1. Unscrambling the Images

Conflict in the Shared Household

Indira Jaising

‘Now Touch His Feet and Go Home’

The idea of this book germinated on the 10th Anniversary of The Protection of Women from Domestic Violence Act (PWDVA) on 26 October 2016. The milestone needed to be marked. The law meant to provide a framework for equality by providing remedies to end violence when it occurred in the shared household. This collection of chapters intends to evaluate some of the concepts that shaped the framing of the law and its evaluation in the hands of judges.

As a lawyer representing women and an observer of the courts and their judgments, I have been struck by the moral indignation shown by judges when women are killed in the matrimonial home. Yet, simultaneously, it is the same judges who are in denial when a living woman complains of violence in the matrimonial home. Indeed, they go further, conjuring up the image of a ‘scheming wife’, ‘the manipulating wife’, a ‘gold digger wife’, and ‘the wife who
'misuses the law'. This I call, ‘concern for the dead, condemnation for the liv-
ing’.\textsuperscript{1} Hence, while convictions were quick to come under Section 304B of the Indian Penal Code (IPC)\textsuperscript{2} for death in the matrimonial home, the antecedent violence was not addressed under Section 498A of the IPC\textsuperscript{3} when the woman was alive. A woman who complained of violence was often told by judges, ‘now touch his feet and go home’. There have been women who did that, if only to regain custody of their children, and never came back alive. While Section 498A of the IPC\textsuperscript{4} has been given a bad name by constructing the image of a scheming wife, there was no alternative civil law, which a woman could use to address domestic violence. The PWDVA was an attempt to frame such a law, premised on the need for an equal relationship between the members of the family living in a shared household. Recognizing that not just wives, but mothers, daughters, and women in live-in relationships also needed protection from violence and from being rendered homeless, the law covers the household as a unit, not just the matrimonial relationship.

\textsuperscript{1} Indira Jaising, ‘Concern for the Dead, Condemnation for the Living’, Economic and Political Weekly 49, 30 (2014): 34.

\textsuperscript{2} Section 304B of the IPC Dowry death: (a) 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, or in connection with, any demand for dowry, such death shall be called ‘dowry death’, and such husband or relative shall be deemed to have caused her death. Explanation: for the purpose of this sub-section, ‘dowry’ shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961). (b) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.

\textsuperscript{3} Section 498A of the IPC: Husband or relative of husband of a woman subjecting her to cruelty: whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Explanation: for the purpose of this section, ‘cruelty’ means: (a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb, or health (whether mental or physical) of the woman; or (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

\textsuperscript{4} See footnote 3.
Providing Definitions

Definitions go to the heart of any law; if they go wrong, the law goes wrong. For a country which has non-violence as its founding faith, it took more than 60 years to get a definition of domestic violence. The PWDVA, for the first time, sought to address the emotional and physiological trauma faced by women in domestic situations. Sexual abuse is included as a form of violence and it should include unwanted sex, making marital rape an actionable wrong, though it is excluded from the definition of rape under the IPC.

In this volume, we have not added to the literature of statistics on the functioning of the PWDVA, but focus on the main issues that have been litigated over the years: is the law universally applicable regardless of religion; have women in relationships in the nature of marriage been using the law; is marital rape addressed by this law; has the right to reside in the shared household found a foothold in jurisprudence; is the infrastructure to support women evolving; how does budgeting affect the implementation of a law?

When I started my legal practice in the 1960s, women could not frame the question of violence against them. When faced by a petition for divorce by their husbands, they would ask what would happen to their children if the divorce comes through, or they would have questions on how to get a divorce in an abusive marriage. Some women would ask the smart question of what their options are, but many women did not even realize and were not aware that there could be any options at all. Given that there is no law of community of property or equitable distribution of assets on the breakdown of a marriage, divorce in the Indian context meant civil death for most women. Women in violent marriages continue to resist divorce, knowing that there are no options for an honourable exit. Laws declaring the father to be the ‘natural guardian’ terrorize women into fearing that they will lose custody

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5 Sub-section (iii) of Explanation I to Section 3 of the PWDVA states the following: (iii) ‘verbal and emotional abuse’ includes: (a) insults, ridicule, humiliation, name calling and insults, or ridicule especially with regard to not having a child or a male child; and (b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested.

6 Sub-section (ii) of Explanation I to Section 3 of the PWDVA states the following: (ii) ‘sexual abuse’ includes any conduct of a sexual nature that abuses, humiliates, degrades, or otherwise violates the dignity of woman.

7 For example, see Section 6 of the Hindu Minority and Guardianship Act, 1956: 6. Natural guardians of a Hindu minor—The natural guardians of a Hindu,
of their children, the one thing they fear on the breakdown of marriage. I have known women who have gone underground with their infant children, never to be seen again when orders to give up custody of minor children were passed. Others have waited patiently till their children reached the age of discretion to exit a marriage. This fear has been often used, and continues to be used effectively, to keep women in a violent relationship from exiting on reasonable terms of separation. For many women, divorce has simply not been an option they could exercise, and yet there was no other exit option from a bad marriage. The PWDVA was intended to be an attempt to restore the measure of equality within a domestic relationship by creating conditions within which a woman could negotiate her options without fear of violence or of being rendered homeless. It is not, and never was, a law of equitable distribution of assets between the people in a domestic relationship. Such a law awaits enactment.

In 1984, Section 498A of the IPC was enacted. There is a long history behind the criminal law on domestic violence coming into place. Preceding this powerful amendment, were cases of women dying in their matrimonial homes. The police were habitually recording these deaths as ‘accidents’ and the case files were closed without an investigation. It was the historic campaign of mothers of these women who died, and their demand for reopening the case file, which led to the enactment of Section 498A. Satya Rani Chaddha, who had lost her daughter in a so-called ‘accident’, was at the forefront of this campaign. Her daughter, Kanchan Rani, got married at a

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young age and died within 10 months of marriage. She was pregnant at that
time. Chaddha refused to believe it was an ‘accident’. She wanted the police
to record an FIR and to prosecute, but the police refused to do so.

Reports9 show that in these cases of ‘accidental’ deaths, women were
always in the kitchen, working on the kerosene stove. These ‘accidents’ were
therefore termed as cases of stove bursts. This was the period when the
polyester king, Dhirubhai Ambani, invented the polyester saree and women
had switched over from wearing silks and cottons to polyester. Polyester was
notorious for catching fire faster than cotton or silk. Hence, there were two
villains at the crime scene—one was the kerosene stove and the other was
the polyester saree. The social dynamics of the family, the deliberate abuse,
and the dowry demands were not taken into consideration. It was Chaddha
who brought these issues to the forefront of Indian legal history. Women
like her made it the mission of their lives to ensure that other daughters
did not die a similar death. Her long battle resulted in her son-in-law being
convicted for abetting the suicide of this wife.10 These campaigns finally led
the government to introduce Section 498A IPC. This was a bold provision
for several reasons. First, it introduced the concept of cruelty in marriages
as a criminal offence and secondly, the definition was not limited to dowry
demands or physical violence only, but extended to mental cruelty as well.
It is a different matter that in its operation, the police understand the law
to mean that it can only be used for prosecuting demands for dowry and
insist that they be included in the FIR as a pre-condition for investigating
the crime of cruelty. Section 304B IPC11 was introduced thereafter, which
defines dowry death. Both sections dealt with aspects of cruelty within

9 Sharma et al., ‘Accidental Burns in Indian Kitchens: Are They Really Acci-
dental?’, Journal of Indian Academy of Forensic Medicine, Vol. 28, no. 1 (2006); see
also, Menon, ‘Dowry Deaths in Bangalore’, Frontline 16, 17.


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mits dowry death shall be punished with imprisonment for a term which shall not be
less than seven years but which may extend to imprisonment for life.
marriage. While Section 498A addressed a woman’s situation when she is alive, Section 304B addresses the situation when she is dead. Both sections were necessary, though they served a different purpose. After all, the aim of every law is to prevent crime, not just punish it after it happens. Section 498A was intended to prevent women from dying a ‘dowry death’. 12

Women were interested in keeping their marriage together but they wanted the abuse to stop. There was no law that addressed what happens within a marriage. There was a law that addressed how one marries and there was a law which addressed how one exits a marriage, but there was no law which addressed what happened between those two points of time. That was the background noise in my head for many years.

In 1994, the National Commission for Women, then headed by V. Mohini Giri and Padma Seth, asked me to create a draft law addressing domestic violence in the matrimonial home. The Lawyers Collective (LC) by then had already started working on a specific project on issues related to domestic violence.

**The Need for a Civil Law and the Structure of the PWDVA**

There were a lot of women who did not want to use the criminal law. 13 The absence of a civil law left them often without a remedy and rendered them homeless.

The major problem with criminal law is that the state vindicates the rights of the victim on her behalf. The survivor is cut out of the whole process of seeking justice. It is the prosecution which has the carriage of the proceedings and the burden of proving it. In civil law, by contrast, the woman never loses agency over decision-making. The rights of the survivors in a criminal trial are limited. There are constitutional guarantees under Article 20 14 to protect the rights of convicts, but the same paradigm cannot be used for the victims. There was therefore the need to put the victim centre stage and strengthen criminal remedies with additional civil remedies.

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12 Jaising, ‘Concern for the Dead, Condemnation for the Living’.

13 498A IPC.

14 Article 20 of the Indian Constitution: Protection in respect of conviction for offences: (a) No person shall be convicted of any offence except for violation of the law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. (b) No person shall be prosecuted and punished for the same offence more than once. (c) No person accused of any offence shall be compelled to be a witness against himself.
There is no need to have a sharp divide between criminal and civil law. Both seek to achieve the same objective: to hold the wrongdoer accountable. It is the nature of relief that varies. Criminal law ends in conviction and incarceration of the accused, whereas civil law could provide monetary relief, custody of the children, and most importantly, residence orders. There is a line that divides criminal and civil remedies. The PWDVA does not delete the line. The civil and criminal reliefs in domestic violence can be concurrent, leaving it to the woman to select remedies most suited to her situation. At all times, the agency is with the women. She should have the right to choose what remedy she wants and which right she wants to exercise. The aim of the PWDVA was to tailor individual relief to the individual need of the woman based on her choice. Most importantly, for the first time, a married woman would have a stake in the shared household and feel a real sense of empowerment with the right to reside in the shared household.15

Within the women’s movement there was a unanimous opinion that women were looking for a single-window clearance to deal with the issue of domestic violence. Women had to approach multiple forums for addressing their issues. Not every woman wanted a divorce: some just want to deal with the issue of custody; some wanted to deal with the issue of maintenance; some wanted a separation; and some just wanted the abuse to stop. There was not a single law, which addressed all these issues under a single forum. This was my motivation and driving force behind drafting the Domestic Violence Act; a woman should be able to choose her options without approaching multiple forums. Most importantly, it was necessary that the forum be accessible to women without having to pay a court fee. Hence, we situated the jurisdiction within the Magistrate’s court, which we considered to be the most accessible forum for the survivors. The Magistrate was empowered to provide civil reliefs.

During the consultations, there was a felt need to extend the domain of the law to a multiplicity of household relationships and not just focus on marital relationships, to sisters who were denied access to the joint family home, mothers facing homelessness, and women in relationships in the nature of marriage. Given that marriage in India is not required to be registered, men

15 Section 17 of the PWDVA: Right to reside in a shared household: (a) Notwithstanding anything contained in any other law for the time being in force, every woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title, or beneficial interest in the same. (b) The aggrieved person shall not be evicted or excluded from the shared household or any part of it by the respondent, save in accordance with the procedure established by law.
in multiple marriages could deny to the ‘second wife’ any rights by simply saying that they never married her lawfully despite the fact that there were children from the ‘second wife’. This, among other considerations, led to the inclusion of the provision giving rights to women in domestic relationships ‘in the nature of marriage’, distinguishing them from women who were married in accordance with law.

Most importantly, this was a law of universal application regardless of the religion to which the woman belonged. It was the first attempt in the realm of family law to depart from the regime of ‘personal laws’ and recognize that women of all communities need protection from violence and had the right to reside in the shared household. Saptarshi Mandal traces the access to this law by Muslim women to establish its universal applicability in his chapter.

**Challenges Faced in the Drafting and Enactment of the Law**

Between 1998 and 2001, the LC started a dialogue within the women’s movement on the need for a domestic violence legislation. A series of consultations were held throughout the country, women’s groups were well-exposed to international conventions and hence there was a groundswell of opinion that there was a need for domestic violence legislation. Challenges were many—both at the stage of drafting and at the stage of it becoming the law. The definition of the ‘respondent’ was the most controversial. As originally drafted, a complaint could not be filed against a woman, including a mother-in-law. A contrary point of view was that if under Section 498A, a woman’s parents-in-law could be prosecuted, there is no reason for the relatives of the husbands to be left out. This gave rise to the proviso to Section 2(q) of the PWDVA, which enables a complaint to be filed against a female family member of the male respondent. Justice Rohinton Nariman seems to have missed the point.

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16 Section 2(f) defines domestic relationship as follows: (f) ‘domestic relationship’ means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption, or are family members living together as a joint family.

17 Section 2(q) of the PWDVA: (q) ‘respondent’ means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act: provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner.

The issue of gender-neutrality has always been a point of discussion from the inception of the law. For me, there was a complete rejection of dominant cultural, social, and political ideologies since the time I had seen women in my family get married according to those norms. Consultations during the drafting of the law with various women’s organizations and empirical data revealed that the law had to be gender-specific due to the pervasive problem of gender inequality existing in the socio-cultural familial structures in India. Given the power relations in these structures, the men could use the domestic violence law to dispossess the women from home. Moreover, Article 15 of the Constitution of India empowers the state to take affirmative action and make special provisions for women and children.

Then comes the issue of gender-neutrality of the definition of the respondent. As mentioned above, during the consultations, it was felt that the new law had to be consistent with Section 498A IPC. Hence, under the PWDVA, an aggrieved woman could bring an action against a relative of the respondent.

The Supreme Court struck down ‘adult male’ from the definition of the respondent under Section 2(q) of the Act. It stated: ‘The classification of “adult male person” clearly subverts the doctrine of equality.’ In a seeming attempt to do justice to women, he interpreted the definition of a ‘respondent’ to include all women, making it possible for a mother-in-law in a stand-alone application to file a complaint against her daughter-in-law for domestic violence. This was certainly not the intent of the law. Now, under the Nariman dispensation, a mother-in-law can file a collusive application against her daughter-in-law with her son, who she can say she has ‘disowned’ and seek to evict her from her home. The law has been made to stand on its head. Prior to this judgment, and as the definition stood, a mother-in-law could file a complaint against her daughter-in-law, provided she also made a complaint against her son stating that she was being ill-treated by them both. The judgment now enables the mother-in-law to act as a surrogate for her son, protect him, and exclude her daughter-in-law from the matrimonial home. In the name of gender neutrality, the judgment has reinforced patriarchal notions that the fight is always between a mother-in-law and a daughter-in-law. It has given the right to make anyone a respondent without making the male member a co-respondent and which goes against the spirit of the Act. The Supreme Court has overlooked the complicity between the mother and son in striking down the exception.

The phenomenon of mothers ‘disowning’ their sons, only to deny the daughter-in-law access to the shared household, is now a familiar one, yet no court has said that this is ‘misuse’ of the law, while constantly mourning the fact that wives ‘misuse’ the law, a narrative constructed to protect the male privilege. On the other hand, adequate care was taken in the law to ensure that no woman should be rendered homeless even if that woman was a violent mother-in-law. No woman could be removed from a shared household.20 The eviction of a woman regardless of her relationship to the woman complainant could not be sought as a relief.21

This shows how judges who appear to be progressive in making laws gender-neutral, end up disadvantaging the woman they seek to protect. This is the inability to see that the family is not an aggregation of the same interests, but that their rights have to be disaggregated and that is what the PWDVA seeks to do.

After this long exercise of meetings and consultations, the bill was submitted to the National Commission for Women, the Department of Women and Child Development, and other related departments. Thereafter, the National Democratic Alliance (NDA) propounded a bill called the ‘Protection from Domestic Violence Bill, 2002’ (hereinafter, GOI Bill) in the Lok Sabha. This meant that for the first time, there was some acknowledgement of the issue of domestic violence at the government level. However, the bill itself was a disappointment in terms of what it sought to do. The focus of the bill was the preservation of the family unit rather than stopping domestic violence against women. The critical issue of the definition of domestic violence was narrowed down to the scope of relief and sought inspiration from a 1939 law22 which defined violence as conduct/assault habitual in nature, which made the life of

20 Section 19 of the PWDVA states the following: (19) Residence orders: (a) While disposing of an application under sub-section (1) of section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order… (b) Directing the respondent to remove himself from the shared household;… Provided that no order under clause (b) shall be passed against any person who is a woman.

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22 Dissolution of Muslim Marriages Act, 1939.
the victim ‘miserable’. A single act could not be termed as an act of domestic violence under the bill. Terms such as ‘cruelty’ and ‘misery’ were not defined in the bill, leaving it vague and open to interpretation. Women in relationships other than legal marriages were excluded from the definition of an ‘aggrieved person’. Section 4(2) of the bill allowed the respondent to take the plea of self-defence. The respondent could thus get away with brutally assaulting a woman on the pretext that such conduct was meant for his own protection or for the protection of his or even another person’s property. The section was misplaced and betrayed mal-intent in protecting women from violence; after all, self-defence is available to the victim and not to the aggressor.

The 2002 bill had no provision granting a woman in an abusive relationship a right of residence. In the absence of any matrimonial or cohabitee property rights in India, the main aim of a prevention of domestic violence law must be to secure the right to reside for women. The bill also ignored the critical need for providing immediate interim relief and ‘stop violence’ orders nor did it provide a time frame for the proceedings to be completed. Further, it required mandatory counselling.

Due to an obvious outrage against the bill, it was referred to the Parliamentary Standing Committee on Human Resource Development (HRD) for examination. The Committee invited comments and views on the bill from various stakeholders. The Parliamentary Standing Committee Report rejected the narrow definition of domestic violence. The Committee stated that the primary concern was to provide relief to women in recognition of their right to live with dignity and therefore women outside marital relationships should also be covered by the Act. Further, it struck


26 Department-Related Parliamentary Standing Committee On Human Resource Development Hundred—Twenty-Fourth Report On The Protection From Domestic Violence Bill, 2002: ‘Moreover, the issue of domestic violence is more proximate with the basic human rights of a woman to live a dignified life. Therefore, providing relief under the present Bill to a woman whose marriage is not legally valid won’t be in conflict with the existing laws and will not give any legal sanction to the illegal marriages’. 
down the need for the plea of self-defence,\textsuperscript{27} recognized the right to reside in a shared household, and asked for better enforcement mechanisms to be included in the Act.\textsuperscript{28}

Despite the active involvement and campaigns by the women’s organizations, there was no initiative from the government to reformulate the bill in terms of the suggestions made by the Standing Committee. In February 2004, with the dissolution of the Lok Sabha, the bill lapsed. It was during the election of 2004 that many non-governmental organizations (NGOs) suggested that the United Progressive Alliance (UPA) promise the enactment of the Domestic Violence Act in their common minimum programme, which they did.\textsuperscript{29} After coming into power, the promise was redeemed with the enactment of the PWDVA.

While Uma Chakravarti traces the long history of inequality towards women and their exclusion from social spaces, Asmita Basu in her chapter traces the history of the engagement of women’s movement with law reform on the subject.

In June 2005, the draft Protection of Women from Domestic Violence Bill received cabinet approval and the bill was tabled in the Parliament in July of that year. Certain members of the house expressed reservations regarding the inclusion of ‘relationships in the nature of marriage’ within the purview of protected categories of women under the law. It was said that the concept was alien to \textit{Bharatiya sanskriti} (Indian culture), which would send across the wrong message to society. They need not be worried. In her chapter, Brototi

\textsuperscript{27} Department-Related Parliamentary Standing Committee On Human Resource Development Hundred—Twenty-Fourth Report On The Protection From Domestic Violence Bill, 2002: ‘It is of the considered opinion that there are sufficient provisions in the existing criminal and civil laws to take care of the right to defence and there is no need to provide the same in the Bill and unnecessarily overburden it.’

\textsuperscript{28} Department-Related Parliamentary Standing Committee On Human Resource Development Hundred—Twenty-Fourth Report On The Protection From Domestic Violence Bill, 2002: ‘The Committee however, feels that there should be specific mention about the right to residence of the aggrieved person in matrimonial home in the Protection order passed by the Magistrate.’

\textsuperscript{29} National Common Minimum Programme of the UPA government, available at http://nceuis.nic.in/NCMP.htm: ‘The UPA government will take the lead to introduce legislation for one-third reservations for women in vidhan sabhas and in the Lok Sabha. Legislation on domestic violence and against gender discrimination will be enacted.’
Dutta points out that Justice Katju in Veluswamy\(^{30}\) held that women who are in live-in relationships are ‘keeps’. Aside from the ambiguous moral judgment Katju J also forgets a central fact—only property, not humans of either gender—can be kept. Dutta deals with the law relating to conjugality tracing it back to almost a century of development.

Basu, working through the history of law reform, concludes that there has been an excessive reliance on criminal law at the cost of civil law. Sitting in the Parliament during the passage of the bill, we were amused at the fact that every political party fielded a woman Member of Parliament to support the bill, the maximum attendance of male MPs being when Jaya Prada addressed the Parliament on behalf of the Samajwadi Party in support of the bill. The bill was unanimously passed by the Lok Sabha on 22 August 2005 and by the Rajya Sabha on 24 August 2005. On 13 September, it received the assent of the president and the PWDVA, 2005 entered the statute book.

**Domestic Violence Act: A Promise of Non-Discrimination**

Article 15 of the Constitution\(^{31}\) guarantees protection of women in one major way: it prohibits discrimination based on sex. In relation to domestic violence, we draw inspiration from the general comments by Committee on Elimination of Discrimination Against Women (CEDAW)\(^{32}\). The guarantee of non-discrimination, most importantly, includes freedom from violence. The law on non-discrimination has been developed over time to include both direct and indirect discrimination. It also requires due-diligence on behalf of the state to prevent the occurrence of violence against women.

There are various limitations of the adversarial system. The judge does not play an active role, but is an umpire. The person who approaches the

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\(^{30}\) *D. Velusamy v. D. Patchaiammal* (2010) 10 SCC 469: ‘If a man has a “keep” whom he maintains financially and uses mainly for sexual purpose and/or as a servant it would not, in our opinion, be a relationship in the nature of marriage’.

\(^{31}\) Article 15 (1) of the Constitution states the following: (15) Prohibition of discrimination on grounds of religion, race, caste, sex, or place of birth. (a) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any, of them.

court carries the whole burden of proving her case. The PWDVA has therefore been carefully crafted to eliminate such technical limitations. It has been placed in a civil jurisdiction, where judges are required to play an active role. The requirement of due diligence of the state was given shape by introducing the concept of protection officers. A state-mandated assistance to the survivor ensured that evidence could be collected and presented to the court without burdening the victim. The protection officers were envisaged to be the eyes and ears of the court. The proactive role played by the protection officers ensured fair reporting and prevented husbands from lying in court about their assets. It was a remarkable departure from the adversarial

33 Section 9 of the PWDVA lays down the duties of the protection officers: (9) Duties and functions of protection officers: (a) It shall be the duty of the protection officer—

(1) to assist the Magistrate in the discharge of his functions under this Act;
(2) to make a domestic incident report to the Magistrate, in such form and in such manner as may be prescribed, upon receipt of a complaint of domestic violence and forward copies thereof to the police officer in charge of the police station within the local limits of whose jurisdiction domestic violence is alleged to have been committed and to the service providers in that area;
(3) to make an application in such form and in such manner as may be prescribed to the Magistrate, if the aggrieved person so desires, claiming relief for issuance of a protection order;
(4) to ensure that the aggrieved person is provided legal aid under the Legal Services Authorities Act, 1987 (39 of 1987) and make available free of cost the prescribed form in which a complaint is to be made;
(5) to maintain a list of all service providers providing legal aid or counselling, shelter homes, and medical facilities in a local area within the jurisdiction of the Magistrate;
(6) to make available a safe shelter home, if the aggrieved person so requires and forward a copy of his report of having lodged the aggrieved person in a shelter home to the police station and the Magistrate having jurisdiction in the area where the shelter home is situated;
(7) to get the aggrieved person medically examined, if she has sustained bodily injuries and forward a copy of the medical report to the police station and the Magistrate having jurisdiction in the area where the domestic violence is alleged to have been taken place;
(8) to ensure that the order for monetary relief under section 20 is complied with and executed, in accordance with the procedure prescribed under the Code of Criminal Procedure, 1973 (2 of 1974);
(9) to perform such other duties as may be prescribed.
system. In the initial phases of the implementation of the Act, protection officers were meeting the survivors, drafting and filing the petitions, appearing and arguing the matter in courts. Specifically, in Andhra Pradesh, the government played a pioneering role in training, awareness programmes, and budget allocations.\(^{34}\)

The problem arose in the limited role and power granted to the protection officer. The exclusive privilege of lawyers to appear in court denies the protection officer the right to appear and articulate their views, once they have conducted their investigation. It is therefore the need of the hour to enable better implementation by amending the Advocates Act, 1961 giving paralegals the power to address the court in matters of social legislations. The direct interaction with the survivor actually informs the protection officer of the true situation in the shared household.

It is imperative to understand that the law tries to bring about a synergy between NGOs, shelter homes, protection officers, and medical facilities to support the survivor. The roles are distinct yet complementary to each other in the ultimate aim of protecting and aiding the survivor. However, in an effort to defeat this coordinating role, in 2014, a circular was issued in Maharashtra that NGOs providing hands on support to women were prohibited from providing counselling or mediation services without the directions of the court. A writ petition was filed for setting aside this circular. Women’s organizations opposed this circular and submitted a report contending that it is due to the support and services rendered by NGOs that women come forward to report domestic violence. The circular restricted the violated woman’s avenues of using mechanisms provided by the law for redressal of her grievance. Counselling is a remedy in itself where women are offered a neutral, non-judgmental, safe place to decide their course of action. The Bombay High Court held the circular issued by the state of Maharashtra to be arbitrary and unreasonable and hence allowed the petition for quashing the circular.\(^{35}\) A declaration of non-discrimination is therefore not enough; it is only when the state will play an active role in the implementation of beneficial legislations such as allocating a generous amount for gender initiative, initiating awareness, and training programmes, will the guarantee of non-discrimination be redeemed.

The synergy between service providers and state agencies has a long history within the women’s movement. Beginning with a complete rejection

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of the police and its role in stopping domestic violence, women’s groups gradually developed a sense of self-confidence to coordinate their efforts with those of the police under Section 498A of the IPC and later the PWDVA. The coordination took multiple forms: some NGOs offered to operate out of the police station or be available on call, as in Rajasthan, others set up special cells within police stations using the authority of the police to mediate the conflict, as did Tata Institute of Social Sciences (TISS) in Mumbai. This latter pattern was replicated in many police stations across the country. However, in a bizarre distortion of institutional framework established by the autonomous women’s movement, the Rajasthan government has outsourced this role of mediation within the police station to the Durga Wahini who, with their misogynist ideology, remain focused on the subordinate role of a wife in a marriage, ensure that no legal action is taken and the woman who complains of violence is compelled to get back into gains of the last few decades. We now live in the era of one-stop crisis centres which ought to be professionally managed centres to deal with all forms of violence against women. Sangeeta Rege and Padma Bhate-Deosthali have traced the evolution of the one-stop crisis centres which have taken on the role of providing support services, establishing their lineage in the history of the movement which gave birth to women’s centres providing legal services to women in distress.

Importance of the Concept of Shared Household

The first, and most common, manifestation of domestic violence is throwing out of the woman from the matrimonial home. The second most common was to kill her. Under Indian Law, a married woman had lesser right to reside in the shared household than a tenant or a trespasser. Section 6 of the Specific Relief Act\(^\text{36}\) protected a person in possession of property

\(^\text{36}\) Section 6 of the Specific Relief Act: Suit by person dispossessed of immovable property: (a) If any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person claiming through him may, by suit, recover possession thereof, notwithstanding any other title that may be set up in such suit. (b) No suit under this section shall be brought,

1. after the expiry of six months from the date of dispossession; or
2. against the government;
3. no appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of any such order or decree be allowed;
from being evicted except by due process of law. Section 17 of the Domestic Violence Act\(^{37}\) was put in place to give a married woman and a woman in a relationship in the nature of marriage the same right to reside in the shared household. There is a long way to go before women get equal rights to matrimonial property. The Act was the first legislation of its kind to introduce the concept of shared household\(^{38}\) and the right to residence of a woman in a shared relationship. The impetus for framing the law in such a manner was the tradition of joint family systems in India; several generations of a family could be living under the same roof. It also indicates that the economic conditions of India do not permit most married couples to have an independent home as soon as they marry.

The definition of ‘shared household’ is significant. It arose out of the need to delink the concept of ownership of property from the use of it for residential purpose. This is a very important distinction that runs through the fabric of law. People who have possession of property also have rights, although, they may not have ownership. Now, moving our focus very specifically to married women: Indian family structure is patrilocal in nature. After marriage, a woman leaves her natal home and comes into her husband’s house. She does not enter her husband’s home as a trespasser and it is not necessary for her to have ownership of that home. She has conjugal rights and by virtue

(5) nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof.

\(^{37}\) Article 20 of the Indian Constitution: Protection in respect of conviction for offences: (a) No person shall be convicted of any offence except for violation of the law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. (b) No person shall be prosecuted and punished for the same offence more than once. (c) No person accused of any offence shall be compelled to be a witness against himself.

\(^{38}\) Section 2(s) of the PWDVA: ‘shared household’ means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest, or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title, or interest in the shared household.
of those conjugal rights, she has a right to reside in the matrimonial home. Recognizing this very conjugal right of residence, the expression ‘shared household’ was defined in a way so as to delink ownership and possession. The words ‘whether the respondent or the aggrieved person has any right, title or interest in the shared household’ were added to the definition because the technical aspect of ownership cannot be allowed to defeat the purpose of the law and to decide on the right of residence.

The PWDVA was the first glimmer of recognition of the concept of ‘shared household’ and was an amazingly empowering section. Suddenly, a woman realized that she is entitled, she has rights, she has negotiating power, she has agency, and she has a voice that should be heard without the fear of being thrown out. In her chapter, Pinki Mathur Anurag links the right to residence with the right to adequate housing under international law, demonstrating that empowering effect of the right to reside for domestic violence survivors.

Going back to the concept of shared household, in the Taruna Batra case, the daughter-in-law, Taruna Batra, was claiming a right of residence in a house, which was owned by her mother-in-law. It was an admitted fact that Taruna and her husband Amit Batra, were residing in the second floor of the house after their marriage. Taruna moved to her parent’s house due to disputes with her husband. When she tried to move back into the matrimonial home, the locks had been changed. She managed to take possession of the house and filed for an injunction restraining her in-laws from interfering with her possession of the said property. The in-laws declared in their affidavit that their son was no longer residing with them and had moved to Ghaziabad, Uttar Pradesh. The Delhi High Court held that the mere change of residence of the husband would not change the matrimonial home. The Court further held that Taruna was entitled to reside on the second floor by virtue of her right to residence. The Supreme Court overruled the decision of the High Court. The Supreme Court held that the house did not belong to her husband and therefore Taruna could not claim a right to live in that house.

That issue with the Supreme Court’s ruling in the Taruna Batra case is that they failed to delink the concept of ownership from possession. The judge ignored the words ‘whether the respondent or the aggrieved person has any right, title or interest in the shared household’. He went back to linking

the entitlement of residence to ownership, factoring in ownership as the single most important element to decide the right to reside in a shared space. He seemed to be suggesting that if the ownership of the property is with the parents-in-law, the daughter-in-law does not have a right to reside in that property. Further, the judge held that the phrase 'lived or has lived' in the definition of 'shared household' would lead to absurd results, with the woman claiming several places as her 'shared household' on the ground that she had lived there 'at some point of time' or the other. Apart from completely going against the statute, the judgment does not make sociological, legal, or economic sense. The tragedy of the situation is that what the legislature achieved in the law, making a quantum shift from the concept of ownership and creating the right to residence, was erased by this judgment. In a subsequent case before the Delhi High Court, although Justice Sikri was bound by the holding of the Taruna Batra case, he held that even if the daughter-in-law had no right of residence in the house that belonged to her in-laws, she could not be removed from the possession without due process of law. It was a very progressive judgment, but it was manipulated to act against daughters-in-law. Hundreds of suits were filed by in-laws in civil courts stating that the property belonged to them and that they wanted to dispossess the daughter-in-law of the suit property. Parents-in-laws also put out ads in the newspapers declaring that they had disowned their sons. Husbands were also taking property on rent. These tactics were used just to produce evidence in court to prove that the son was no longer the member of the household. Once the husband moved out, it was easier for him to abandon the wife. This was due process and how it was manipulated to defeat the purpose of the legislation. This is how the Taruna Batra judgment rendered the due process a mockery of the law. Due process only works when the coordinate substantive provisions also work. After all, due process is in aid of substantive provisions and is not a standalone provision. There is a critical assumption for the success of due process, which is that the duties imposed by the substantive provisions and the rights enshrined in law are voluntarily respected by those upon whom the duty is cast. The law

41 Jaising, 'Bringing Rights Home: Review of the Campaign for a Law on Domestic Violence'.


43 Smt. Shumita Didi Sandhu v. Mr Sanjay Singh Sandhu and Ors: 'However, statement of defendant No. 2 was recorded by the Court under Order X CPC where he stated that he or his wife had no intention to throw her out of the premises in question without due process of law. Therefore, while dismissing the applications of the plaintiff, it is ordered that the defendant Nos. 1 and 2 shall remain bound by the said statement.'
comes in, when those on whom the duties are imposed do not honour the
duties, and hopefully that should be an aberration and an exception to the
rule. My critique of the Taruna Batra judgment is not just confined to the fact
that the judgment itself is wrong because it ignored the letter of the law, but
also that it gave birth to a manipulative process which subverted the law and
enabled the due process provision to be misused in order to defeat the law.
The critical link between the substantive law and due process was broken.
When due process is used as a tool to manipulate the system and is misused,
it ceases to be due process. It is the people who manipulate due process that
misuse the law and not the women. Further, when the abuse of due process
becomes a pattern, then it is time to recalibrate both the substantive and the
due process provisions of the law. It is time to make course corrections and
understand what is it in the due process provisions that made it possible for
this provision to be misused, and the answer is not just in dealing with an
isolated instance of misuse. It is no longer an isolated misuse once it becomes
a pattern.

Luckily, many judges understood the dangers of the Taruna Batra judg-
ment and went beyond the judgment, distinguishing the fact scenario from
the Taruna Batra judgment. 44

On Misuse

The provisions of laws are being overlooked and undermined in practice
and women are constantly being accused of misusing the law. No court
has defined misuse of Section 498A in specific terms. An obvious example
of the misuse would be making relatives of the husband respondents in a
cruelty case where the relatives are not residing in the same country and
have nothing to do with the abuse. The problem with judgments, specifically
the Arnesh Kumar 45 and more recently the Rajesh Sharma 46 rulings is that
what is specific to one fact scenario has been generalized to state that all
women misuse the law.

If an individual woman does misuse the law, it is within the power of the
court to delete the name of the said relatives from the proceedings through
a quashing petition. It is true that sometimes police and even lawyers

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44 Lawyers Collective, Staying Alive: 5th Monitoring and Evaluation 2012 on the
Protection of Women from Domestic Violence, p. 169. Also detailed in Chapter 6.
encourage women to put a narrative which they think will work with the courts, such as dowry-demands. They sometimes fail to understand that Section 498A goes beyond dowry demands and covers mental harassment too. In addition to this being the wrong legal strategy, it is unethical too. I have seen in my years of practice that the most credible narrative is when you stick to the basic facts because that is the true narrative. The judges understand that narrative.

Where the judges fail us, it is not because they do not understand that narrative, but it is the extraneous factors of bias which disappoint us. What they bring onto the table is their bias of the concept of marriage being sacred, of women’s duty to be obedient and subservient to her husband and in-laws. It is pertinent that in cases like this, experts who understand sociology of the family, causes and consequences of domestic violence, and narratives of women be appointed as amicus curiae, which the court failed to do. The approach of the court undermined the functions of the protection officers and the police. It corrupted the jurisprudence of law. The judges relied upon the data of the National Crime Record Bureau (NCRB) of 2005, 2012, and 2013. Relying on the figures of the number of people arrested, convicted, and acquitted, it concluded that since the conviction rate is low, most of the cases registered under 498A are ‘false’. These data do not give a clear picture as there can be a number of reasons for acquittal, such as poor investigation by the investigating officer, settlement through mediation, or intimidation of witnesses and the complainant herself.

It is nobody’s case that if an individual woman has lied or has falsely implicated a relative of the husband, she should be supported or that the courts should decide in her favour. But to brand women as a class of liars is where the error lies. Section 498A questions patriarchy and this seems to be the response of the court, who take it as their moral duty to ‘save the institution of marriage’. The misuse argument often spills over to the PWDVA. As there is no issue of arrest under the Act, the central issue revolves around property. This, again, is another stronghold of patriarchy: that property should remain in the hands of the male members of the family. The PWDVA becomes very critical in dismantling patriarchy. Woman’s right to demand a fair share in the assets of the family is labelled as misuse. The basis of the argument is the same—the refusal to give up patriarchy.

47 In cases where domestic violence did not specifically include or did not extend to demands for dowry.
It is indeed very encouraging to see that the PWDVA has been widely used; this is an indicator of its success. It has been an empowering legislation, particularly the right to residence provision. A few limitations of the usage of the law have emerged that it is being used primarily by married women and not all the other categories of women in domestic relationships that the Act seeks to protect. Monica Sakhrani and Tripti Panchal, in their chapter, explain their success and their disappointments with the law, in their own voice.

The other disappointment is that the protection officers are no longer working in an efficient manner as they were during the early years of implementation. The reasons lie in the negligence of the state towards specific gender initiatives. The government has failed to create a separate cadre of protection officers. Further, one cannot dissociate the role that patriarchy plays. For example, the rules state that counselling can only take place when an injunction is granted preventing the respondent from committing any act of violence. The idea is that counselling can only take place when there is a level playing field and the level playing field can be created by this order restraining the respondent from committing further acts of violence. Survivors often complain that the protection officers often tell them to go back to the matrimonial home or to opt for conciliation.

Kanika Kaul explains in her chapter that the inadequate nature of gender budgeting is one of the main contributors for non-implantation of the Act in letter and spirit. The state therefore has to take proactive measures in evolving the institutional structures and put a national action plan in place for the implementation of the Domestic Violence Act. There should be protocols and standard operating procedures put in place for shelter homes, protection officers, and NGOs to ensure elimination of bias.

The feminist movement has gone through several phases in its engagement with the state. The first phase saw a total rejection of the state

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48 Rule 14(3) of the PWDVA, 2006: The factors warranting counselling shall include the factor that the respondent shall furnish an undertaking that he would refrain from causing such domestic violence as complained by the complainant and in appropriate cases an undertaking that he will not try to meet, or communicate in any manner through letter or telephone, electronic mail or through any medium except in the counselling proceedings before the counsellor or as permissibly by law or order of a court of competent jurisdiction.

49 Conclusion of this book.
machineries, including the police. Then it moved into a phase where they considered working with the institutions of the state. TISS social workers were placed within police stations in the mid-1990s, and they worked with the institution of states. The format was used differently in different states but the role was the same: to act as the first interface of interaction between the survivor and the police. The third phase has seen the elimination of the progressive women’s alliances out of the police stations. They have been replaced by organizations such as the Durga Wahini. The driving force behind this is politics. The progressive forces of the women’s movement are not being allowed to mould and shape the law. The one-stop crisis centres do not synergize with the existing structures in place. They end up adding to the burden of the survivor to repeat her narrative to yet another stakeholder in the system. In our search for a solution, we could be falling between stones.

In the midst of all this, the profile of the Indian woman is also changing; she is beginning to reject patriarchal norms and wants to get out from the marriage. More women are opting out of marriage by mutual consent, rather than clinging on to a violent relationship. The stigma of being divorced is slowly disappearing. Dignity for women is a more sought-after goal, rather than the status of being married. While this reality has changed, the mindset of the courts and other state functionaries is yet to follow suit.
A two-state solution that will definitely solve all conflicts in the region. Dudes will buy their third copy of space al queda Simulator but say that women in the biggest global conflict. This happens when you do not resolve the merge conflicts! Identify recurring conflict situations. If the same conflict repeatedly arises in the workplace, take steps to resolve the matter in an effective way. The real conflict of Danganronpa 2 (DR2 spoilers). Everyone’s a signatory to the lease, you each have equal rights in the household. It shouldn’t matter if someone’s paying more for a larger room, no one housemate should lord it over the others. And this also means that everyone’s equally responsible for paying their share of the rent and looking after the bond.

Read more: Share houses: co-tenancy vs. sub-let. Establish and agree on a means of delivery that doesn’t result in just one person shouldering the burden of coordinating rental payments. Not only is this unfair, it’s inefficient. Instead, payments could be made.

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Rental payments. Establish and agree on a means of delivery that doesn’t result in just one person shouldering the burden of coordinating rental payments. Not only is this unfair, it’s inefficient. Instead, payments could be made.

Sharing household chores helps prevent marital conflict. Strategies include setting priorities, being fair, showing appreciation, and avoiding blame.

How to Share Household Chores. The biggest mistake you can make in your quest to have your partner do more chores around the house is to ask for help. Asking for help implies that the responsibility for the chores belongs to just you. In actuality, chores are shared responsibilities, and doing a good job dividing up the housework is essential to ensure a happy marriage. Here’s how to do it. Learn About Priorities.