking and an important step toward gender equality for Indian women. The concern, however, is whether the Act will be enforceable or whether it is a mere paper tiger.

Despite the Act's potential to assist women experiencing domestic violence, the Act will not be effective in reducing overall levels of violence unless the patriarchal mindset of Indian society is dismantled, Indian women are empowered to recognize that violence is unacceptable, and there is training for, sensitization of, and cooperation among police, protection officers, service providers, and magistrate judges in enforcing the Act. This article begins by introducing the cultural backdrop that has perpetuated Indian society's acceptance of violence

[†] We would like to extend our deepest appreciation to Professor Diane Geraghty, who made this experience possible, and to all of our interviewees, who took time out of their schedules to share their thoughts, experiences, and research with us. Without their help, our research would not have been complete.

¹ See *Waghmare v. State of Maharashtra*, (1991) 1 HLR 438.

² The Protection of Women from Domestic Violence Act, No. 43 of 2005; India Code (2005) [hereinafter Protection of Women Act].

³ LAWYERS COLLECTIVE WOMEN'S RIGHTS INITIATIVE, ONLY HER WORD: A NATIONAL CAMPAIGN FOR LAW ON DOMESTIC VIOLENCE 45 (Gondals Press 2004) [hereinafter LAWYERS COLLECTIVE, ONLY HER WORD].

⁴ Protection of Women Act, ch. 4, § 18.

⁵ *Id.* ch. 2, § 3; *Id.* ch. 4, § 21.

Solution or Mere Paper Tiger?

against women. Next, it outlines the provisions of the Act, its protections, and its limitations, and discusses the Act's enforcement provisions. Finally, it presents suggestions from a general perspective for successful implementation of the Act through both the public and private spheres.

I. The Problem: A Legacy of Patriarchy

In India, a crime is committed against a woman every three minutes.⁶ In a 2005 survey, 37% of married women in India reported experiencing domestic violence at some point during their marriage.⁷ Despite these alarming statistics, experts agree that actual rates of violence against women are likely higher than what is reported in these studies; underreporting may be caused by embarrassment, denial that violence is a problem, or a failure to recognize that the behavior is abusive.⁸ In fact, as many as 70% of the female victims of domestic violence in India believe their physical abuse was justified for one reason or another.⁹ The cultural issues that contribute to these high rates of violence against women threaten the effectiveness of the Act.

India's longstanding and widespread discrimination against women, rooted in the patriarchal social structure,¹⁰ makes it unlikely that any purely legal solution will decrease rates of violence against women because violence against women is socially maintained by Indian cultural norms. First, many people fail to recognize domestic violence as an unacceptable form of control over women. Indian society expects and tolerates a certain level of violence against women while failing to recognize the true cause of domestic violence.¹¹ While Western literature views domestic violence as a means of exerting control over the woman, this view does not prevail in India.¹² Instead, "maladjustment" is often cited as the cause of domestic violence.¹³ Therefore, the preferred method of dealing with domestic violence is joint counseling, which may value the continuation of the

⁶ NATIONAL CRIME RECORDS BUREAU, CRIME IN INDIA 2005 9 (Aug. 4, 2006), available at <http://ncrb.nic.in/crime2005/cii-2005/Crime%20Clock-05.pdf>.

⁷ MINISTRY OF HEALTH & FAMILY WELFARE, GOVERNMENT OF INDIA, 2005–2006 NATIONAL FAMILY HEALTH SURVEY NFHS-3: NATIONAL FACT SHEET INDIA 3 (2006), available at <http://www.nfhsindia.org/pdf/IN.pdf>. (noting, however, large regional discrepancies in reporting, from 6% in Himachal Pradesh to 59% in Bihar).

⁸ See, e.g., INT'L CTR. FOR RES. ON WOMEN, VIOLENCE AGAINST WOMEN MUST STOP: TOWARD ACHIEVING THE THIRD MILLENNIUM DEVELOPMENT GOAL TO PROMOTE GENDER EQUALITY & EMPOWER WOMEN I, (INT'L CTR. FOR RES. ON WOMEN 2005) available at http://www.ictw.org/docs/2005_brief_mdg-violence.pdf.

⁹ Pami Vyas, *Reconceptualizing Domestic Violence in India: Economic Abuse and the Need for Broad Statutory Interpretation to Promote Women's Fundamental Rights*, 13 MICH. J. GENDER & L. 177, 187 (2006).

¹⁰ Interview with Dr. Jyotsna Chaterji, Director, Joint Women's Programme, in New Delhi, India (March 6, 2007); NATIONAL SEMINAR, STOP VIOLENCE FROM WOMB TO TOMB: BATTERED & SHATTERED, Domestic Violence & Rape: A Bitter Reality 4 (Nat'l Seminar 2006).

¹¹ Purna Manchandia, *Practical Steps toward Eliminating Dowry and Bride-Burning in India*, 13 TUL. J. INT'L & COMP. L. 305, 319 (2005).

¹² Judith G. Greenberg, *Criminalizing Dowry Deaths: The Indian Experience*, 11 AM. U. J. GENDER SOC. POL'Y & L. 801, 809–10 (2003).

¹³ *Id.* at 810; Interview with Dr. Jyotsna Chaterji, *supra* note 10.

R

Solution or Mere Paper Tiger?

marriage above the safety of the woman.¹⁴ This perception is reflected in the Act itself, which provides the husband and wife time to work out their differences.¹⁵ The failure of the courts and some advocacy groups to recognize domestic violence as a form of domination and control by men is a serious impediment to providing true protection for women from domestic violence.

Second, prejudice against women is widespread in India. The conception of a woman as her husband's property pervades Indian society.¹⁶ Although the Indian Constitution guarantees equal rights for all citizens, gender equality is neither recognized nor accepted in Indian society.¹⁷ There is also a general prejudice against women, which is reinforced and maintained through the system of dowry and Indian personal laws.¹⁸ The dowry system is both evidence of gender inequality and a tool for perpetuating the system of discrimination.¹⁹

Discrimination against women begins even before a female child is born and continues throughout her life, due in large part to the Indian system of dowry. This prejudice is first evidenced by the widespread practice of sex-selective abortion among upper and middle-class families, which occurs despite India's explicit prohibition against it.²⁰ Discrimination against female infants and children is further exemplified by the substandard education, poor medical care, and inadequate nutrition female children endure in comparison to male children.²¹ Furthermore, an unmarried adult daughter is considered a social taboo, as well as a financial drain on her parents.²² Therefore, there is strong pressure to marry, with a husband often being selected for the daughter by her parents or other relatives.²³ Once a potential husband is found, the woman's parents must pay a dowry to the husband's family.²⁴ The amount of dowry is based on the husband's economic means and social status.²⁵ In many cases, a woman's family may pay many times their annual income to ensure that their daughter is married to a suitable husband.²⁶ Once married, a woman is considered part of her husband's family, rather than part of her natal family.²⁷ Because she becomes a

¹⁴ Greenberg, *supra* note 12, at 811.

¹⁵ Interview with Brottil Dutta & Kamolika Dutta, Esquires, Lawyers Collective Women's Rights Initiative, in New Delhi, India (March 5, 2007); Interview with Dr. Jyotsna Chaterji, *supra* note 10.

¹⁶ Laurel Remers Pardee, *The Dilemma of Dowry Deaths: Domestic Disgrace or International Human Rights Catastrophe?*, 13 ARIZ. J. INT'L & COMP. L. 491, 502 (1996).

¹⁷ Vyas, *supra* note 9, at 182.

¹⁸ *Id.*

¹⁹ Pardee, *supra* note 16, at 502.

²⁰ Namratha S. Ravikant, *Dowry Deaths: Proposing a Standard for Implementation of Domestic Legislation in Accordance with Human Rights Obligations*, 6 MICH. J. GENDER & L. 449, 457 (2000).

²¹ *Id.* at 457–58.

²² *Id.* at 458.

²³ Sunil Bhawe, *Deterring Dowry Deaths in India: Applying Tort Law to Reverse the Economic Incentives that Fuel the Dowry Market*, 40 SUFFOLK U. L. REV. 291, 298–99 (2007).

²⁴ Manchandia, *supra* note 11, at 312.

²⁵ *Id.*

²⁶ Ravikant, *supra* note 20, at 458.

²⁷ Manchandia, *supra* note 11, at 314–15.

R

R

R

R

R

R

R

Solution or Mere Paper Tiger?

member of her husband's family, a woman is not able to support her parents in old age, which further contributes to the strong preference for male children.²⁸ While some evidence indicates that these norms are fading in younger generations,²⁹ the dowry system and the discrimination it creates against girls and women are deeply rooted in Indian culture.

The evolution and enforcement of Indian personal laws also reflects a prejudice against women in Indian culture. Although India's Constitution directs the state to create a uniform civil code applicable to all citizens, a single, secular civil code does not exist.³⁰ Instead, laws relating to marriage, divorce, child custody, property inheritance, and other personal and family issues are determined by the individual religious community to which the particular citizen belongs.³¹ These laws, which vary between Hindus, Muslims, Christians, and Sikhs, are known as personal laws.³² The evolution and enforcement of Indian personal laws also reflect a prejudice against women in Indian culture. While the existence of personal laws is justified by advocates as protective of pluralism and the religious rights of minority groups, they have been criticized as a mere means of reinforcing patriarchy and preventing gender equality.³³

Property inheritance laws are demonstrative of the effect personal laws have on the status of women in India. Approximately 80% of Indian citizens are Hindu and are therefore subject to Hindu laws regarding property inheritance.³⁴ Hindu personal law originally provided that a married woman could not inherit any interest in her father's property.³⁵ In 1947, motivated by a desire to improve the status of women, the Hindu Law Committee proposed a revision to the Hindu personal laws that recommended, among other changes, the granting of equal property inheritance rights to sons and daughters.³⁶ This change was fiercely opposed by Hindu religious leaders who saw women's property rights as a Muslim practice that had no place in Hindu family law.³⁷ Despite widespread opposition, this change was eventually enacted, and daughters now have equal legal rights to inherit their fathers' property.³⁸ Nonetheless, the change in the law has not resulted in a change in practice for most families; sons continue to inherit their fathers' property to the exclusion of daughters.³⁹ This is likely due to both a

²⁸ *Id.* at 314.

²⁹ Interview with Purnima, Nirantar: A Centre for Women and Education, in Delhi, India (Mar. 6, 2007); Interview with Reenu Ram and Anubha Rastogi, Human Rights Law Network, in Delhi, India (Mar. 5, 2007).

³⁰ Pratibha Jain, *Balancing Minority Rights and Gender Justice: The Impact of Protecting Multiculturalism on Women's Rights in India*, 23 BERKELEY J. INT'L L. 201, 211 (2005).

³¹ *Id.* at 212.

³² Asha Bajpai, *Custody and Guardianship of Children in India*, 39 FAM. L.Q. 441, 441 (2005).

³³ Jain, *supra* note 30, at 212.

³⁴ Bajpai, *supra* note 32, at 441.

³⁵ See Jain, *supra* note 30, at 212.

³⁶ *Id.* at 214.

³⁷ *Id.*

³⁸ Interview with Dr. Jyotsna Chaterji, *supra* note 10.

³⁹ *Id.*

R
R
R

R

Solution or Mere Paper Tiger?

lack of information regarding the change in the law and a strong preference for the traditional male-dominated form of property ownership in India.⁴⁰

Finally, the social stigma attached to divorce and living outside the marital home prevents women from leaving abusive relationships. In Indian culture, “the breakdown of a marriage . . . with its attendant discrimination means a virtual civil death for a woman.”⁴¹ The failure of a marriage is nearly always viewed as the woman’s fault and a reflection of her character, morals, or child-bearing ability.⁴² Returning to her parent’s home would bring great shame on her natal family; therefore, most women considering divorce would have no option other than to live alone.⁴³ Even if a woman is prepared to deal with the shame and social isolation associated with living outside the marital home, most women lack the economic resources to support themselves.⁴⁴ Therefore, a woman living in an abusive relationship has limited options when she is considering leaving the relationship.

II. Legal Background

Despite these cultural issues, some women experiencing domestic violence choose to seek legal protection. Prior to 2006, however, the options for these women were limited to divorce under Indian civil law or criminal sanctions under the Indian Penal Code.⁴⁵ A woman’s options were further limited because criminal sanctions are only available if the abuse involves extreme cruelty or dowry-related acts of violence.⁴⁶

A. Criminal Domestic Violence Laws under the Indian Penal Code

The Indian Penal Code provides two avenues for criminal sanctions against perpetrators of domestic violence, as illustrated in the chart below. Section 498-A of the Indian Penal Code (“Anti-Cruelty Act”) provides that “whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty, shall be punished with imprisonment . . . and shall also be liable to fine.”⁴⁷ However, this section only results in punishment where the violence or harassment is likely to drive the woman to commit suicide or to cause grave danger to her life, limb, or health.⁴⁸ Section 304B (“Dowry Death Act”) criminalizes violence against a woman when it can be shown that the death of a

⁴⁰ *Id.*

⁴¹ LAWYERS COLLECTIVE, ONLY HER WORD, *supra* note 3, at 5.

R

⁴² Interview with Dr. Jyotsna Chaterji, *supra* note 10.

R

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ LAWYERS COLLECTIVE, ONLY HER WORD, *supra* note 3, at 5.

R

⁴⁶ *Id.*

⁴⁷ INDIA PEN. CODE (1986), §498A.

⁴⁸ INDIA PEN. CODE (1986), §498A; Kirti Singh, *Violence Against Women and the Indian Law*, in *VIOLENCE, LAW & WOMEN’S RIGHTS* 77, 82 (Savitri Gooneskere, ed., 2004).

Solution or Mere Paper Tiger?

woman was caused in conjunction with dowry demands.⁴⁹ The Dowry Death Act creates a presumption of murder “where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for . . . any demand for dowry.” The point at which a remedy can be sought varies between the acts; the Anti-Cruelty Act can be invoked while a woman is still alive, while the Dowry Death Act provides punishment after the woman is dead.⁵⁰

To further complicate a woman’s options in seeking help, fabrication of some claims under the Anti-Cruelty Act led police and the courts to heavily scrutinize those claims.⁵¹ However, many commentators suggest that some of these fabrications are the result of women being forced to overstate the violence they are experiencing and thereby “misuse” the Anti-Cruelty Act because they have no other options for recourse.⁵² These allegations make it more difficult for women to succeed in criminal actions against abusive husbands, leaving the importance of domestic violence claims seriously undermined.

Because the law did not provide an adequate remedy, women were forced to either live with the violence or endure the wrath of a community that does not accept divorce. Therefore, the greatest impediment to a woman seeking recourse against a violent husband was her own fear that exposing her husband’s violent behavior would force her into homelessness and shame.⁵³ Additionally, in many cases, the woman needed time to evaluate her present situation to determine whether she wanted to reconcile with her husband or whether she was prepared to deal with the social stigma associated with being a divorced woman.⁵⁴ Protecting a woman’s right to reside in her home, even after reporting domestic violence, and giving women time to evaluate their options were precisely the goals behind advocating for the Act.

B. The Protection of Women from Domestic Violence Act

The fight for new domestic violence legislation began in 1993 when the Lawyers Collective was approached by the National Commission of Women to draft

⁴⁹ INDIA PEN. CODE (1986), §304B (criminalizes dowry violence resulting in the death of a woman and creates a presumption of dowry death where a woman dies under other than normal circumstances within seven years of marriage and it is shown that before her death the husband or his family subjected her to cruelty or harassment in connection with dowry demands).

⁵⁰ LAWYERS COLLECTIVE, ONLY HER WORD, *supra* note 3, at 11.

⁵¹ *Id.* at 6.

⁵² LAWYERS COLLECTIVE, ONLY HER WORD, *supra* note 3, at 13.

⁵³ Greenberg, *supra* note 12, at 837–839; see Jayoti Gupta, *Property Ownership of Women as Protection for Domestic Violence: The West Bengal Experience*, in PROPERTY OWNERSHIP & INHERITANCE RIGHTS OF WOMEN FOR SOCIAL PROTECTION—THE SOUTH ASIA EXPERIENCE: SYNTHESIS OF THREE STUDIES 37, 47 (Int’l Ctr. of Research for Women, ed., 2006), available at http://www.icrw.org/docs/2006_propertyrights-southasia.pdf.

⁵⁴ See Greenberg, *supra* note 12, at 838 (suggesting that divorce is not a practical remedy because it brings a sense of shame to the woman).

Solution or Mere Paper Tiger?

a law to close the legal loophole created by the lack of general domestic violence legislation.⁵⁵ Members of the women's rights movement and government officials gathered at several colloquia to discuss what legislation was needed in order to adequately protect victims of domestic violence.⁵⁶ The passage of the Act was the result of a unified effort by the Lawyers Collective, who drafted the statute, and various other women's rights groups, both in India and internationally.⁵⁷ The legislation was a response to the appeal for a law to "deal with the cases of women who want to stop violence, who need time to review their relationships and look at their life options, [and] who wish to negotiate their problems with their husbands with dignity in an atmosphere free from violence, physical or mental."⁵⁸ As a result of this effort, the Indian legislature passed the Act in 2005, which became effective on October 1, 2006.⁵⁹

The Act is a civil law that "runs parallel to the criminal law provisions contained in [the Anti-Cruelty Act]."⁶⁰ Therefore, a woman can file a criminal complaint under the Anti-Cruelty Act in addition to seeking emergency relief under the Act, depending on her objectives.⁶¹ In providing a civil remedy, the Act is not designed to punish the abuser, and no arrests can be made based on a complaint filed under the Act.⁶² Arrests under the Act can be made only if the abuser violates a Protection Order issued by the court.⁶³ The groups drafting the Act determined that the remedy should be civil rather than criminal to ensure that women who are not ready to leave their spouses are still able to seek protection from domestic violence.⁶⁴

1. Definitions under the Domestic Violence Act

The Act provides an expansive definition of domestic violence. Domestic violence includes multiple forms of violence against women, including physical, sexual, verbal, emotional, and economic abuse.⁶⁵ Not only does the Act proscribe acts of abuse, it also proscribes the *threat* of any physical, sexual, verbal, emotional, or economic abuse.⁶⁶ This liberal expansion of the term domestic

⁵⁵ Interview with Brototil Dutta & Kamolika Dutta, *supra* note 15.

⁵⁶ *Id.*

⁵⁷ LAWYERS COLLECTIVE, ONLY HER WORD, *supra* note 3, at 45; Interview with Brototil Dutta & Kamolika Dutta, *supra* note 15.

⁵⁸ *Id.* at 13.

⁵⁹ *Id.*

⁶⁰ *Id.* at 46.

⁶¹ LAWYERS COLLECTIVE WOMEN'S RIGHTS INITIATIVE, FREQUENTLY ASKED QUESTIONS ON THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT 2005 1 (2005-2006) [hereinafter LAWYERS COLLECTIVE, FREQUENTLY ASKED QUESTIONS].

⁶² *Id.*

⁶³ *Id.* at 6; Protection of Women Act, ch. 5, § 31.

⁶⁴ Interview with Brototil Dutta & Kamolika Dutta, *supra* note 15.

⁶⁵ Protection of Women Act, ch. 2, § 3.

⁶⁶ *Id.*

R

R
R

R

Solution or Mere Paper Tiger?

violence extends the right to protection into many areas that have traditionally been considered private family matters.⁶⁷

The Act provides protection for women who are in a “domestic relationship,” which includes any “two persons who live or have, at any point in time, lived together in a shared household.”⁶⁸ This protection extends the reach of the Act to more than just married women. It embraces relationships based on consanguinity, marriage, adoption, and cohabitation.⁶⁹ Therefore, the Act provides protection for all women who have a relationship with the abuser, including sisters, widows, mothers, in-laws, and unmarried women living with the abuser.⁷⁰

A key provision of the Act is the creation of a woman’s right to reside in the “shared household” or to seek support for alternative housing arrangements.⁷¹ A shared household is a household where a woman lives or has lived in a domestic relationship, whether or not she has any ownership rights in the property.⁷² This provision is intended to protect a woman from eviction even where her in-laws hold title to the house in which she lives with her husband.⁷³ It recognizes only a right to reside in the household in which she has become accustomed to living and does not create an ownership interest in the house.⁷⁴ This right was incorporated in the Act because, as discussed above, most women do not have the option to return to their parents’ home or the resources to live on their own.⁷⁵ If the woman does not want to return to the shared household, the court can order the abuser to provide alternative accommodations for her.⁷⁶

Although the interpretation of “shared household” was intended to cover a broad range of intimate housing arrangements, the Indian Supreme Court narrowly interpreted the scope of the definition in *S.R. Batra v. Taruna Batra*, the only Supreme Court case to date interpreting the Act.⁷⁷ In *Batra*, a husband and wife lived together on the second floor of a house owned by the husband’s mother.⁷⁸ After some time, the husband filed for divorce and moved out of the

⁶⁷ Cf. Pardee, *supra* note 16, at 501 (indicating that police may not investigate dowry deaths because they consider them to be family matters). R

⁶⁸ Protection of Women Act, ch. 1, § 2(f).

⁶⁹ *Id.*

⁷⁰ VakilNo1.com, The Act to Protect Women from Domestic Violence Comes into Effect from Today, Oct. 26, 2006, www.vakilno1.com/news/Protection-of-Women-From-Domestic-Violence.php (last visited May 3, 2007); LAWYERS COLLECTIVE, FREQUENTLY ASKED QUESTIONS, *supra* note 61, at 2–3. R

⁷¹ Interview with Brototil Dutta & Kamolika Dutta, *supra* note 15; Interview with Dr. Jyotsna Chaterji, *supra* note 10. R
R

⁷² Protection of Women Act, ch. 1, § 2(s).

⁷³ LAWYERS COLLECTIVE, FREQUENTLY ASKED QUESTIONS, *supra* note 61, at 3. As a part of normal Indian culture, a woman assimilates into her husband’s family, which many times may lead to living with the husband’s family. See Vyas, *supra* note 9 at 185. R
R

⁷⁴ Interview with Brototil Dutta & Kamolika Dutta, *supra* note 15. R

⁷⁵ See *supra* Part I.

⁷⁶ LAWYERS COLLECTIVE, FREQUENTLY ASKED QUESTIONS, *supra* note 61, at 3; Protection of Women Act, ch. 4, § 19(f). R

⁷⁷ *SR Batra v. Taruna Batra*, 136 (2007) DLT 1 (SC).

⁷⁸ *Id.*

Solution or Mere Paper Tiger?

house.⁷⁹ The wife, who was locked out by her mother-in-law, applied for an injunction to prohibit her dispossession of the marital home.⁸⁰ The High Court held that the wife was in possession of the matrimonial home and granted the injunction.⁸¹ The mother-in-law and husband appealed to the Supreme Court.⁸² The Act became effective while the case was pending in the Supreme Court, and the wife argued that sections 17 and 19(1) of the Act protected her right to remain in the shared household.⁸³ She argued that the plain meaning of section 2(s), which defines shared household, encompasses not only a household where the victim lives, but also any household in which she has lived at any stage of the domestic relationship. The Supreme Court rejected the wife's argument, and removed from the scope of shared household a house owned entirely by a woman's in-laws.⁸⁴ The Court held that section 17(1) of the Act entitles the wife to claim a right to reside in the shared household only when the house is joint family property.⁸⁵ Here, the property did not belong to the husband, the husband did not pay rent, and the house was not joint family property.⁸⁶ Therefore, the Court vacated the injunction, thus permitting the woman's in-laws to evict her from the home if they so desired.⁸⁷

One of the criticisms of this opinion is that the judge disregarded the plain language of the Act.⁸⁸ The language of section 2(s) expressly states: "shared household means a household where the person aggrieved lives or at any stage has lived in a domestic relationship . . . irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household."⁸⁹ Therefore, the Act is intended to protect the right to reside in the shared household no matter who holds title to the property. Although the Court criticized section 2(s) as being "not very happily worded, and . . . the result of clumsy drafting,"⁹⁰ it appears that adherence to the plain meaning of the section would have led to a contrary conclusion. The Court's insistence that it "give [section 2(s)] an interpretation which is sensible and which does not lead to chaos in society"⁹¹ does exactly the opposite; this decision strains India's commitment to end domestic violence by failing to consider some of the fundamental traditions

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.* (stating in a hostile tone, "such a view would lead to chaos and would be absurd"); see Lawyers Collective Women's Rights Initiative, Critique of the Batra Judgment & the Aftermath—A Note by LCWRI, http://www.lawyerscollective.org/%5Ewri/%5EProjects_%26_Activities/%5EDomestic_Violence/landmark_judgements_%26_orders.asp (last visited May 3, 2007).

⁸⁵ *S.R. Batra v. Taruna Batra*, 136 (2007) DLT 1 (SC).

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ Interview with Brototil Dutta & Kamolika Dutta, *supra* note 15.

⁸⁹ Protection of Women Act, ch. 1, § 2.

⁹⁰ *S.R. Batra v. Taruna Batra*, 136 (2007) DLT 1 (SC).

⁹¹ *Id.*

Solution or Mere Paper Tiger?

underlying Indian culture. In a patriarchal society that prevents women from returning to their natal families after marriage, this decision may have a debilitating effect on the protections afforded under the Act.⁹²

Although women's groups acknowledge the impact of this restrictive interpretation, the decision has not been fatal to the women's movement or the effectiveness of the Act thus far. As evidenced in *Shalu Bansal v. Nitin Bansal*, the courts may be willing to find creative ways to circumvent the Supreme Court's narrow construction of the term "shared household."⁹³ In *Bansal*, a Delhi magistrate judge took notice of the Supreme Court's decision in *Batra* but held that the woman could not be dispossessed of the marital residence without due process of law, and in the event that she was dispossessed, the husband must pay the woman rent as maintenance.⁹⁴ Therefore, it appears that even though *Batra* is a setback for the women's movement, judicial activism may find a way to keep it alive.

2. Protection Officers and Service Providers

The Act also establishes a network of protection officers and service providers. The Act requires the states to appoint protection officers, whose sole focus is enforcement of the Act.⁹⁵ A protection officer's responsibilities include assisting women in filing domestic incident reports with the magistrate, filing applications for Protection Orders and other court orders with the magistrate, ensuring that women are provided legal aid, a safe shelter home, medical attention, and enforcing Orders passed by the court.⁹⁶ The Act also calls for service providers, non-governmental organizations ("NGOs"), or other voluntary organizations to assist women in filing complaints, filing applications for court Orders, and providing other necessary support to victims of domestic violence.⁹⁷ The rationale behind the designation of protection officers and registered service providers is to afford domestic violence complaints importance in the eyes of the law and to provide women an alternative avenue to seek help other than the Indian police.⁹⁸

3. Protections and Remedies under the Act

The Act provides for six remedial protections: 1) a Protection Order;⁹⁹ 2) a Residence Order;¹⁰⁰ 3) monetary relief;¹⁰¹ 4) a Compensation Order;¹⁰² 5) a Cus-

⁹² See Lawyers Collective Women's Rights Initiative, Landmark Orders & Judgments Passed on Protection of Women from Domestic Violence Act 2005, http://www.lawyerscollective.org/%5Ewri/%5EProjects_&_Activities/%5EDomestic_Violence/landmark_judgements_&_orders.asp (last visited on May 3, 2007) (describing the possible implications of the court's holding).

⁹³ *Shalu Bansal v. Nitin Bansal*, CC 1250/1 (Delhi, Unreported Judgment January 3, 2007) (order granting Residence Order).

⁹⁴ *Id.*

⁹⁵ Protection of Women Act, ch. 3, §§ 8(1) & 9(1).

⁹⁶ *Id.*

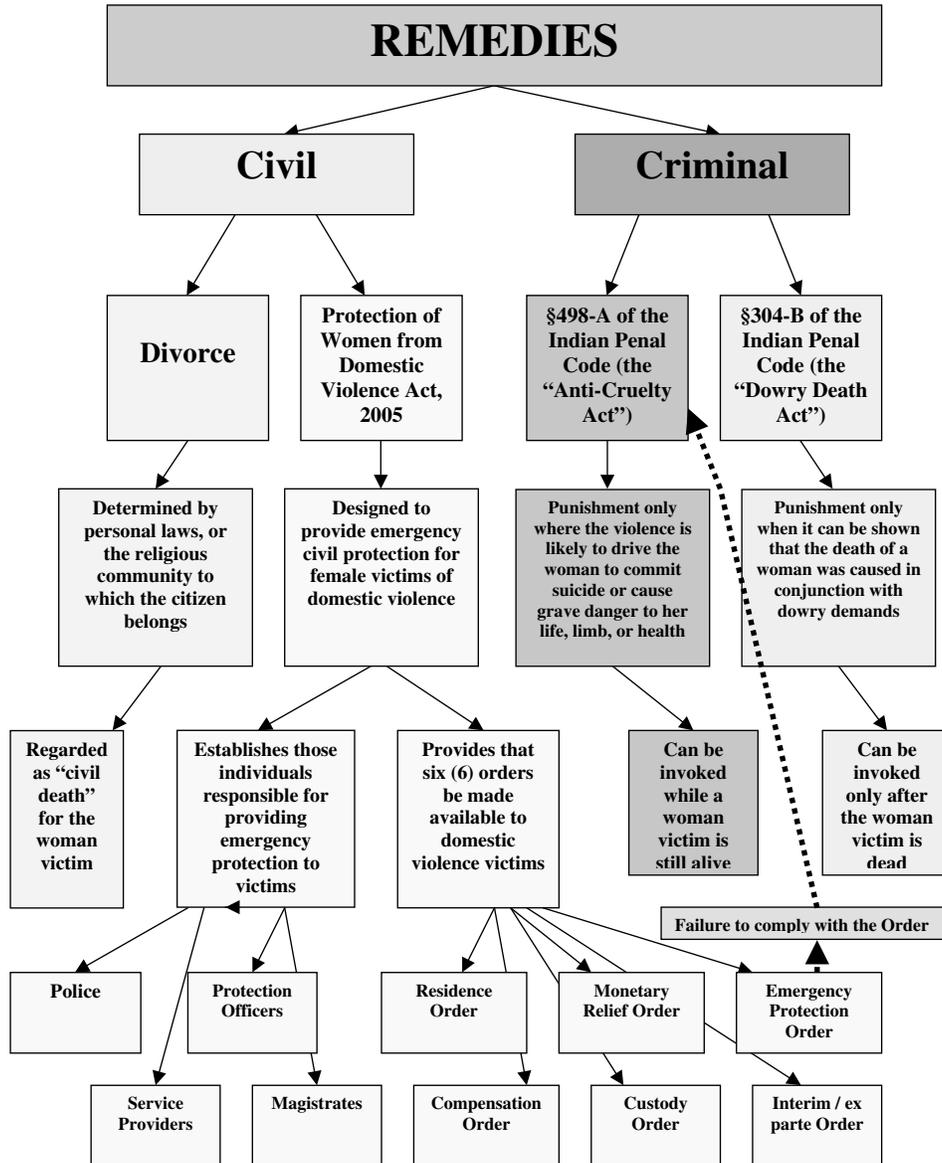
⁹⁷ *Id.* ch. 3, § 10.

⁹⁸ Interview with Brototil Dutta & Kamolika Dutta, *supra* note 15.

⁹⁹ Protection of Women Act, ch. 4, § 18.

¹⁰⁰ *Id.* § 19.

Solution or Mere Paper Tiger?



tody Order;¹⁰³ and 6) an interim or ex parte order.¹⁰⁴ A Protection Order or “stop violence” order prohibits the alleged abuser from committing any act of violence

¹⁰¹ *Id.* § 20.

¹⁰² *Id.* § 22.

¹⁰³ *Id.* § 21.

¹⁰⁴ *Id.* § 23.

Solution or Mere Paper Tiger?

against the victim, aiding or abetting the commission of violence against the victim, entering the victim's place of employment or school, attempting to communicate in any form with the victim, alienating any financial assets to the detriment of the victim, and/or harming any dependant or relative of the victim.¹⁰⁵ Although it is not clear from the language of the statute, it appears that the magistrate determines the scope of the order after making a determination that domestic violence has taken place or is likely to take place and weighing the need for each of the aforementioned prohibitions.¹⁰⁶

The Act also allows the magistrate to enter a Residence Order, which prohibits the victim from being dispossessed of the shared household, directs the alleged abuser to remove himself from the shared household, prohibits the abuser or any of his relatives from entering any portion of the shared household in which the victim lives, restricts the abuser from renouncing his rights in the shared household, or orders the abuser to provide the same level of alternate accommodation for the victim.¹⁰⁷ No removal order may be passed against any woman entitled to protection under the Act.¹⁰⁸ The goal of this provision is to prevent the woman from being displaced from her home and forced into homelessness.

In addition to Protection and Residence Orders, a victim of domestic violence may also seek monetary relief to cover any expenses she incurred as a result of the domestic violence.¹⁰⁹ This includes medical expenses, lost earnings, loss of property, and maintenance for the woman and her children.¹¹⁰ In addition to monetary expenses, a victim may seek a Compensation Order, which permits the woman to recover compensation and damages for her physical injuries and emotional distress.¹¹¹ These damages are intended to be awarded in addition to monetary relief, which only covers actual expenses related to the violence.¹¹²

Furthermore, a woman may seek a temporary Custody Order to ensure that the abuser does not take her children from her.¹¹³ A magistrate may also pass any interim or ex parte order that he deems necessary to thwart immediate threats to the life or limb of the woman.¹¹⁴ The only condition appears to be that proceedings must have commenced before the magistrate under the Act.¹¹⁵

In order for a woman to obtain an Order from the court, she must first file a formal complaint in the form of a domestic incidence report with the police, a

¹⁰⁵ *Id.* § 18(a)–(g).

¹⁰⁶ *See id.* § 18.

¹⁰⁷ *Id.* § 19(1)(a)–(f).

¹⁰⁸ *Id.* § 19(1).

¹⁰⁹ *Id.* § 20.

¹¹⁰ *Id.* § 20(1)(a)–(d).

¹¹¹ *Id.* § 22.

¹¹² *Id.* § 22; LAWYERS COLLECTIVE, FREQUENTLY ASKED QUESTIONS, *supra* note 61, at 4.

¹¹³ Protection of Women Act, ch. 4, § 21.

¹¹⁴ *Id.* § 23.

¹¹⁵ *Id.*

Solution or Mere Paper Tiger?

protection officer, a service provider, or directly with the magistrate.¹¹⁶ Thereafter, a woman may file an application for an order of relief directly with the magistrate.¹¹⁷ Alternatively, a protection officer or any other person may file the application on her behalf.¹¹⁸ The Act requires that all proceedings brought under the Act be disposed of within sixty days of the first hearing, which must occur within three days following the application.¹¹⁹ Once the magistrate enters an Order, failure to comply with the Order will result in criminal punishment.¹²⁰ As mentioned previously, this is the only instance in which a complaint under the Act can result in criminal sanctions against the abuser. The failure to adhere to an Order of the court is punishable with imprisonment for a maximum of one year or a maximum fine of 20,000 rupees.¹²¹ In addition, the magistrate may bring charges against the abuser under the Anti-Cruelty Act or the Anti-Dowry criminal laws if he deems it appropriate.¹²²

III. Barriers to Implementation

The Act is groundbreaking legislation. Before the Act was passed, women in India had no specifically defined rights.¹²³ The Act, nonetheless, has certain key limitations; notably, the scope is limited, and the Act does not provide the intended comprehensive protection for women against domestic violence.

A. Limitations of the Act

For women turning to the Act for protection from domestic violence, the most significant limitation is the civil character of the Act. The drafters of the Act made a strategic decision to make the Act's remedies civil.¹²⁴ As a civil statute, however, the Act does not allow criminal punishment for men who engage in domestic violence. Therefore, even with the enactment of the Act, women are left with only the Anti-Cruelty Statute and the Dowry Death Statute under which to bring criminal charges for domestic violence. As outlined above, these acts are not broad enough to provide criminal recourse for most victims of domestic violence.¹²⁵

Additionally, the Act does not provide victims of domestic violence with permanent relief. The Act provides only an interim solution, by providing for Protection Orders and other temporary orders that are designed to give women time

¹¹⁶ LAWYERS COLLECTIVE, FREQUENTLY ASKED QUESTIONS, *supra* note 61, at 8; *See* Protection of Women Act, *supra* note 2, ch. 3, § 5. R

¹¹⁷ *See* LAWYERS COLLECTIVE, FREQUENTLY ASKED QUESTIONS, *supra* note 63, at 8–9.

¹¹⁸ Protection of Women Act, ch. 4, § 12(1).

¹¹⁹ *Id.* § 12(4)–(5).

¹²⁰ *Id.* ch. 5, § 31(1).

¹²¹ *Id.* § 31(1).

¹²² *Id.* § 31(3).

¹²³ Interview with Purnima, *supra* note 29. R

¹²⁴ *See supra* Part II.

¹²⁵ *See supra* Part II.

Solution or Mere Paper Tiger?

to evaluate their options.¹²⁶ During this period, the woman's right to reside in her home is protected, but after this period, the Act does not provide any protection for victims of domestic violence. Due to the interim nature of the Act and the lack of comprehensive criminal statutes punishing domestic violence, perpetrators of domestic violence have no real incentive to curb their violent behavior, even when a woman seeks protection under the Act.

The Act is also limited because it grants women only one right—the right to reside in a shared household. As discussed above, the creation of any right specific to women is groundbreaking in Indian human rights history and is an important step toward the creation of other rights for women. The right to reside in the shared household protects a woman from being thrown out of her home; however, it does not directly protect her from being subjected to violence. While the orders of protection that can be granted under the Act prohibit the respondent from committing any act of domestic violence and require the perpetrator to have no contact with the victim,¹²⁷ these orders are only temporary. Therefore, the Act does not create a right to freedom from violence.

B. Structural and Procedural Barriers to Successful Implementation

Although the Act has the potential to protect women from domestic violence, a lack of information regarding the Act, a lack of training, and police and judicial corruption threaten the successful implementation of the Act. Under the Act, the government is responsible for disseminating information regarding the Act and for training protection officers and magistrate judges.¹²⁸ If these steps are not carried out and if existing corruption among public officials is not addressed, the Act will be no more successful in reducing rates of domestic violence than the Dowry Death Act was in eliminating dowry violence.¹²⁹

Currently, the average Indian citizen is likely unaware of the Act and the protection it offers.¹³⁰ Section 11 of the Act provides that the government “shall take all measures to ensure that the provisions of the Act are given wide publicity through public media including the television, radio and print media at regular intervals.”¹³¹ While it is difficult to determine whether the government is fulfilling this obligation, women's advocacy groups in New Delhi consistently cite a lack of dissemination of information regarding the Act.¹³² Because the Act became effective in October 2006, it is possible that the required media campaigns

¹²⁶ Interview with Brototil Dutta & Kamolika Dutta, *supra* note 15.

¹²⁷ Protection of Women Act, ch. 4, § 22.

¹²⁸ *Id.* § 14.

¹²⁹ See Pardee, *supra* note 16, at 502.

¹³⁰ Interview with Brototil Dutta & Kamolika Dutta, *supra* note 15; Interview with Dr. Jyotsna Chaterji, *supra* note 10; Interview with Reenu Ram and Anubha Rastogi, *supra* note 29, Human Rights Law Network reported no increase in the number of domestic violence cases coming in after the Act was passed.

¹³¹ Protection of Women Act, ch. 4, § 14(a).

¹³² Interview with Brototil Dutta & Kamolika Dutta, *supra* note 15; Interview with Reenu Ram and Anubha Rastogi, *supra* note 29.

R

R

R

R

R

Solution or Mere Paper Tiger?

are still being developed. Nonetheless, the creation and regular distribution of information are necessary to bring greater public awareness of the Act and the protection it provides.

Despite the lack of government public relations campaigns, there has been some media reporting of the Act.¹³³ However, anecdotal evidence indicates that much of the early media coverage was negative, highlighting the potential for misuse and abuse of the Act.¹³⁴ While this portrayal of the Act is unfortunate, some women's advocacy groups are pleased that the passage of the Act is being reported at all, because even negative publicity leads to greater public awareness.¹³⁵ Furthermore, media coverage has become more balanced recently, with an increased focus on the provisions of the Act rather than the potential for misuse.¹³⁶

While the early media coverage of the passage of the Act may have created awareness among some populations, many groups cannot be reached through newspaper and television reporting. This is particularly true for rural and poor urban communities with high levels of illiteracy and limited access to television media.¹³⁷ Community-level campaigns with the ability to spread information about the Act to socially and geographically isolated communities are lacking.¹³⁸ To bring awareness to these communities, non-traditional means of disseminating information will need to be implemented in addition to the traditional media campaigns that the government is required to fund.

In addition to circulating information about the Act, the government is required to provide training for protection officers and magistrate judges charged with carrying out the Act. Section 11 of the Act provides that the government "shall take all measures to ensure that . . . the police officers and the members of the judicial services are given periodic sensitization training and awareness on the issues addressed by this Act."¹³⁹ Because of widespread gender discrimination in India,¹⁴⁰ gender-sensitization training is necessary to enable protection officers and magistrate judges of both sexes to properly carry out the provisions of the Act. Without this training, social norms regarding the acceptability of violence against women will color protection officers' and magistrate judges' execution of their duties under the Act.¹⁴¹

The women's advocacy groups interviewed were not aware of any gender-sensitization training that had been provided for protection officers and magistrate judges in the first six months after the law became effective.¹⁴² This lack of

¹³³ Interview with Brototil Dutta & Kamolika Dutta, *supra* note 15.

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ Interview with Purnima, *supra* note 29.

¹³⁸ *Id.*

¹³⁹ Protection of Women Act, ch. 4, § 11(b).

¹⁴⁰ *See supra* Part I.

¹⁴¹ *See* Manchandia, *supra* note 11, at 320.

¹⁴² Interview with Dr. Jyotsna Chaterji, *supra* note 10.

R

R

R

R

Solution or Mere Paper Tiger?

training may be the result of the short time period since the Act became effective. Nonetheless, if comprehensive training is not conducted, this will be a significant barrier to the successful implementation of the Act.

Widespread police and judicial corruption and judicial inefficiencies also threaten the effectiveness of the Act. While corruption among public officials is difficult to measure, it is generally accepted that sometimes Indian police and courts consciously choose not to enforce laws designed to protect women.¹⁴³ Failure by police officers to properly report and investigate domestic violence and possible dowry-related deaths is widely reported.¹⁴⁴ Unwillingness by the police to investigate and report incidents of domestic violence stems from the view that domestic violence is a family problem and should be dealt with privately.¹⁴⁵ Because of the Act's lack of a criminal remedy, some police officers will have an additional reason to refuse to assist women in bringing complaints.¹⁴⁶ While these problems might deter victims from filing complaints, the Act does include provisions to deal with this barrier. As discussed in more detail below,¹⁴⁷ the Act expressly states the duties of protection officers, which include assisting women in filing complaints and informing women of their rights under the Act.¹⁴⁸ Despite these requirements, the corruption among police officers and judges will result in circumvention of the Act's safeguards if left unaddressed.

Finally, the traditionally slow response of the courts may deter victims of domestic violence from seeking recourse through the judicial system.¹⁴⁹ The Act addresses this problem by providing in section 16 that the magistrate judge shall have the first hearing within three days of the receipt of a petition under the Act and "shall endeavor to dispose of every application . . . within a period of sixty days from the date of its first hearing."¹⁵⁰ It remains to be seen whether this will be a realistic goal considering the number of petitions and the already overburdened caseload of magistrate judges.¹⁵¹

IV. Enforcement of the Act

As with all newly enacted legislation, time must pass before a determination can be made as to whether the Act will be effectively implemented. Questions

¹⁴³ See e.g., Manchandia, *supra* note 11, at 320; Tara S. Kaushik, *The Essential Nexus Between Transformative Laws and Culture: The Ineffectiveness of Dowry Prohibition Laws of India*, 1 SANTA CLARA J. INT'L L. 74, 87 (2003). R

¹⁴⁴ See e.g., Kaushik, *supra* note 143, at 87; Greenberg, *supra* note 12, at 813; Melissa Spatz, *A "Lesser" Crime: A Comparative Study of Legal Defenses for Men Who Kill Their Wives*, 24 COLUM. J.L. & SOC. PROBS. 597, 611–12 (1991). R

¹⁴⁵ Pardee, *supra* note 16, at 501. R

¹⁴⁶ Interview with Dr. Jyotsna Chaterji, *supra* note 10.

¹⁴⁷ See *infra* Part IV.

¹⁴⁸ Protection of Women Act, ch. 3, § 9.

¹⁴⁹ See Manchandia, *supra* note 11, at 320 (stating that "It can take eight to ten years for a case to go to court"). R

¹⁵⁰ Protection of Women Act, ch. 4, § 12(4), (5).

¹⁵¹ Justice Gita Mittal, Delhi High Court, Speech on Protecting Women from Domestic Violence Under the PWDV Act, 2005 (on file with the author).

Solution or Mere Paper Tiger?

remain as to how, and if, the new Act will be enforced. The Act sets forth specific provisions that require certain services to be made available to victims of domestic violence. Under the Act, a victim of domestic violence has rights to the services of protection officers and police officers.¹⁵² These individuals may receive the initial complaint of domestic violence, and the Act must contain clear descriptions of their duties and responsibilities.

A. Protection Officers as Enforcers of the Act

The Act assigns protection officers to handle cases of domestic violence. Protection officers, who are appointed by the state governments, are the primary enforcers of the Act.¹⁵³ Protection officers are entrusted with handling domestic violence cases from the initial complaint to its conclusion, either by offering services to the victim or by following the case through the final stages of court intervention.¹⁵⁴ Section 8 of the Act directs that protection officers shall “as far as possible be women,” and provides that the state governments shall appoint such number of protection officers in each district as it considers necessary.¹⁵⁵ Some NGOs have construed this to mean that not less than one protection officer should be appointed for the area of each magistrate judge; however, this is not specifically enumerated within the Act.¹⁵⁶ Once protection officers are appointed, the state governments must notify the police and service providers of the identity of the protection officer(s) serving the local area.¹⁵⁷

Despite the importance of the role, the qualifications and experience of protection officers are not clearly defined within the Act. Instead, the Act merely states that protection officers “shall possess such qualifications and experience as may be prescribed.”¹⁵⁸ While the Act confers power upon the central government to make rules for carrying out the Act,¹⁵⁹ the qualifications and required experience of protection officers are absent from the Act.

Protection officers must carry out a number of functions in order to successfully assist a victim of domestic violence. After receiving a complaint of domestic violence, a protection officer must inform the victim of her right to apply for a Protection Order, an Order for Monetary Relief, a Custody Order, a Residence Order, or a Compensation Order.¹⁶⁰ Additionally, protection officers have an affirmative duty to inform the victim of the availability of the services of protection officers and service providers, her right to free legal services under the Legal

¹⁵² Protection of Women Act, ch. 3, § 5(a)–(e).

¹⁵³ *Id.* at § 8(1).

¹⁵⁴ *Id.* at § 9.

¹⁵⁵ *Id.* at § 8(2).

¹⁵⁶ Solution Exchange for Gender Community E-Discussion Summary-Implementing the Protection of Women from Domestic Violence Act, <http://www.solutionexchange-un.net.in/gender/e-discuss/disc01-t01-fullsumm.htm> (Mar. 1, 2007) [hereinafter Solution Exchange].

¹⁵⁷ Protection of Women Act, ch. 3, § 8(1).

¹⁵⁸ *Id.* § 8(2).

¹⁵⁹ *Id.* ch. 5, § 37(2)(a)–(b).

¹⁶⁰ *Id.* ch. 3, § 5(a).

Solution or Mere Paper Tiger?

Services Act of 1987, and the right to file a criminal complaint under the Anti-Cruelty Act, if she chooses.¹⁶¹

In addition to informing a victim of her rights under the Act, protection officers perform other administrative functions, such as assisting the victim in filling out a domestic incident report.¹⁶² These reports are used to document the allegations of abuse and to provide a formal record of the complaint.¹⁶³ Once the domestic incident report is complete, the protection officer must forward copies of the report to the chief of police in the jurisdiction where the domestic violence is alleged to have occurred and to all service providers in the area.¹⁶⁴ Moreover, if a domestic violence victim requires medical attention, it is the protection officer's duty to have the victim medically examined and to forward copies of medical reports detailing the victim's treatment to the police and any shelter homes or medical establishments assisting the victim.¹⁶⁵

Lastly, protection officers are responsible for maintaining a list of all service providers providing legal aid or counseling, shelter homes, and medical facilities in a given jurisdiction.¹⁶⁶ Protection officers also assist magistrates in the discharge of their adjudicative functions under the Act.¹⁶⁷ Additionally, if a victim chooses to file a criminal complaint or apply for free legal aid or any orders available to her, the protection officer must assist her in securing these services.¹⁶⁸

To ensure protection officers are more than simply "enforcers on paper", the Act provides for the punishment of protection officers who willfully fail to execute their duties.¹⁶⁹ Section 33 of the Act provides that if a protection officer fails or refuses to discharge his duties as required in a Protection Order without sufficient cause, he may be punished with imprisonment up to one year, a fine up to 20,000 rupees (approximately \$492.28 on August 14, 2007), or both.¹⁷⁰ However, these penalties will only be ordered if the protection officer acts in bad faith in failing to execute his duties.¹⁷¹ A protection officer may not be prosecuted, or named as a party to a civil suit, for any damage caused or likely to be caused by actions performed in good faith in executing his duties under the Act.¹⁷² Because protection officers are assigned significant responsibility and face risk of penalty if they do not execute their duties, the number of protection officers assigned to

¹⁶¹ *Id.* § 5(d)-(e).

¹⁶² *Id.* § 9(1)(b).

¹⁶³ *Id.* ch. 1, § 2(e).

¹⁶⁴ *Id.* ch. 3, § 9(1)(b).

¹⁶⁵ *Id.* § 9(1)(g).

¹⁶⁶ *Id.* § 9(1)(e).

¹⁶⁷ *Id.* § 9(1)(a).

¹⁶⁸ *Id.* § 9(1).

¹⁶⁹ *Id.* ch. 5, § 33.

¹⁷⁰ Protection of Women Act, ch. 5, § 33.

¹⁷¹ *Id.* § 35.

¹⁷² *Id.*

Solution or Mere Paper Tiger?

each jurisdiction is vital in determining whether the Act will be effectively enforced.

B. Police Officers as Enforcers of the Act

In addition to protection officers, police officers are also responsible for enforcement of the Act. The Act provides that “nothing in this Act shall be construed in any manner as to relieve a police officer from his duty to proceed in accordance with law upon receipt of information as to the commission of a cognizable offence.”¹⁷³ Therefore, if a police officer is present during an incident of domestic violence or if a complaint of domestic violence is reported to him, the police officer is required to inform the victim of her rights under the Act. Additionally, the police officer must inform the victim of her rights to seek the services of service providers, protection officers, free legal advocates, and her right to file a criminal complaint under the Anti-Cruelty Act.¹⁷⁴

Perhaps of greatest importance, the Act mandates that the central government and state government officers, including police officers, be given sensitization and awareness training on domestic violence issues addressed by the Act.¹⁷⁵ As will be discussed in greater detail below,¹⁷⁶ the requirement of sensitization training is a tremendous accomplishment by those who drafted and voted to pass the Act. It is a call to law enforcement to positively change the ways they interact with female victims and react appropriately to complaints of domestic violence.

C. Enforcing the Act: Initial Concerns and Solutions

As discussed above, the Act provides victims of domestic violence with access to a number of resources, including protection officers, police, and service providers. Protection officers and police are the primary enforcers of the Act, and therefore, they are responsible for helping a victim navigate the system, from the receipt of the first complaint to the final resolution of the case. Protection officers, police, and service providers are bestowed with the ultimate duty of maximizing the protections under the Act to keep the victim safe.

1. *Protection Officers—Concerns and Suggestions*

Protection officers are instrumental to the Act’s success. However, the protection officer is a newly created position, and there are few structural guidelines in place to ensure that protection officers are effective in carrying out their duties. Because few protection officers have been appointed, it remains to be seen whether the use of protection officers will prove effective as a means of enforcing the Act.

¹⁷³ *Id.* ch. 3, § 5(e).

¹⁷⁴ *Id.* § 5(a)–(e).

¹⁷⁵ *Id.* § 11(b).

¹⁷⁶ *See infra* Part V.

Solution or Mere Paper Tiger?

As mentioned above, the Act is void of any detailed, or even suggested, qualifications, education, or experience a protection officer should possess before being appointed. Guidelines for protection officers' qualifications would not only ensure that protection officers can effectively execute their duties, but it would also give the position a level of legitimacy. This suggestion was voiced at the National Women's Conference held in February 2006, when representatives from twenty-three states met to demand effective implementation and enforcement of the Act.¹⁷⁷ Protection officers should, at a minimum, be full-time professionals appointed directly by or recommended by NGOs and should receive an adequate salary and mandatory gender-sensitization training.¹⁷⁸

In addition, at least one protection officer per magistrate is necessary.¹⁷⁹ As discussed above, the Act does not specify the number of protection officers that should be appointed in each jurisdiction.¹⁸⁰ Although one protection officer may be all that is needed at this time because of the lack of reporting, one protection officer per magistrate may prove to be insufficient in the future given the significant amount of responsibility each protection officer is supposed to undertake. For example, in the Northwest District of Delhi, two protection officers have been appointed.¹⁸¹ Although this is a good start, two protection officers will likely prove inadequate given that the Northwest District's population is over 1,412,476 citizens and has the highest rates of domestic violence against women in Delhi.¹⁸²

Lastly, the training of protection officers should not only be mandatory, but also uniform across jurisdictions. Since the role of a protection officer is new, it is vital that protection officers have clearly defined roles and responsibilities. Most importantly, protection officers should be made aware of the NGOs and government agencies they may turn to for assistance or guidance. These trainings will ensure that the enforcers of the Act are both correctly interpreting and successfully enforcing the law.

2. *Police Responses and Attitudes*

As mentioned previously, domestic violence is often underreported.¹⁸³ A victim's fear that the police will not take her complaint seriously or that she will be subjected to additional violence at the hands of the police initiating reports may contribute to underreporting.¹⁸⁴ Police investigations of dowry-related crimes and domestic violence have historically been inadequate and inappropriately con-

¹⁷⁷ Solution Exchange, *supra* note 156.

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ Interview with Dr. Sagar Preet Hooda, Deputy Police Comm'r, Nw. Dist. of Delhi Police, in Delhi, India (Mar. 5, 2007).

¹⁸² DELHI POLICE, PARIVARTAN: ANNUAL REPORT 2006 4 (Delhi Police Pub. 2007) [hereinafter DELHI POLICE ANNUAL REPORT 2006].

¹⁸³ Greenberg, *supra* note 12, at 803.

¹⁸⁴ Singh, *supra* note 48, at 131-32.

R

R

R

Solution or Mere Paper Tiger?

ducted.¹⁸⁵ The Supreme Court of India has stated that “the perpetrators of [dowry violence] not infrequently escape from the nemesis of the law because of inadequate police investigation.”¹⁸⁶ The Indian Supreme Court has also criticized police for delaying the investigations of domestic violence complaints, insufficient evidence gathering techniques and documentation of their investigation, and a “lackadaisical” approach to investigating domestic violence incidents.¹⁸⁷

In response to these concerns, the Act specifically addresses the duties of the police in their handling of domestic violence cases. Most importantly, the Act mandates that police participate in sensitization and awareness training.¹⁸⁸ These trainings are an integral step in ensuring that the Act’s provisions are carried out. Additionally, some police districts have recently integrated female police officers into their police force in part to encourage victims to report domestic violence incidents.¹⁸⁹

3. All-Women’s Police Units

One early attempt to increase reporting of crime against women was the establishment of All-Women’s Police Units (“AWPUs”). These were established by a number of police districts throughout India in response to the growing awareness of the problem of familial violence.¹⁹⁰ Despite the initial belief that the AWPUs would work in a law enforcement capacity to combat violence in families, AWPUs have focused largely on the reunification of families through counseling.¹⁹¹ Therefore, they have been criticized for frequently returning women to the home where domestic violence is occurring without fully ensuring that the woman will be safe.¹⁹² A further critique of AWPUs is that they contribute to the marginalization of women’s domestic violence complaints.¹⁹³ The presence of AWPUs allows police working within main police stations to funnel all domestic violence complaints to the AWPUs as a method of avoidance.¹⁹⁴ Therefore, domestic violence cases are merely handed off to the AWPUs, which often suggest that the victim return to the violent matrimonial home. As a result, the police, the victims, and their aggressors continue to believe that domestic violence is less

¹⁸⁵ See *supra* Part III.B.

¹⁸⁶ *Bhagwant Singh v. Delhi Comm’r of Police*, (1983) S.C.R. 3 109, 121; Singh, *supra* note 48, at 132. R

¹⁸⁷ Singh, *supra* note 48, at 132; *Bhagwant Singh*, (1983) S.C.R. 3 at 120–21. R

¹⁸⁸ Protection of Women Act, ch. 3, § 11(b).

¹⁸⁹ DELHI POLICE, PARIVARTAN: VISION 2006–2011 (A draft Five-year Plan for Reduction of Violence Against Women) 31 (Delhi Police Pub. 2006) [hereinafter DELHI POLICE, VISION 2006–2011].

¹⁹⁰ Greenberg, *supra* note 12, at 811. R

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ *Id.*

Solution or Mere Paper Tiger?

serious than other forms of violence because a non-traditional approach is taken.¹⁹⁵

Despite the criticism of the AWPUs, the 295 units located throughout India can continue to serve a valuable function. Many victims are unwilling or unable to leave the marital home due to their cultural or religious beliefs.¹⁹⁶ For those victims who choose not to file a complaint under the Act, the AWPUs can provide counseling and inform a victim of the services available to her if she later decides to file a complaint under the Act. Additionally, some domestic violence victims may fear going directly to the main police station, and may view the AWPUs as a more approachable option. As one researcher has suggested, “[victims] don’t want to talk about their personal relationships with a man. They think they won’t get any justice.”¹⁹⁷ Assuming AWPUs are made aware of the Act’s provisions and are given sensitization training, AWPU officers may be able to aid victims in obtaining assistance from protection officers or police if the victim’s situation worsens.

4. *Parivartan*

In 2006, the Northwest District of the Delhi Police implemented a program called Parivartan in an effort to increase reporting of violence against women.¹⁹⁸ The Northwest District created this program after discovering that their district had the highest incidence of violence against women in Delhi and that women were reluctant to report violence because of a fear of police retaliation.¹⁹⁹ Parivartan was implemented in twenty beats in the Northwest District after discovering that these beats had the highest incidences of rape and spousal battery.²⁰⁰ These beats are densely populated by the poor who have little, if any, education.²⁰¹ These areas were targeted for Parivartan’s five-year program, which focuses on reducing crime against women in the district, increasing the reporting of violence, improving the behavior of men toward women in both domestic and public spaces, and increasing awareness among women.²⁰²

To achieve these goals, Parivartan seeks to increase the accessibility of police officers to victims of domestic violence.²⁰³ Aware that victims were suffering in silence and that a lack of reporting was a challenge in combating violence within the district, the Northwest District sought to change their methodology.²⁰⁴ The

¹⁹⁵ *Id.* at 812.

¹⁹⁶ *See supra* Part I.

¹⁹⁷ Rebecca Ruiz, India’s All-Women Police Pursue Dowry Complaints, WOMEN’S E-NEWS, Sept. 13, 2006, <http://www.womensenews.org/article.cfm/dyn/aid/2886>.

¹⁹⁸ DELHI POLICE, VISION 2006–2011, *supra* note 189, at 30–32.

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ *Id.* These twenty beats include colonies such as Sultan Puri, Jahangir Puri, Deep Vihar, and Pansali, Mukundpur.

²⁰² DELHI POLICE, VISION 2006–2011, *supra* note 189, at 32.

²⁰³ Interview with Dr. Sagar Preet Hooda, *supra* note 181.

²⁰⁴ *Id.*

R

R

R

Solution or Mere Paper Tiger?

Police Commissioner of the Northwest District emphasized, “[The police] could not wait for the women to come to them to report; instead, the police would have to go to [the victims].”²⁰⁵

Parivartan reaches out to victims of violence in the district through female beat constables.²⁰⁶ In contrast to AWPUs, female beat constables supervise and patrol the beats to combat and prevent crime against women on the street.²⁰⁷ Parivartan’s advocates believe that utilizing female officers on beat patrol will increase the visibility of female officers and encourage reporting of domestic violence.²⁰⁸ AWPUs officers are useful in addressing matrimonial disputes, but because the officers are primarily assigned to desk duties, victims must know of and seek out their services. To address this problem, Parivartan places female beat constables on the street to reach out to victims who otherwise would not report violence.²⁰⁹

In an effort to increase reporting, forty female beat constables were selected for deployment to street patrol in 2006.²¹⁰ Initially, female beat constables experienced a number of obstacles, such as reluctance to report violence, tolerance of violence, cultural traditions, and social stigmas.²¹¹ Nevertheless, the female beat constables joined in a cumulative effort with the larger law enforcement agencies, local schools, social workers, NGOs, and citizens to raise awareness and were able to overcome the initial difficulties.²¹² Female beat constables have proven successful thus far and have been extended to an additional fourteen police beats in the Northwest District.²¹³ Largely because the police beat officers are women, victims often feel a greater level of comfort in reporting domestic violence.²¹⁴ The implementation of female beat constables is one of the most important components of the Parivartan program.²¹⁵ Due to their visibility on the street, female beat constables cultivate a sense of security and empowerment for women at the local level.²¹⁶ In addition to increasing visibility of female officers, Parivartan utilizes pantomimes and street plays to raise awareness in poor communities and slum colonies, and to promote two-way communication between citizens and police.²¹⁷

²⁰⁵ *Id.*

²⁰⁶ DELHI POLICE, *supra* note 189, at 30–31.

²⁰⁷ *Id.*

²⁰⁸ *Id.* at 32.

²⁰⁹ *Id.*

²¹⁰ DELHI POLICE, ANNUAL REPORT 2006, *supra* note 185, at 7.

²¹¹ DELHI POLICE, PARIVARTAN: BRIEF NOTE SUPPLEMENTAL HANDOUT 1 (Delhi Police Pub., 2007) [hereinafter DELHI POLICE, SUPPLEMENTAL HANDOUT].

²¹² *Id.* at 1; DELHI POLICE, VISION 2006–2011, *supra* note 189, at iii.

²¹³ DELHI POLICE, SUPPLEMENTAL HANDOUT, *supra* note 211, at 1.

²¹⁴ See DELHI POLICE, ANNUAL REPORT 2006, *supra* note 182, at 2.

²¹⁵ DELHI POLICE, VISION 2006–2011, *supra* note 189, at ii.

²¹⁶ *Id.*

²¹⁷ *Id.* at 3; DELHI POLICE, ANNUAL REPORT 2006, *supra* note 182, at 6.

R

R

R

R

R

R

Solution or Mere Paper Tiger?

Although the program is still in the initial phases of implementation, there are indications that the program is successful. However, it remains to be seen whether rates of violence against women, and more specifically rates of domestic violence, will fall. Street play audiences have had a strong positive reaction, namely directly reporting incidences of domestic violence to the police officers present.²¹⁸

The Northwest District has also implemented mandatory sensitization training for both male and female police officers.²¹⁹ Although any sensitization training is beneficial, it is critical that these trainings be continued over the long-term to maximize their effectiveness.²²⁰ Initially, male police officers were not receptive to Parivartan and reacted negatively to the introduction of female beat constables.²²¹ Because the attitudes and responses of police officers are critical to ensuring enforcement of the Act, the district will continue to conduct sensitization training for these male officers.²²²

The Northwest District has taken critical steps to enforce the Act by increasing visibility of female beat constables and using street plays to reach populations that are often overlooked in campaigns to educate the public about their rights. Although the success of Parivartan will not be fully determined until its conclusion in 2011, it is an ambitious program that may prove beneficial in the implementation of the Act. Each district will need to assess its unique population to determine whether Parivartan is an appropriate model for raising awareness and reducing rates of domestic violence.

V. The Role of Service Providers and the Path to Success

In addition to the important role of police and protection officers, women's rights organizations have an integral role in ensuring the Act is successfully implemented. Because women's rights organizations are most familiar with the goals of the Act, these groups will continue to serve an important function in monitoring the implementation and enforcement of the Act. Nevertheless, the role of these organizations must be specifically defined so that their function is not merely a duplication of efforts by protection officers and police.

A. Women's Rights Organizations as Service Providers

As discussed above, the Act was drafted and passed due in large part to the efforts of various Indian and international women's rights organizations.²²³ These organizations pushed for the enactment of a law that would afford women

²¹⁸ DELHI POLICE, ANNUAL REPORT 2006, *supra* note 182, at 6.

²¹⁹ *Id.* at 5.

²²⁰ The need for continued sensitization training was reiterated in February 2006 at a review conference designed to assess the performance of the Parivartan program at the conclusion of its first year. *Id.*

²²¹ *Id.* at 3.

²²² *Id.*

²²³ Interview with Purnima, *supra* note 29.

R

R

Solution or Mere Paper Tiger?

greater protection.²²⁴ Although the Act is the product of collaboration among various women's rights organizations, the effort was led by the Lawyers Collective, which is a public interest organization that strives to set high standards for human rights advocacy, litigation, and legal aid.²²⁵ The Women's Rights Initiative of the Lawyers Collective strives to empower women through the law.²²⁶ With this mission in mind, they provide legal counsel and representation to women and facilitate access to other NGOs.²²⁷

While the role of women's rights organizations in the drafting and passage of the Act was known, the responsibilities that these organizations will have now is unclear.²²⁸ The Act does not specify, nor do these organizations know, what their role will be in overseeing the implementation of the Act.²²⁹ Despite this uncertainty, without the participation of NGOs, the Act cannot be successful in reducing the rate of domestic violence. While protection officers and police can ensure that the Act's provisions are enforced, the larger social issues that prevent gender equality call for "a multi-stakeholder partnership and the adoption of measures that have a multi-dimensional approach."²³⁰ "The roles of the protection officers and the police need to be buttressed by other factors, such as political will, resources, influencing the socialization processes anchored in patriarchy and increased engagement with men and boys."²³¹ The first step in tackling the cultural barriers that threaten the effectiveness of the Act is for NGOs to determine what their role will be as service providers under the Act.²³²

The Act allows NGOs to be registered with state governments as service providers.²³³ In addition to providing legal aid, medical care, counseling, or other forms of support, service providers can assist women in filing domestic incident reports.²³⁴ NGOs registered as service providers will be permitted to take complaints.²³⁵

Protection officers are responsible for maintaining the list of registered service providers.²³⁶ To date, no procedures have been put into place for NGOs to become registered.²³⁷ The lack of procedures for registration hampers the objective

²²⁴ *Id.*

²²⁵ *Id.*; Lawyers Collective—About Us, http://www.lawyerscollective.org/about_us.asp (last visited May 5, 2007).

²²⁶ Lawyers Collective—What We Do, http://www.lawyerscollective.org/^wri/^about_us/what_we_do.asp (last visited May 5, 2007).

²²⁷ *Id.*

²²⁸ Interview with Dr. Sagar Preet Hooda, *supra* note 181.

R

²²⁹ Interview with Brottil Dutta & Kamolika Dutta, *supra* note 15.

R

²³⁰ Interview with Gita Gupta, Information Officer for South Asia, United Nations Development Fund for Women (UNIFEM), in New Delhi, India (Mar. 9, 2007);

²³¹ *Id.*

²³² Interview with Dr. Sagar Preet Hooda, *supra* note 181.

R

²³³ Protection of Women Act, ch. 3, §10(1).

²³⁴ *Id.* §§ 10(1) & (2)(a); LAWYERS COLLECTIVE, FREQUENTLY ASKED QUESTIONS, *supra* note 61, at 7.

R

²³⁵ Protection of Women Act, ch. 3, § 10(2)(a).

²³⁶ *Id.* at §9(1)(e)

²³⁷ Interview with Dr. Sagar Preet Hooda, *supra* note 181.

R

Solution or Mere Paper Tiger?

of providing multiple places where women can file complaints.²³⁸ Allowing alternative venues for filing complaints permits women to choose the option with which they feel most comfortable.²³⁹ Until protection officers implement a procedure for registration of service providers, victims of domestic violence will be limited to filing complaints with protection officers, police officers, and magistrates, all of whom victims have historically been reluctant to approach.²⁴⁰

Additionally, without a list of service providers, victims are unlikely to know where they can turn for support. A comprehensive list will help victims, service providers, and other key players under the Act by allowing coordination of services.²⁴¹ Although NGOs appear connected through workshops and conferences, the organizations, nevertheless, lack overall awareness of service providers other than organizations that contributed to the drafting of the Act.²⁴² Outside this group are many grassroots and smaller organizations that provide services for women, such as counseling, job skills training, and shelter, which are equally important to the success of the Act.²⁴³ If a victim goes to a service provider to make a complaint, she likely will need more services than that individual service provider can offer.²⁴⁴ Therefore, for service providers to fully assist and support a victim, they must be able to direct the victim to other NGOs providing services outside their specialty.²⁴⁵ For example, while the Lawyers Collective predominantly offers legal assistance, with a list of service providers, they could ensure that a victim is also able to get counseling, housing, and education. In addition, a comprehensive service provider directory would connect a victim with service providers in her neighborhood or district, rather than having to travel to the few well-known NGOs.²⁴⁶

While many of the organizations will need to continue to provide the same services that they provided prior to the enactment of the Act, some of the women's organizations and NGOs will also need to take on new responsibilities. Therefore, the women's groups and NGOs should reevaluate their roles and responsibilities to determine what services they need to offer to ensure successful implementation of the Act.

²³⁸ Interview with Dr. Sagar Preet Hooda, *supra* note 181.

R

²³⁹ Interview with Brottil Dutta & Kamolika Dutta, *supra* note 15.

R

²⁴⁰ *Id.*

²⁴¹ National Secretariat, Protection of Women Act, 2005, *Recommendations Emerging Out of the Second National Women's Conference Held on 18th-20th February 2007 at Delhi for Mechanism for Effective Implementation of the Protection of Women Against Domestic Violence 2* (available through Action India, email: actionindia1976@gmail.com)

²⁴² Interview with Purnima, *supra* note 29; Interview with Dr. Jyotsna Chaterji, *supra* note 10.

R

²⁴³ Interview with Purnima, *supra* note 29; Interview with Dr. Jyotsna Chaterji, *supra* note 10.

R

²⁴⁴ National Secretariat, Protection of Women Act, 2005, *supra* note 241, at 2.

R

²⁴⁵ *Id.*

²⁴⁶ *Id.*

Solution or Mere Paper Tiger?

B. Suggestions to Assist in the Implementation of the Act

Despite the Act's potential to assist women experiencing domestic violence, the Act will not be effective in reducing overall levels of violence unless the patriarchal mindset of Indian society is dismantled. Indian women need to be empowered to recognize that violence is unacceptable, and there needs to be training for, sensitization of, and cooperation among police, protection officers, service providers, and magistrate judges in enforcing the Act. The following suggestions will facilitate the achievement of these objectives.

1. *Teamwork*

First, police, protection officers, service providers, magistrate judges, and government officials must collaborate to determine how best to successfully implement and enforce the Act. Without their joint efforts, the objective of the Act cannot be achieved.²⁴⁷ If these parties do not work together toward the goal of reducing violence against women, women will continue to fall victim to the abuse and violence will continue to be perpetuated by India's patriarchal society.

2. *Sensitization Training*

Second, the traditional acceptance of domestic violence in Indian culture is detrimental to successful implementation and enforcement of the Act.²⁴⁸ This mindset is not limited to those who inflict domestic violence on women; it extends to individuals at all levels and in all positions, including the people who are responsible for ensuring that women are protected under the Act.²⁴⁹ To dismantle this mindset, NGOs and government officials must assume responsibility for carrying out gender sensitization training for all parties who have any role or responsibility under the Act.²⁵⁰

The purpose of gender sensitization training should be to create awareness of discrimination against women, reduce bias against women, and cultivate an understanding of the role of women in Indian society to better address the needs of domestic violence victims. By creating an awareness of biases and prejudices against women, the key players in enforcing the Act will be better aware of actions and decisions which stem from these biases and hopefully work to reduce the effects of these biases.²⁵¹ If this Act is to successfully protect women affected by domestic violence, those responsible for enforcing the Act must overcome their own biases to help victims.²⁵² Should persons of authority continue to react with prejudice and bias toward victims of domestic violence, victims will

²⁴⁷ Interview with Brototil Dutta & Kamolika Dutta, *supra* note 15.

²⁴⁸ Interview with Dr. Jyotsna Chaterji, *supra* note 10.

²⁴⁹ See *supra* Part I.

²⁵⁰ National Secretariat, Protection of Women Act, 2005, *supra* note 241, at 3–4.

²⁵¹ Interview with Dr. Jyotsna Chaterji, *supra* note 10.

²⁵² *Id.*

R

R

R

R

Solution or Mere Paper Tiger?

be discouraged by the results of their efforts to seek protection, and they may cease pursuing their rights under the Act.

Because of the deeply ingrained patriarchal mindset, NGOs and the government should conduct multiple training sessions, and the sessions should be conducted on a regular basis and continue far into the future.²⁵³ Limited trainings will not be effective because all Indians grew up in a society permeated by prejudice against women. These stereotypes and prejudices will not be dismantled after only a few sessions of gender sensitization training. In addition, NGOs should employ a variety of methods to combat biases and raise awareness of women's realities in India.²⁵⁴ Such methods could include role-playing, plays, and discussions. The NGOs must monitor the progress of these trainings and make modifications based on the level of progress. If a method does not appear to be working, the NGOs should experiment with other methods to find the most effective combination. Additionally, NGOs and government officials must work together to coordinate and fund training sessions in order to begin the systematic breakdown of the patriarchal mindset.²⁵⁵

One existing program that may be successful is *Walking Wisdom: A Creative Learning Experience*, which was developed by Sakshi.²⁵⁶ This program, geared toward the sensitization of judges, consists of a book accompanied by compact discs, which can be used by the judge on his or her own time.²⁵⁷ The objective of the program is to sensitize judges to gender issues so that they may make objective decisions free from biases and stereotypes.²⁵⁸ While the effectiveness of this program is unknown, it has the potential to be beneficial because it is a self-learning program, which will likely fit into the schedules of busy judges better than other types of training programs. However, the disadvantage to a self-learning program is the difficulty in determining whether judges are actually completing the program and using it in the proper manner. If the organizations could develop a way to monitor judge's compliance and progress, this type of program could be advantageous because of its time benefits and cost-effectiveness.

3. *Publicity and Education of the Law*

Third, for victims of domestic violence to obtain relief under the Act, the public must become aware of the Act and be educated on how to utilize its protections.²⁵⁹ As discussed above,²⁶⁰ a major impediment to the success of the Act is

²⁵³ Interview with Purnima, *supra* note 29.

²⁵⁴ Interview with Dr. Jyotsna Chaterji, *supra* note 10.

²⁵⁵ National Secretariat, Protection of Women Act, 2005, *supra* note 241, at 1, 3–4.

²⁵⁶ SAKSHI, WALKING WISDOM: A CREATIVE LEARNING EXPERIENCE (Sakshi 2005).

²⁵⁷ *Id.*

²⁵⁸ *Id.*

²⁵⁹ National Secretariat, Protection of Women Act, 2005, *supra* note 241, at 3–4; Interview with Purnima, *supra* note 29; Interview with Dr. Jyotsna Chaterji, *supra* note 10.

²⁶⁰ See *supra* Part III.

R

R

R

R

R

Solution or Mere Paper Tiger?

a lack of knowledge regarding the law's provisions.²⁶¹ Formulating a suitable remedy to this problem requires the coordinated efforts of the government, media, and NGOs.²⁶²

The media can be an effective tool in publicizing the Act and its features.²⁶³ Because the lack of knowledge regarding the Act is so widespread, women's rights organizations have found that even negative news reporting of the Act is valuable because the public is at least becoming aware that a civil domestic violence law exists.²⁶⁴ Whether positive or negative, news reporting is valuable, and the government and women's rights organizations should continue to seek the media's attention.²⁶⁵

In addition to news reporting, additional publicity can be achieved through other outlets, such as television and radio commercials, billboards, newspaper, and magazine advertisements.²⁶⁶ These outlets reach a wide array of people and draw attention to the Act, while also ensuring that the publicity is positive and informative. However, the drawback to some of these forms of publicity is that they will not reach all groups of people. In particular, these media forms will not likely reach some rural populations, including those who do not have access to radios or televisions and those who are illiterate.²⁶⁷ In order to bring awareness to these groups, NGOs and the government will need to actively reach out to these people.²⁶⁸ An active approach may require organizations to travel from village to village and use non-traditional forms of educating the rural public about the law. It may also require providing incentives to get members of these communities to attend presentations and learn about the Act. Street plays, similar to those used by Parivartan, may be effective because they are able to inform audience members whether or not they are educated or literate.²⁶⁹ Additionally, plays may be able to draw larger audiences than other teaching methods because they are entertaining and appeal to people of all ages and sexes.²⁷⁰

Nevertheless, to be beneficial, these street plays or other publicity tools must address the basic components of the Act. The audience must understand what constitutes domestic violence, what rights women have under the Act, and how to enforce these rights.²⁷¹ The public must also be told where a victim can go to find assistance in filing a complaint under the Act. Without information regard-

²⁶¹ National Secretariat, Protection of Women Act, 2005, *supra* note 241, at 3–4; Interview with Purnima, *supra* note 29; Interview with Dr. Jyotsna Chaterji, *supra* note 10. R
R

²⁶² National Secretariat, Protection of Women Act, 2005, *supra* note 241, at 3–4; Interview with Purnima, *supra* note 29; Interview with Dr. Jyotsna Chaterji, *supra* note 10. R
R

²⁶³ National Secretariat, Protection of Women Act, 2005, *supra* note 241, at 3–4. R

²⁶⁴ Interview with Dr. Jyotsna Chaterji, *supra* note 10; Interview with Purnima, *supra* note 29. R

²⁶⁵ National Secretariat, Protection of Women Act, 2005, *supra* note 241, at 4. R

²⁶⁶ *Id.* at 3–4.

²⁶⁷ Interview with Dr. Jyotsna Chaterji, *supra* note 10. R

²⁶⁸ Interview with Purnima, *supra* note 29; Interview with Dr. Jyotsna Chaterji, *supra* note 10. R

²⁶⁹ Interview with Dr. Sagar Preet Hooda, *supra* note 181; Interview with Purnima, *supra* note 29; Interview with Dr. Jyotsna Chaterji, *supra* note 10. R
R

²⁷⁰ Interview with Dr. Sagar Preet Hooda, *supra* note 181. R

²⁷¹ Interview with Dr. Jyotsna Chaterji, *supra* note 10. R

Solution or Mere Paper Tiger?

ing these basic provisions of the Act, a victim will not be able to effectively use the Act, and as a result, the Act will not protect women from domestic violence.²⁷²

4. *Legal Representation*

Fourth, the Act requires police officers, service providers, and magistrates to inform aggrieved persons of their right to free legal aid.²⁷³ However, although Indian citizens are entitled to free legal aid under the Act, India has relatively few attorneys who work in the public interest field or are willing to provide pro bono legal representation.²⁷⁴ The deficiency in the number of available legal counsel results in a lack of free or low cost legal representation for victims of domestic violence. Unless more funding is made available, the Act's provision for free legal aid to victims of domestic violence will only add to the work of already overburdened public interest lawyers without adding to the number of public interest attorneys that are available.²⁷⁵ Those promoting the Act must evaluate how these new claims will affect the current judicial system in terms of capacity and address any areas that are in need of additional support.²⁷⁶ The government must participate in this area, and in particular, it must ensure that adequate monetary and legal resources are available to address the legal claims. While women's rights organizations have yet to report an increase in complaints since the enactment of the Act, the number of complaints will likely increase if NGOs heed advice to publicize the Act and educate women regarding their rights.

The lack of attorneys willing to work in public interest is a difficult problem to overcome. However, the Indian government could take some steps toward remedying the problem, such as requiring all attorneys to work a certain number of hours per year on pro bono cases and/or providing incentives in the form of student loan forgiveness or subsidies for lawyers working predominately in the public interest field. By increasing the number of attorneys available to provide free legal aid, more victims of domestic violence will have assistance in exercising their rights in the manner intended under the Act. The absence of legal representation available to victims may result in fewer complaints being filed and a failure of victims to follow through with the litigation of claims. Therefore, the government must ensure that funds are allocated and resources are available to provide the necessary legal representation to victims. Additionally, the government should monitor the availability of legal aid and allocate additional resources should the previous estimate prove insufficient to provide adequate free legal aid to all victims.

²⁷² *Id.*

²⁷³ Protection of Women Act, ch. 3, § 5(d).

²⁷⁴ Interview with Subbayamma Nagubadi, in Valaparaiso, Indiana (Feb. 25, 2007).

²⁷⁵ Mittal, *supra* note 151, at 17–18; National Secretariat, Protection of Women Act, 2005, *supra* note 241, at 4.

²⁷⁶ Mittal, *supra* note 151, at 17–18; National Secretariat, Protection of Women Act, 2005, *supra* note 241, at 4.

R
R
R
R

Solution or Mere Paper Tiger?

5. *Increase the Number of Shelters*

Fifth, there is a strong social stigma against women living outside the marital home, and, as a result, shelters are rarely utilized by women in abusive relationships.²⁷⁷ Nevertheless, the availability of shelters is important because shelters provide an option to women who do decide to leave abusive relationships. Shelters are needed in times of emergency when a woman cannot possibly return home and remain safe. Additionally, as women gain more independence, the belief that a woman should not live outside the marital home will likely weaken. This may lead to an increase in the willingness of a woman to leave an abusive relationship and seek out a shelter for protection and housing until she is able to provide for herself.

India currently has few shelters, and those that are available often prohibit the children of victims from accompanying the victim at the shelter.²⁷⁸ This prohibition contributes to the reluctance of women to utilize the benefits of shelters for fear of being separated from their children. Therefore, their policies should be modified to permit children of victims to live with their mothers at the shelter.²⁷⁹ Additionally, the location of shelters should be made known to NGOs, protection officers, and police officers.²⁸⁰

6. *Empower Women*

Sixth, in order to reduce domestic violence against women, women must be empowered.²⁸¹ The empowerment of women will begin to dismantle the patriarchal mindset that is ingrained in Indian society and place women on an equal level with men.²⁸² One study conducted in rural India found that women whose husbands granted them real property rights were less likely to be victims of domestic violence than those who had no ownership in their husband's property.²⁸³ Therefore, programs encouraging the voluntary granting of property rights to women should be implemented.

While women in India have equal rights to own property, many women are still prevented from owning or inheriting property because of traditional beliefs or because their families stand in their way.²⁸⁴ Moreover, many women who hold title to property are unaware of their ownership either because they do not understand the title, they were told that they do not own it, or they are illiterate

²⁷⁷ Interview with Dr. Jyotsna Chaterji, *supra* note 10.

²⁷⁸ *Id.*

²⁷⁹ *Id.*

²⁸⁰ National Secretariat, Protection of Women Act, 2005, *supra* note 241, at 2.

²⁸¹ Interview with Brottil Dutta & Kamolika Dutta, *supra* note 15; Interview with Purnima, *supra* note 29; Interview with Gita Gupta, *supra* note 230; Interview with Dr. Jyotsna Chaterji, *supra* note 10.

²⁸² Interview with Brottil Dutta & Kamolika Dutta, *supra* note 15; Interview with Purnima, *supra* note 29; Interview with Dr. Jyotsna Chaterji, *supra* note 10.

²⁸³ Gupta, *supra* note 53, at 45–46.

²⁸⁴ *See supra* Part I.

R

R

R

R

R

R

Solution or Mere Paper Tiger?

and did not know what they were signing.²⁸⁵ To combat this problem, India could enact a law requiring a full explanation of title and the rights of ownership when a woman inherits or otherwise acquires title to real property. A law of this nature would provide protection for women who are illiterate or do not understand the legal language of the title. Additionally, a marital property law should be enacted providing that all property acquired during a marriage is jointly owned by the spouses.²⁸⁶

In addition to property rights, women must be educated and given the option and opportunity to work outside the home.²⁸⁷ Therefore, the NGOs and the government must focus on the education of female children so that every woman has the opportunity to become literate. Furthermore, NGOs should offer job skills training workshops, which could teach a variety of skills enabling woman to find jobs outside the home and contribute to their household income.²⁸⁸ As women gain a more equal economic status with men, women will hopefully face less domestic violence because their partners will begin to see them as equals.²⁸⁹ Alternatively, if violence continues, a woman who is educated and has job skills will have the means to live outside of her marital home should she decide to leave an abusive relationship.

7. *Monitor and Amend Act as Necessary*

Seventh, NGOs and the government must monitor the effectiveness of the Act in reducing rates of domestic violence.²⁹⁰ In addition, these groups must evaluate the avenues available for women seeking relief and the various remedies available under the Act to determine which provisions are effectively implemented.²⁹¹ If certain provisions have not been effective or could not be implemented as intended, protection officers, service providers, and magistrate judges should first try to find alternative ways to make the provision work without amending the Act. However, if this is not possible, the legislature must amend the Act as necessary to ensure successful implementation.

Additionally, even if progress is made initially, NGOs must continually monitor the effectiveness of the Act to determine if new laws addressing domestic violence are needed as society evolves.²⁹² While the law is considered comprehensive today, women's rights organizations may determine that additional protections are needed in the coming years. Therefore, continuous monitoring and amendment may be necessary to achieve true protection for women against domestic violence.

²⁸⁵ See Gupta, *supra* note 53, at 38; Interview with Purnima, *supra* note 29; Interview with Dr. Jyotsna Chaterji, *supra* note 10; Interview with Gita Gupta, *supra* note 233.

²⁸⁶ See LAWYERS COLLECTIVE, ONLY HER WORD, *supra* note 3, at 80–81

²⁸⁷ Interview with Purnima, *supra* note 29; Interview with Dr. Jyotsna Chaterji, *supra* note 10.

²⁸⁸ Interview with Purnima, *supra* note 29; Interview with Dr. Jyotsna Chaterji, *supra* note 10.

²⁸⁹ Interview with Brottil Dutta & Kamolika Dutta, *supra* note 15.

²⁹⁰ See LAWYERS COLLECTIVE, ONLY HER WORD, *supra* note 3, at 85.

²⁹¹ See *id.*

²⁹² See *id.*

R
R
R
R
R
R

Solution or Mere Paper Tiger?

8. *Judicial Consideration of International Obligations*

Finally, Indian courts have an obligation to consider international law and India's treaty obligations in formulating their common law. In fact, India's Constitution specifically requires recognition and enforcement of India's international treaty obligations.²⁹³ The Supreme Court has recognized that where domestic legislation does not address an issue, the judiciary should consider international conventions and norms in filling the gaps so long as those international obligations are not in conflict with any existing legislation or the Indian Constitution.²⁹⁴

International law mandates gender equality and advocates for the protection of women's rights.²⁹⁵ Because India has never had legislation comparable to the Act, it is imperative that the judiciary considers India's international treaty obligations in its interpretation of the Act in order to safeguard women's rights to protection from violence. Two such obligations are the Convention on the Elimination of All Forms of Discrimination against Women ("CEDAW") and the Beijing Platform for Action of the Fourth World Conference on Women in Beijing.²⁹⁶ CEDAW is a United Nations Convention that proscribes discrimination against women and mandates equal opportunities, access and benefits to women so that men and women can equally enjoy "all economic, social, cultural, civil, and political rights."²⁹⁷ India ratified CEDAW on August 8, 1993, and thus committed itself to the protection of the woman's right to be treated equally.²⁹⁸ In addition to CEDAW, India's government committed itself to adopting a national policy for the protection of women's rights in accordance with the Beijing Platform for Action.²⁹⁹ The Platform for Action calls for member States to develop "a holistic and multidisciplinary approach to the challenging task of promoting families, communities and States that are free of violence against women."³⁰⁰ It requires that "equality, partnership between women and men and respect for human dignity must permeate all stages of the socialization process."³⁰¹

²⁹³ See INDIA CONST. art. 4, §51(c). It provides in pertinent part: "The State shall endeavor to . . . (c) foster respect for international law and treaty obligations in the dealings of organized people with one another." *Id.*

²⁹⁴ See *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241; see also *Gramophone Co. of India Ltd. v. B.B. Pandey*, AIR 1996 SC 2715.

²⁹⁵ See United Nations Convention on the Elimination of All Forms of Discrimination Against Women, India, July 30, 1980, 1249 U.N.T.S. 13 [hereinafter CEDAW].

²⁹⁶ See Singh, *supra* note 48, at 82.

²⁹⁷ See CEDAW, *supra* note 295.

²⁹⁸ Office of the U.N. High Comm'r for Hum. Rts., Status of Ratifications of the Principal International Human Rights Treaties (June 9, 2004), <http://www.unhchr.ch/pdf/report.pdf>.

²⁹⁹ See Singh, *supra* note 48, at 82; See also Further Actions and Initiatives to Implement the Beijing Declaration and Platform for Action, G.A. Res. S-23/3, U.N. Doc. A/Res/S-23/3 (Nov. 16, 2000) [hereinafter Further Actions]

³⁰⁰ United Nations Fourth World Conference on Women, Beijing, China Sept. 4–15, 1995, *Platform for Action*, ¶119, U.N. Doc. A/CONF.177/20/Rev. 1, (Sept. 1995), available at <http://www.un.org/womenwatch/daw/beijing/platform/violence.htm>.

³⁰¹ *Id.*; see Further Actions, *supra* note 299.

R
R

R

Solution or Mere Paper Tiger?

Together CEDAW and the Platform for Action recognize that women have rights and those rights should not be ignored. These international covenants reinforce that the once private issue of domestic violence in Indian households should be considered a human rights violation and thus immediately actionable.³⁰² The tenets of the Platform should be integrated into the judiciary's interpretation of the Act because they recognize and address the fact that domestic violence in India cannot be extinguished overnight—there are cultural undertones that have to be addressed before the Act will be effectively implemented.

Conclusion

The Protection of Women from Domestic Violence Act grants Indian women more rights and protections than have ever been granted to them in the past. Unlike previous domestic violence laws, which provided protection only in cases of dowry death and extreme cruelty, the Act defines domestic violence broadly to include everything from physical violence to emotional injuries to economic threats. Furthermore, the Act provides civil remedies to fill the gap between the restrictive criminal laws and the extreme civil remedy of divorce. Most importantly, for purposes of the women's rights movement in India, the Act grants a specific right to women, the right to reside in the shared household.

The language of the Act is exceptional, and the Act, if implemented properly, has great potential to make a difference in the lives of women victimized by domestic violence. Nonetheless, various characteristics of Indian culture threaten the Act's effectiveness. The main barrier to successful implementation is the deeply ingrained patriarchal mindset of Indian society. Among all classes and levels of society, women are viewed as subordinate to men. The patriarchal mindset does not affect just the general public; it also affects the very people who are supposed to protect women from domestic violence. Therefore, many steps must be taken to promote the effective implementation of the Act.

Specifically, the Act will not be effective in reducing overall levels of violence unless the patriarchal mindset of Indian society is dismantled, Indian women are empowered to recognize that violence is unacceptable, and there is training for, sensitization of, and cooperation among police, protection officers, service providers, and magistrate judges in enforcing the Act. In addition to implementing the requirements specified in the Act, NGOs and the government must take additional steps to ensure the Act is effective in protecting women. These steps include performing gender sensitization training of all protection officers, police, lawyers, magistrate judges, and all other parties involved in the implementation of the Act; providing publicity and education regarding the law; increasing the number of attorneys available to provide legal representation to victims of domestic violence; adding to the number of shelters; empowering women; monitoring and amending the Act as needed; and interpreting the Act pursuant to

³⁰² See BARBARA BURTON, NATA DUVVURY, & NISHA VARLA, JUSTICE, CHANGE AND HUMAN RIGHTS: INTERNATIONAL RESEARCH AND RESPONSE TO DOMESTIC VIOLENCE 9 (Int'l Ctr. for Research on Women & The Ctr. for Dev. & Population Activities 2000), available at <http://www.icrw.org/docs/domesticviolencesynthesis.pdf>.

Solution or Mere Paper Tiger?

international treaty obligations. Although the Act is a great achievement for Indian women, NGOs and the government must carefully monitor the enforcement of the Act and work together to dismantle the patriarchal mindset that threatens to make the Act ineffective.
