

THE DYNAMICS OF COUNSELLING AS A VICTIM MANAGEMENT STRATEGY IN CASES OF DOMESTIC VIOLENCE IN INDIA

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Abstract

Purpose of the study: The purpose of the study is to bring forward the ground realities regarding the practice of counselling which was considered to be a sine qua non under the Protection of Women from Domestic Violence Act, 2005. The study reveals the actuality of how counselling remains an alien concept to the victims of marital abuse indicating that counselling is rarely done by the Protection Officers and as a consequence, the victims remain both ignorant as well as fail to reap the benefit of this method of resolution.

Methodology: A plausible combination of doctrinal and empirical research is adopted. Doctrinal and empirical research involves in-depth study and analysis of available information in an attempt to explain the complex phenomenon. Through comparative analysis, proper reasoning has been tried to be brought to decode the practice of counselling in various states of India. The empirical research involves data collection from four different stakeholders such as; Judiciary, victims and Public. *Modus operandi:* Observation, questionnaire, interviews.

Result: Through this paper, the authors have brought out the reality behind the policymaking and the implementation aspect of the Protection of Women from Domestic Violence Act, 2005, in the State of West Bengal. The research was conducted throughout six districts of West Bengal, especially focusing on the method of 'counselling.' The result that came out of the study revealed the lack of awareness of the victims about the practice of counselling' and also that 'counselling' being the least favored relief granted by judicial officers. While on the other hand, the data on protection officers revealed their belief in the practice of 'counselling' which according to them helps in curbing the menace of domestic abuse.

Implications: The study brings to light the gap between the provisions of the law under the PWDVA, 2005, and its practice in actual cases, particularly in West Bengal and requires a re-visit by the policymakers to reconsider the grand ideas set out in the Act and their practical implementations in our society.

Novelty: The study was conducted in six districts of West Bengal, and is a first of its kind. The questionnaires have been prepared by the authors themselves and the answers have been obtained by personal visits to all the stakeholders mentioned in the article. A research of this kind has not been conducted previously in the State of West Bengal, making the data collection and analysis original. Apart from the field research, the researchers have referred to various primary and secondary documents to understand the background of the phenomenon of domestic abuse, for which reference has been given.

Keywords: Domestic Violence, Patriarchy, Feminism, Marriage, Counselling.

INTRODUCTION

The issue of domestic violence particularly against the wife is not only about the violence itself but is also about power dynamics at play. Violence and the fear of violence have a symbolic impact that reinforces women's inequality of status concerning men and deprive the former of their ability to achieve ultimate equality. The patriarchal culture validates violence as an acceptable and at times even desirable attribute to masculinity, thus results in the intervention of violence between the man-woman relationships within the four walls of the home. So many laws are there, especially before the incorporation of the [PWDV Act, 2005](#), to extending a cloak of protection to the women. Unfortunately, the offenses against women, especially against married women which is the subject matter of the present research, were increasing and ultimately ending in painful divorces. To protect the sanctity of marriage, the [PWDV Act, 2005](#) was enacted with some unique features, namely 'counselling' among them. Ten years have passed after the enactment of this statute and one a-posteriori study of the statute is necessary to test the effective implementation of the Act. The present research will critically analyze a landmark judgment of the Bombay High Court on the issue of 'counselling' and compare it with the findings of a field survey in the State of West Bengal on the implementation mechanism of the Act mainly focusing on the practice of 'victim counselling' to understand the truth regarding judicial expectations and the ground realities in practice this paper will begin with a critically analyze of a landmark judgment of the Bombay High Court on the issue of 'counselling' to understand the background of incorporation of the provision on victim counselling and its importance as provided by the Act. Further, the researchers will discuss the findings of a field survey conducted by them in the State of West Bengal on the practice of 'counselling' to show the reality of its practical application in cases of domestic violence in the State.

There is gender violence against women around the world; there also exists a high degree of social and customary tolerance of such violence against women around the world. Such rampant violence against women and its tolerance results in a major human rights violation, which has been ignored for a long time. Though there can never be a comprehensive list that will be able to include the varied types and the intensity of violence against women or the intensity with which they affect the victim, yet it may reveal the nature of the society from which abuses like sati, widow abuse, domestic battering of women, dowry death, female foeticide, rape et cetera stems have come from. Violence against women is as old as the human race itself, such accounts have been a part of art and literature but could not figure in our historical chronicle; its contemporary narratives have recently become an issue of public concern, first national and now global (Chapman, 1990).

Violence happens within an interactional setup of superordinate and subordinate relationships that spouses into domestic structure entitled as home. A patriarchal societal structure that places women in a subordinate position to males, that makes the husband the rule maker and enforcer in his home, should not be shocked to find the presence of domestic violence in that society.

In *G.D. Dagade v. The State of Maharashtra*(2015), court focused on the complicated link between the Indian legal system and feminism in India, which since the 1980s have continuously struggled to come up with a variety of support services like counselling, providing refuge, legal aid and organizing campaigns for legal reforms, for the eradication of the phenomenon of domestic abuse from the Indian society (Gangoli, & Rew, 2015). This judgment can be seen as a discourse within various women's organizations focused on the ideologies of women's liberation, aiming to incorporate them in the DV Act, 2005.

The above-mentioned judgment was a result of a petition which sought judicial directions for the practical application and use of the Act; the main contention behind the petition was to challenge a notification in Maharashtra that prohibited pre-litigation joint counselling between the spouses in cases of matrimonial violence, without an order of the court. The judgment cancelled the circular and directed against joint counselling in aggravated domestic violence cases, stating that the court should deal with such cases directly to impart justice. The court also stated that in all other cases of domestic violence, the NGOs, counsellors and the police might undertake counselling for either reconciliation or an amicable separation.

OBJECTIVES OF THE STUDY

The objective of this research is to show that the provision relating to 'counselling' remains largely an unapplied remedy for domestic violence victims. It is well accepted by both the higher judiciary across the nation as well as the Protection Officers in West Bengal, that 'family counselling' is of paramount importance in curbing the menace of domestic abuse, yet the real picture portrays a contrasting picture. Although the Act, 2005, puts a lot of emphasis on this provision, yet sadly due to lack of application, in the State of West Bengal, the victims are unable to reap the benefits of this welfare provision. A comparison has been made between a most recent landmark judgment of Bombay High Court on the issue of 'counselling' and the practical implementation of this method in West Bengal, to show how propitious provisions for the vulnerable largely remain restricted to the pages of judgments and statutes.

LITERATURE REVIEW

Domestic violence: The criminal justice response book provides an overview of the causes behind domestic violence and classifies the causes into various theories and also provides criticism of some of the theories. It also focuses on the apathy of the police authorities in responding to domestic violence calls and provides a solution to bring a change in the attitudes of the officials through gender sensitization training and programs. This book helped the researcher understand the various causes behind domestic violence and the weaknesses of the criminal justice system to effectively counter this problem. (Buzawa, E. S., & Buzawa, C. G. 1990)

Law Of Domestic Violence book provides a detailed discussion on the various options available under the Protection of Women from DV Act, 2005, the rights which derive from her status as a wife, a daughter and a widow, her post-divorce rights, rights of children from the marriage, and provisions relating to judicial separation and divorce under various personal laws. This book not only provides useful information on this new law on domestic violence but also inform women the best ways to access the justice system, allow lawyers and activists to provide aid, assistance, and support to women facing violence and also assist members of the judiciary dealing with cases on domestic violence. This book helped the researcher gather a thorough knowledge of the application of various provisions of the PWD Act, 2005. (Jaising, I. 2007)

The Victimization of Women focuses on the role of the society in condoning cruelty against women by grooming women to adhere to their gender role to be submissive when facing violence. This book helped the researcher understand the role of the society which helped the continuation of domestic violence against women through ages. (Chapman, J. R. & Gates, M. J. 1978)

'On Liberty' and Other Writings, the essay on *Subjection of Women* by J. S. Mill talks about the unequal status of women in England during his time. The essay mainly talks about the enslavement of women through marriage, the hypocrisy of men when they say that they understand the nature of women and the gender role conditioning of women to compel

them to marry and dedicate their lives to serve the pleasures of men. This book helped the researcher analyze that although the author as talking about the status of women during his time, yet even in the present age, not much have changed as women are still going through the same problems that they were facing during Mill's time. ([Mill, J. S. 1989](#))

Bringing Rights Home: Review of the Campaign for a Law on Domestic Violence, article provides the background behind enacting the Protection of Women from Domestic Violence Act, 2005, which was to deal with the menace of domestic violence against women because of the inadequacies of the existing laws relating to dowry deaths, cruelty, and harassment which were failing to address the problem of domestic abuse. ([Jaising, I. 2009](#))

How women experience battering: The process of victimization, the article analyses the experience of battered women and provides six rationalizations that make women stay in the abusive relationship and six catalysts which makes them leave such relationships. The researcher on analyzing the rationalizations and catalysts could relate them to the victims of domestic violence in India as to their decisions to continue the relationship or to end it. ([Ferraro, K. J. & Johnson, J. M. 1983](#))

The envious will to power, the article focuses on the gender theory which states that violence is a source for creating masculinity and that domestic violence will be affected by social courses that accept male dominance and this societal environment will impact violence as they encourage means for power within relational links. This article has helped the researcher understand the socio-demographic causes of domestic violence. ([Anderson, R. W., Bushman B. J., & Groom, R. W. 1997](#))

Methodology

Quantitative empirical research was conducted by the authors. The object of the researchers was to observe as to how far the provisions of the PWDV Act, 2005, were being implemented in the State of West Bengal and for this purpose, six districts from the State were selected for the study. The researchers have considered the data provided in the [2011 census reports](#) that were the last census conducted and it consisted of 19 districts. The selection of the districts was done in the following manner:

The researchers started with the literacy chart, made available from the [2011 census report](#).

Table 1: Showing District wise Literacy Rate

| Sl. No. | Districts | 2001 | 2011 | Percentage | | |
|---------|----------------------------|---------|---------|------------|----------|----------|
| | | Lit1 | Lit2 | Lit per1 | Lit per2 | Increase |
| 1 | Purba Medinipur | 3037106 | 3969750 | 80.16 | 87.66 | 7.5 |
| 2 | Kolkata | 3382103 | 3648210 | 80.86 | 87.14 | 6.28 |
| 3 | North Twenty Four Parganas | 6151527 | 7798722 | 78.07 | 84.95 | 6.88 |
| 4 | Haora | 2895625 | 3642617 | 77.01 | 83.85 | 6.84 |
| 5 | Hugli | 3333988 | 4140487 | 75.11 | 82.55 | 7.44 |
| 6 | Darjiling | 1008288 | 1328218 | 71.79 | 79.92 | 8.13 |
| 7 | Paschim Medinipur | 3127210 | 4173522 | 70.41 | 79.04 | 8.63 |
| 8 | South Twenty Four Parganas | 4067343 | 5639112 | 69.45 | 78.57 | 9.12 |
| 9 | Bardhaman | 4205146 | 5350197 | 70.18 | 77.15 | 6.97 |
| 10 | Nadia | 2644461 | 3524073 | 66.14 | 75.58 | 9.44 |
| 11 | Koch Bihar | 1386965 | 1879984 | 66.3 | 75.49 | 9.19 |
| 12 | Dakshin Dinajpur | 799479 | 1102355 | 63.59 | 73.86 | 10.27 |
| 13 | Jalpaiguri | 1810083 | 2527018 | 62.85 | 73.79 | 10.94 |
| 14 | Bankura | 1734222 | 2264013 | 63.44 | 70.95 | 7.51 |
| 15 | Birbhum | 1553852 | 2175923 | 61.48 | 70.9 | 9.42 |
| 16 | Murshidabad | 2620538 | 4134584 | 54.35 | 67.53 | 13.18 |
| 17 | Puruliya | 1182284 | 1656940 | 55.57 | 65.38 | 9.81 |
| 18 | Maldah | 1332704 | 2136898 | 50.28 | 62.71 | 12.43 |

| | | | | | | |
|----|----------------|--------|---------|-------|-------|-------|
| 19 | Uttar Dinajpur | 923477 | 1521933 | 47.89 | 60.13 | 12.24 |
|----|----------------|--------|---------|-------|-------|-------|

as all tables and data have been mentioned here, so only the two sets of questionnaires that are relevant for this article have been mentioned in the appendix.

Firstly, the average literacy rate was taken and the standard deviation of the table evaluated. First, the average (AV) of the literacy rate is taken and the Standard Deviation of the table is calculated.

Table 2: Showing Average and Standard deviation for literacy rate

| | | | | |
|--------------------|---------|---------|---------|----------|
| Average | 2484021 | 3295503 | 66.5753 | 75.63947 |
| Standard Deviation | 1393200 | 1727210 | | |

Two distinctive colours i.e. light pink and violet have been put to highlight the data which have been taken into consideration in the further stage. Then based on the average, the database of literacy [2011 census](#) is segregated in two categories; districts above the average are coloured with yellow and below the average are coloured with light green.

Table 3: Heterogeneous sample is extracted from data on literacy rate

| Sl | Districts | Lit (2011) |
|----|----------------------------|------------|
| 1 | Dakshin Dinajpur | 1102355 |
| 2 | Darjiling | 1328218 |
| 3 | Uttar Dinajpur | 1521933 |
| 4 | Puruliya | 1656940 |
| 5 | Koch Bihar | 1879984 |
| 6 | Maldah | 2136898 |
| 7 | Birbhum | 2175923 |
| 8 | Bankura | 2264013 |
| 9 | Jalpaiguri | 2527018 |
| 10 | Nadia | 3524073 |
| 11 | Haora | 3642617 |
| 12 | Kolkata | 3648210 |
| 13 | Purba Medinipur* | 3969750 |
| 14 | Murshidabad | 4134584 |
| 15 | Hugli | 4140487 |
| 16 | Paschim Medinipur* | 4173522 |
| 17 | Bardhaman | 5350197 |
| 18 | South Twenty Four Parganas | 5639112 |
| 19 | North Twenty Four Parganas | 7798722 |

As the object is to test the heterogeneity of the sample, so now by applying standard deviation the data is stratified taking $\log \pm \epsilon$ ($AV \pm SD$), i.e. $\mu \pm \epsilon$ and four clusters of districts are created, shown in table 3. As the population is already included within the literacy database, hence the researcher is not segregating the districts based on population. From each cluster, two districts, having less clarity is selected. It gives 8 districts. In clusters 2 and 3, the number of districts is

there so two more districts, those are in the middle of the column, i.e. Birbhum and Purba Medinipur, are taken from those two clusters.

Table 4: Showing a purposive selection of districts

| Sl | Districts | Lit (2011) | | | | |
|----|----------------------------|------------|-------------|-------------|-------------|---------|
| 1 | Dakshin Dinajpur | 1102355 | | | | |
| 2 | Darjiling | 1328218 | | | | |
| 3 | Uttar Dinajpur | 1521933 | 1568293 | Lower limit | | |
| 4 | Purulia | 1656940 | | | | |
| 5 | Koch Bihar | 1879984 | | | | |
| 6 | Maldah | 2136898 | | | | |
| 7 | Birbhum | 2175923 | | | | |
| 8 | Bankura | 2264013 | | | | |
| | | | Upper limit | | Lower limit | |
| 9 | Jalpaiguri | 2527018 | AV | SD | AV+SD | AV-SD |
| 10 | Nadia | 3524073 | 3295503 | 1727210 | 5022713 | 1568293 |
| 11 | Haora | 3642617 | | | | |
| 12 | Kolkata | 3648210 | | | | |
| 13 | Purba Medinipur* | 3969750 | | | | |
| 14 | Murshidabad | 4134584 | | | | |
| 15 | Hugli | 4140487 | | | | |
| 16 | Paschim Medinipur* | 4173522 | | | | |
| 17 | Burdwan | 5350197 | 5022713 | Upper limit | | |
| 18 | South Twenty Four Parganas | 5639112 | | | | |
| 19 | North Twenty Four Parganas | 7798722 | | | | |

Thereafter the researchers selected 10 districts purposively. Next by using crime records and demography, the number of districts was reduced finally to six districts for the collection of data.

Table 5: After applying average and standard deviation (AV+- DV)

| Sl | Districts | Lit (2011) |
|----|------------------|------------|
| 1 | Dakshin Dinajpur | 1102355 |

| | | |
|----|----------------------------|---------|
| 3 | Uttar Dinajpur | 1521933 |
| 4 | Purulia | 1656940 |
| 7 | Birbhum | 2175923 |
| 9 | Jalpaiguri | 2527018 |
| 10 | Nadia | 3524073 |
| 13 | Purba Medinipur | 3969750 |
| 16 | Paschim Medinipur | 4173522 |
| 17 | Burdwan | 5350197 |
| 19 | North Twenty Four Parganas | 7798722 |

Table 6: Filtered using crime Rate

| Sl | Districts | Literacy |
|----|----------------------------|----------|
| 3 | Uttar Dinajpur | 1521933 |
| 7 | Birbhum | 2175923 |
| 9 | Jalpaiguri | 2527018 |
| 10 | Nadia | 3524073 |
| 13 | Purba Medinipur | 3969750 |
| 16 | Paschim Medinipur | 4173522 |
| 17 | Burdwan | 5350197 |
| 19 | North Twenty Four Parganas | 7798722 |

By applying the filter of the rate of crime, the average crime rate of ten districts is taken, two districts having a low rate of crime are removed. As the object is to test the implementation mechanism mandated in the PWDV Act 2005, it is logical to select those districts where the rate of crime is high.

Table 7: Showing Demography of Districts

| Sl | Districts | Demography |
|----|-------------------|------------|
| 3 | Uttar Dinajpur | 1521933 |
| 7 | Birbhum | 2175923 |
| 10 | Nadia | 3524073 |
| 13 | Purba Medinipur | 3969750 |
| 16 | Paschim Medinipur | 4173522 |
| 17 | Burdwan | 5350197 |

Lastly, by applying the filter of demography, two districts are further removed. As the object is to maintain heterogeneity, the ratio between Panchayat and municipality is considered. The reason behind this filter is based on the reality that in urban areas, people have easy access to the police, lawyers other remedial instruments, unlike in rural areas. Finally, the above mentioned six districts have been selected for conducting empirical research.

The districts which were selected for the research were Uttar Dinajpur, Birbhum, Burdwan, Nadia, Purbo Medinipur, and Paschim Medinipur. After selecting the districts The researchers prepared questionnaires consisting of multiple choice answers and conducted surveys by visiting each district. As each district had one Protection Officer, so the sample consists of data from six Protection Officers; the number of Judicial Magistrates, Police Officers and Lawyers in each district varied, hence the researchers have randomly selected five samples for each category for the survey. Lastly, the researchers have randomly selected ten victims from each district, whose information was collected from the office of the Protection Officers. This helped in locating the gap in the process and thereby helps the researcher in making recommendations for a more effective and efficient mechanism.

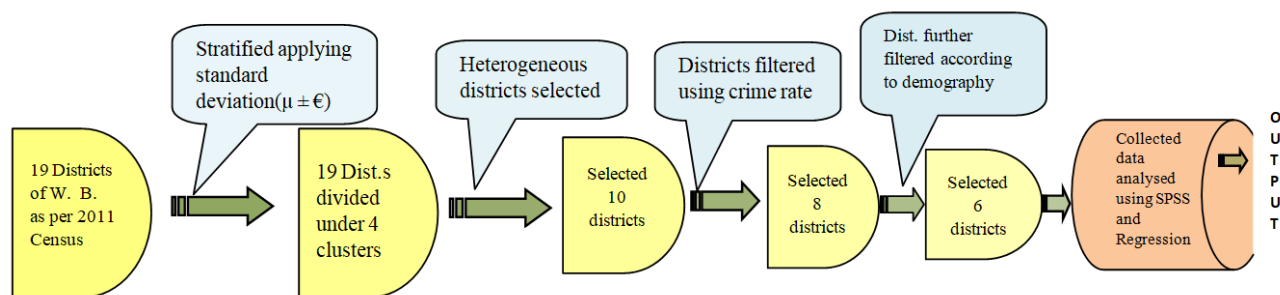


Figure 1: Showing methodology in a diagram

The districts which were selected for the research were Uttar Dinajpur, Birbhum, Burdwan, Nadia, Purbo Medinipur, and Paschim Medinipur. After selecting the districts The researchers prepared questionnaires consisting of multiple choice answers and conducted surveys by visiting each district. As each district had one Protection Officer, so the sample consists of data from six Protection Officers; the number of Judicial Magistrates, Police Officers and Lawyers in each district varied, hence the researchers have randomly selected five samples for each category for the survey. Lastly, the researchers have randomly selected ten victims from each district, whose information was collected from the office of the Protection Officers. This helped in locating the gap in the process and thereby helps the researcher in making recommendations for a more effective and efficient mechanism.

The questionnaires used by the researchers had several questions but only two among them have been used for this paper. The data collected was in a quantitative form which was converted from hardcopy to soft copy in a tabular format. Next from that tabular format of data, the researchers calculated the percentages of ‘yes’, ‘no’, ‘partially’ and ‘not sure’ from the two questions asked to victims and Protection Officers, which were used here. The percentages were thereafter shown in this paper with the help of pie-charts.

DISCUSSION

The History behind the First Wave of Feminism in India

Women’s issues started gaining worldwide attention when the UN declared 1975 to 1985 to be the United Nations Decade for Women. India reciprocated by setting up a commission comprising of a group of feminist researchers and activists dedicated to the cause of women, which identified the existence of various kinds of inequalities and injustices that women in India endure throughout their lives (Guha, 1974). The ‘autonomous’ women’s movement started emerging during this time where some women’s groups started to alienate themselves from the State, which they saw as patriarchal and restrictive (Agnew, 1997). The newly formed feminist groups emerging from the late 1970s primarily took up the issues of police atrocities against women and its first major campaign was triggered by the custodial rape of a tribal girl named Mathura by two policemen inside the police station, which was condoned by the judiciary in *Tuka Ram and Anr v. State of Maharashtra* (1979). As stated by a feminist activist, “we were interested in issues of class, but we were distinct from left-wing party organizations. For us, we saw that patriarchy would still exist in a socialist state, while for left-wing party women’s activist...they thought we should wait for the socialist revolution until patriarchy could be tackled” (Solanki, & Geetanjali, 2016). Truly, these women’s groups ascribed to a particular social class, which became evident when members of the feminist group called Forum against Rape which later changed its name to Forum Against Oppression of Women upheld themselves an organization formed by women having, “cosmopolitan values, and were well informed about Western liberation movements” (Vibhuti, 1983). Although this body primarily started their activism fighting sexual crimes against women, soon it started campaigning on problems of sexual minorities and domestic violence.

At the same time, other feminist groups from minority communities started challenging the “mainstream” feminist groups accusing them of being upper-caste Hindus, who were inept in addressing the problems faced by minority women (Sangari, K. 1995) and as a result in Mumbai from 1987, few organisations were founded to cater to the needs of such women. Today, feminist e-groups like Feminists India are making active use of social media releasing short films on topics of sexual harassment (Mitra-Kahn, 2013) protesting against gender stereotyping and over-zealous attempts to control women and her body.

The feminist wave in India which started since the 1970s in Mumbai, included women’s organisations, agitation groups, women members of political parties and trade unions and other NGOs working on women’s issues (Neely, 2008). The Indian women’s movement has been immersed in the political environment of that time, for instance, women’s groups in Calcutta ascribed to the political ideology of the Leftist government that ruled the state (Ray, 1999) and primarily focused on real problems faced by women such as low level of literacy or unequal pay (Molyneux, 1985). While at the same time in another part of India, engulfed in a diverse political environment, women’s groups in Mumbai were more adept in identifying the roots of gender subordination of women and attempted to come up with strategic goals for emancipation of women from this gender hierarchy (Molyneux, 1985) so as a result their debates pivoted around issues

of violence against women. These mainly focused on legal reforms and in the process started networking with the police, social welfare departments, academicians, journalists, lawyers, and human rights activists, resulting in developing a rich discourse of strategies on liberation of women from their subjugation ([Solanki, 2011](#)).

From the beginning of the feminist movement in India, these organizations faced two predicaments as to the nature of their intervention in cases of matrimonial violence and the ethical ideology behind it. The feminist organizations saw domestic violence as a continuous physical and mental violence and also identified a link between intermittent abuses with that of routine violence that is rooted in the social fabric of marriage along with other inequalities suffered by women. In their endeavor to fight against domestic violence, these feminist organizations propose a range of services from counselling to adjudication, providing emotion support to women, encouraging them to join campaigns on violence against women, to provide shelter along with medical and legal services and often try to arrange for employment or other financial support for these women ([Solanki, 2017](#)).

The experience gathered while countering the phenomenon of domestic and other forms of violence against women, helped these feminist groups develop certain ethical principles regarding counselling, which they believe should be pro-women because they deduced that matrimonial violence against women is a direct consequence of the existing power inequalities in the society. The counselling that they offer tend to listen to all sides yet focus on the problem of gender inequalities; 'believing the women' and 'believing in the women' is the fundamental tenet behind such counselling, which begins with the notion that women are proficient in making independent decisions for themselves and these women's groups projected themselves as facilitators in this process.

Since the 1980s, the feminist groups identified a lack of financial stability as being the prime reason as to why victims were unable to leave their abusive marriages. For instance, women across India, irrespective of caste, class or religion faced specific legal hindrances as in the case of maintenance which in spite of being meager amounts, were far difficult to receive, resulting in blatant disregard of orders of the court. These women victims were not only facing a battle of survival against their domestic abuse at home, but they were also fighting their socio-legal structure for the financial wellbeing of their children. Thus the presence of socio-economic inequalities solely based on gender created a power imbalance in favour of men.

Feminist groups while addressing domestic abuse also confronted the complex problems of single divorcee women becoming easy prey for sexual predators, both in their workplace and inside the family, which due to their marital status considered them to be promiscuous and on the other hand the religious diktats faced against minority women to reconcile with their wife-beating husbands and save the family honour. Even today, it is the belief in the sacredness of the marital bond that prevents Indian women from leaving their abusive homes.

Over the years, feminist scholars have engrossed themselves in these perplexities, some having criticized these problems as masculinist conceptions that have become an inalienable part of our being ([Oshana, 2006](#)) while others have held collective action as a resource to progress the existence of women ([Collins, 2000](#)).

Feminist Actions in Domestic Violence Cases

Since the emergence of human society, women wherein a state of bondage to some men, because as if they belong to men and they have less muscular strength than men ([Mill, 1869](#)). Marriage is the destination of every woman's dream; a destination is shown to her by her society from her nascent age, the objective behind this destination is her life-long promise of obedience to the husband, then it is but apt to say that no slave is a slave to the same extent and in a complete sense of the word as a wife is.

Since the 1980s, feminist groups in India have intensely debated on issues of agency and intervention which ultimately helped them develop their methods of intercession in cases of matrimonial violence against the wife. These women's organizations had a liberal approach towards women empowerment, their intervention into marital disputes was rooted in autonomy, freedom, and equality and they had advanced their understanding of the phenomenon of domestic violence from experience; so when a victim chose to return to her violent home, these feminist organizations did not see such a choice as 'typical', instead, they saw it as a result of the belief in the social value of marriage; instead of critiquing a women's submissive actions when faced with domestic violence, these organizations acknowledged with respect and saw it as an act of autonomy when these very women approached women's organizations facing repeated violence. The feminist counsellors understood the importance of listening to the victim and to help her come up with options best suitable for her as their first course of action; secondly, these groups provided women-centric spaces which reflected an environment of support which helped victims understand their capacity and make choices regarding their lives; thus these organizations aimed to increase competence in women to challenge patriarchy and make decisions, giving them a possibilities of a life without violence ([Solanki, 2017](#)). Although feminist recognized that the decision to 'return' will in all possibilities negatively affect these women, still they avoided taking decisions on behalf of these women and to impose the same on them as they considered it to be patronizing, reinstating the patriarchal notion of women being incapable of decision making, a notion paradoxical to feminist ideology.

These predicaments led to an unavoidable question regarding the nature of intervention in marital disputes and violence. To deal with this issue, the feminist chose to increase women's bargaining power during conciliation and came up with

several remedial options for them. These feminist groups facilitated the victims with contacts of the local women's organizations and neighbors, urging such to intervene during an episode of violence. These strategies were placed before the Bombay High Court by these women's groups putting forward an argument in favour of drawing a written agreement between the parties requiring the husband to guarantee that they will not subject the wife to violence in the event she chooses to return to them.

Since the 1980s, Indian women's movements have continuously fought for making justice accessible to women, pressuring the State to establish more family courts and to open women's police stations, partnering up with the judicial mechanisms to counter violence against women, organizing programs to share feminist ideologies and experiences and lead campaigns to protest against judicial inertia in cases relating to rights of women ([Solanki, 2013](#)).

Legal Propositions on Domestic Violence

The PWDV, Act of 2005, can't be imparted without acknowledging the role of women's organizations, feminist interventions and their rigorous engagement ([D'Mello, 2015](#)). The policymakers and lawyers considered the 2005 bill as a landmark victory in the battle against domestic violence ([Staying Alive, 2013](#)). In early 1983, when India pronounced domestic violence as a criminal offense, it came with a biased notion, as the primary focus was only on physical violence not on mental agony. For example murder on the ground of dowry would only be considered as domestic violence, not psychological torture and the low conviction of mental agony cases exacerbated this point ([Agnes, 1992](#)). The PWDVA includes all forms of family relationships such as domestic violence in matrimonial relation; it also extends to men and women staying in a "live-in-relationship". Its broad ambit also includes sexual violence, giving married women some relief in circumstances of marital rape, though such an act is not a crime under the IPC, 1860. The PWDVA detached itself from the punitive perspective and incorporated civil remedy in violent domestic relations, adding matrimonial property rights and the courts' power to order suitable injunctions.

Analysis

The present paper is focused on the method of 'counselling' as provided under the PWDV Act, 2005, hence from the data collected from the survey, only that part which emphasizes the reality behind the practical application of counselling has been used here.

On the question of awareness of 'family counselling', 59% of victims stated their ignorance on the practice of 'family counselling' and only 41% said that they are aware of such a practice because in their case, family counselling was used as a means for conciliation. The figure puts forward a disheartening picture which indicates that to several alarming indicators; victims are not aware of the Act and their rights under it, hence are unable draw the benefits of such rights, for example 'family counselling' which, if done effectively, in some cases, can bring permanent peace among warring couples; 'family counselling' is not uniformly applied by the Protection Officers in all cases that come before them; and the latter's attitude of not discussing with the victims the various options provided by the Act, denying her the right to decide her situation.

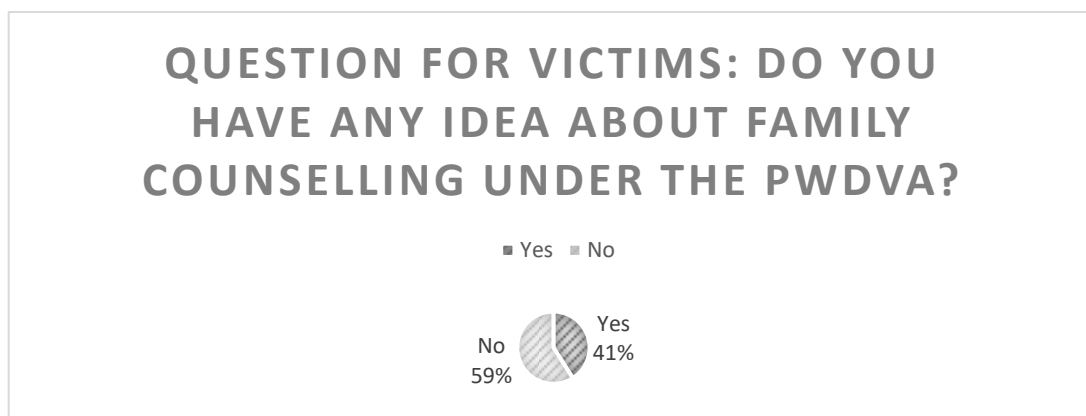


Figure 2: Question for victims on awareness regarding counselling

In the same study, when Protection Officers were interviewed regarding the effectiveness of family counselling in curbing the menace of domestic violence, 85.71 responded positively to it and 14.29 regarded such counselling as ineffective. From here it becomes clear as to why 'family counselling' is not resorted to as a viable means in solving marital disputes; the Protection Officers are themselves not convinced about its usefulness and are also not willing to give it a try.

Question for Protection Officers: Do you believe "Counselling" under the Act is effective in curbing the menace of domestic violence?



Figure 3: Question for Protection Officers on the effectiveness of counselling

A “convergent model” is developed under the PWDVA where a new post termed as Protection Officer (PO) is created to help the women victims to approach in courts and other facilities. The indigenous feminist models pioneered many ideas to help uplift the sufferers of Domestic Violence.

The Salient Features of the PWDVA:

- The victim seeking protection under the Act must have been in a domestic relationship with her abuser either by consanguinity, marriage or a type of marriage or by adoption and must have lived in a shared household with the abuser.
- Abuse under the Act includes both the threat as well as the actual abuse which is broad enough to include physical, verbal, sexual, economic and emotional abuse under the definition of “Domestic Violence.”
- The right to secure housing in the case of a married woman either in the matrimonial household or making her husband arrange for her alternate accommodation is provided under the Act.
- Protection orders in favour of the woman can be passed by the court, ordering the abuser to refrain from coming in contact with both the victim as well as her relatives. This order also prevents the abuser from parting with assets detrimental to the interest of the victim.
- Protection officers and service providers are appointed by the government under the Act to assist with legal aid, shelter, medical examination, etc.
- When there is a non-compliance or breach of a protection order from the respondent’s side, the offense becomes cognizable and non-bailable. Imprisonment for a term which may extend to one year with or without fine could be imposed under the Act. When the POs commit any non-compliance in discharging their duties, similar punishments are prescribed under the Act.

Implementation and interpretation are the two big challenges before the PWDVA in spite of its excellent formulation (D’Mello, and Agnes, 2015). Different women’s organizations have shown their genuine concerns about the gaps prevailing in support services prescribed under the PWDVA. Research indicates the deficiency in setting up refugee centers to cater to the emergency needs of women experiencing domestic violence and inadequate forms of providing counselling and/or mediation by different government and non-government agencies, is a cause of grave concern regarding the effective implementation of the PWDVA.

In the PWDVA, feminist intervention and counselling have been institutionalized. The difficulty is that the counsellors often pressurize and manipulate women to return to their violent partners and the circle of violence continues as the law does little but to support patriarchy thus failing in protecting and empowering women experiencing acute domestic abuse. To remedy this practice, the circular issued on 24.06.2014 by the Department of Women and Child Development, State of Maharashtra, circumscribed the protection agencies ambit and authorized them to only let know the victims on their rights under the Act, give them access to shelter homes and medical services and to act as facilitators in their process of filing a case with the help a PO. Further, this circular also instructed all agencies working on this issue, to commence mediation and counselling only once the court acknowledges the grievance and directs them to do so. A PIL (Public Interest Litigation) was filed by an activist- academician Dr. Jaya Sagada, Women’s Studies Centre, ILS, Pune, along with few others, D’Me challenging the circular, based on ground reality research conducted by the petitioners. Their contentions were based on the circular being arbitrary and discriminatory, violative of Art. 14 and Art. 21 of the Indian Constitution. The Act explicitly prescribes the feminist models for counselling and mediation to facilitate the

prevention of domestic violence, yet reality shows that once a case is filed in court counsellors have very little to do, thus frustrating the purpose of the Act. Hence the petitioners pleaded not to limit the rights of women in choosing her counsellor and also not allow such circulars to come into practice which aims to swallow the autonomy of the agencies which had contributed greatly in constituting this Act.

Summary of the Judgement

Three issues were analyzed by the court:

1. Should the service providers act as information dispensers or do they have the responsibility of counselling victims who approach them?
2. Does the PWDVA authorize pre-litigation counselling?
3. Is there any scope of counselling post-litigation?

In the context of the above issues, the Judgement clarified that the counsellors are the authorized agents under the ambit of the PWDVA and putting restrictions on their authorities would curtail the ambit of the Act. It also clarified that pre-litigation counselling is a mandate under the PWDVA. A circular which confines the scope of feminist counselling by reducing it to be an information service diminishes the job of a counsellor to act as a clerk. The court also held that the circular is also responsible to expose victim women to the complexities of litigation; denies them to benefit from pre-litigation counselling thus acting as an antithesis to the spirit of the Protection of Women from Domestic Violence Act, 2005.

The Court accepted the fact that in Maharashtra, pre-litigation counselling is a lengthy procedure, having tangible impacts as such. Hence, there is a fear of losing time in pre-litigation counselling before the actual judicial-trial begins. This lengthy procedure may harm on the interest of women and therefore, if rules are formulated to cater to the immediate needs of victims as e.g. residence, maintenance, custody as soon she files a complaint under Sec. 10 of the PWDV Act, 2005, the magistrate should give a pre-interim or interim order.

It is a fact that when a woman intends to put a complaint under Sec. 498A of the Indian Penal Code, 1980 the police often forcefully advise her to compromise with her husband in the same way as counsellors do by encouraging her to settle her dispute amicably, disregarding her wishes. There seem to exist in our society a discourse on disbelieving the women, especially one who approaches the law for remedying her trauma caused by domestic abuse in the hands of her husband and in-laws, a disbelief that is so apparent that even the executors of law like the lawyers, cast a suspicious eye on such victims and often doubt the veracity of their claims of violence, more often than not disbelieving her and at times partially believing her, as reflected in **Figure 5** in the following page, can hardly work for the true welfare of such victims. There also exists a disconnect between the police and protection officers, the latter often act reluctant to send complainants to the former for counselling and different other appropriate actions under the DV Act, the Court had acknowledged both, rightly held that priority must be given to the victim's choice and she must not either be manipulated to go for litigation when she does not desire to do so nor should she be made to reconcile against her wishes and that such irresponsible acts of agents under this Act, should not devalue an otherwise excellent piece of legislation.

The court pondered on a vital question as to the outcome of pre-litigation counselling, which may either lead to an amicable separation or a negotiated settlement. There will be women who become reluctant to pursue a legal battle followed by a settlement, so the court observed that in the event of such settlements failing, it would be open for such women under Sec. 12 of the Act, to resort to litigation, the earlier failed settlement acting as vital evidence in her favour. The court also observed that judicial arbitration in cases of marital disputes, may not serve the interest of women, and if counsellors fail to address the problem of power in their counselling, it would result in gross abuse of her human and legal rights.

The Court held that physical violence under the realm of domestic violence is an anathema to our society and in such situations counselling or the option of residing with her perpetrator should not even be considered as a viable option, as it might pose a risk to the lives of such women and instead, a Domestic Incidence Report under Sec. 12 of the Act, must be compulsorily filled. The court stressed on giving a much-required sensitization training to all the actors under the Act to prevent them from misguiding the victims by acting detrimentally to the interest of the later. The Bombay High Court agreed with the Lawyers Collective by holding that pre-litigation counselling can be aptly practiced where victims need maintenance or a place to stay, not in cases of aggravated physical violence; yet that too is hardly practiced in the State of West Bengal where majority of victims of domestic violence, who might not be victims of aggravated violence, were not even aware of the concept of counselling, as reflected in **Figure 2** in the previous page.

The Court found the circular in question to be unusual, discriminatory and arbitrary and hence, quashed it. The judgment draws a fine symmetry between the two feminist approaches used in the PWDVA by holding that a woman, who has experienced any sort of domestic violence other than acute physical assault, can avail counselling and other suitable options under the PWDVA. However, the counsellors must bear in mind that only upon the full consent of the victims, should she be made to attend. In the event of a settlement, it must be in writing mentioning it as "Terms of Settlement" and if a service provider feels necessary, he may irrespective of such settlement, file a DIR under Sec. 10 of the Act.

Discussion on Legal Continuum

This particular part of the paper covers both the imperative sections wherein we observed the position of the Court which has tried to draw equilibrium between the two divergent positions of victims in the light of domestic violence and decided in the favour of women. Nevertheless, the decision stirs certain notable concerns about feminist theory and law interventions.

Development & Decay in Traditional Marriage:

According to the feminist commentators, the state's apparent concern for safety of women from marital violence comes as of a true apprehension of the breaking up of the Indian heterosexual, nuclear family system (Basu, 2015). But fortunately, the Bombay High Court's judgment does not portray this notion and in fact, acknowledges the need to treat a victim of acute violence with compassion instead of coercing her to opt for reconciliation.

The veracity of violence

The Judgement makes a harmful demarcation between physical and other kinds of violence in domestic space. For example, the Court held that for a civilized society physical violence is anathema because it is dangerous. However, the decision failed to acknowledge the mental agony of a woman due to continuous exposure to callous, vicious, oppressive and malicious conduct of her partner, which will most definitely lead to a loss of self-worth, psychiatric disorders or the will to live. The judgment failed to recognize the devastating consequences that years of bullying, confinement, emotional and pecuniary suppression can have on the psychology of women and how this sense of helplessness can drive her towards suicide. The judgment, while making a differentiation between routine and episodic domestic violence, failed to see a connection between them. It failed to see how women get trapped in an abusive relationship through intimidation, control, and isolation, the manoeuvres that men resort to trap women, keeping them from leaving the abusive home, a practice approved by the existing patriarchal society. Domestic violence indeed is continuous rather than an episodic process and its consequences are cumulative, not incident-specific and abused women continue to suffer even when the assault is not taking place (Stark, 2007).

In the Indian context, very little attention is paid to the problem of post-separation violence. Mostly, it has remained as a grey part in domestic violence literature. Study (in the United States of America and the United Kingdom) has found that when a woman determines to leave or ends an abusive relationship, the risk violence increases drastically (Centre For Partnership Studies, 2014). This area of domestic violence has been studied by Gill and Thiara (Thiara, 2012) where they have researched black and minority women's post-separation experiences. In the context of South Asian women, the family system puts enormous pressure on the woman to return to the abusive relationship or sometimes in the name of children the society coerces her to reconciliation. In the majority of cases, men use children to bend the women, making it extremely difficult for her to "move on" and the lack of parental support and legal welfare provisions makes it even worst (Solanki, 2011). Subordination and discrimination has become a part of Indian women's identity, be it her treatment inside the family or her education or wage or access to justice – all having a cumulative effect of exposing her to exploitation and abuse and when law and its practice also subscribe to such patriarchal notions of treating women as sub-humans, it takes the form of a 'structural violence' against women (Ruri, 2003) which becomes an impossible battle, for her, to win.

The Question of Women's Autonomy

The feminist understanding of domestic violence is a vital necessity because it harmonizes survival and freedom. But the High Court of Bombay gave its judgment against such understanding as it did not significantly seem conscious about the feminist dilemmas of autonomy & freedom when the Govt. of Maharashtra issued the circular refusing to consider the backdrop of feminist conduct which has shaped the domestic violence laws. Patriarchal paternalism led the High Court to decide that the victims of domestic violence may not have the competence to decide whether they want to file a complaint in the court or not, undermining the capability of women to decide for themselves and the judiciary's responsibility to acknowledge those choices. The decision of the Court has profound impact on this issue as it decided to limit women's autonomy by allowing her to make decisions in cases of 'other' forms of marital dispute, but on the other hand, denying her this right in cases of 'serious' physical abuse, wherein she is to be compulsorily put under the care of the State. From the circular issued by the Govt. of Maharashtra, it was quite apparent that the state perceives physical violence to be life-threatening for the victim; yet there lacks adequate evidence to support this contention. Secondly, such contention dangerously undermines the extreme mental distress that victims of mental abuse go through, as discussed earlier in the paper, which might often lead them to take their lives. Thus, when the judiciary also adheres to such paternalistic methods it does little to empower women.

The judgment should have focused on the various structural hindrances that prevent victims from walking away from the abusive home, a fact which was brought to the limelight through the account of one such victim, a result of a fieldwork conducted in Mumbai in 2015 Bharatiya Muslim Mahila Andolan ("BMMA") (Solanki, and Gangoli, 2016). A Hindu woman with her three children sought help from the ("BMMA") on being severely beaten by her husband. While she was narrating her story she explained how she was regularly sexual violated and she also expressed her fear that in her absence her husband was abusing the children. As she was working as a domestic servant, she was compelled to leave

her children at home in the care of her husband who was not working. On being asked as to whether she had ever complained to the police about this, she stated that despite making several complaints the police failed to apprehend the husband because he managed to flee every time. It took a lot of tracking by the BMMA activist to finally get their hands on him. After his apprehension, a joint meeting was called which included his wife, husband, his family, the police officer in charge and the BMMA members. Although both the BMMA activists and the police informed the woman about her rights both under the PWDVA and the criminal law of the country and the police officer, in this case, was extremely cooperative and was interested to file a case under the Protection of Children against Sexual Offence Act, 2012, the victim was reluctant to file a criminal case altogether. The parents of the husband offered a conditional solution of taking him away to their village and provide maintenance to the aggrieved, on the condition that they would withdraw their help in the event Maya (victim) files a criminal case against their son. It was this stipulation that made her opt for the option provided by her in-laws, in spite of being advised against such action by the BMMA workers as well as the police. On being counselled repeatedly by the latter to change her decision, Maya revealed her vulnerability of being exposed to the predators in the society who prey on such helpless single women especially with children. Moreover, even though the PWDVA would help her get a place to stay, but it is her in-laws who will provide her and her children with economic support so becoming estranged from them will create great hardships for her. Hence she was more willing to take the risk of her husband coming back from the village and abusing her again than face the risk of failing to provide security, food and an education for her children. Though Maya is fortunate that the BMMA workers along with the police have not only provided her with some emergency relief but have decided to take up her case to further assist her in the coming years to get some share in the property of her in-laws, few victims in India are lucky to get such much-needed rescue and support. It is the basic requirement of a safe home environment for children, that makes a victim stay back in her abusive relationship and this case is just one in a million, which portrays the harsh realities of life for a woman in a society build on power hierarchy. The Court, although on one hand, have acted sensitive to the cause of such victim women, yet by patronizing such victims, have majorly failed to address the challenges towards her autonomy. The judgment could have a landmark in advancing women's agency but ended up being just another judgment reinforcing state paternalism on women.

Access to counselling: A reality check

The Court made the difference between pre-litigation counselling and counselling *pendente lite* for women who have experienced severe physical violence from their spouses. Few feminist scholars have highly criticized the process of family mediation which according to them is detrimental for the interest of the victim women as it has a very casual air about it, fails to hold the perpetrator accountable for his actions and often ends up manipulating the victim from taking decisions for her best interest (Basu, 2015). On the contrary, it has been pointed out that the feminist attitude of going for “all or nothing” cannot uniformly benefit all victims of domestic abuse as not only are the types of abuse vary but this method overlooks the continuance of power play between the warring couple even during litigation and also makes a mistaken assumption that all will proceed smoothly, the court procedure will run on time, counselling rendered will be effective, there would be adherence to court order and the husband would be in all cases equipped and willing to pay up and as correctly stated by Madsen, these undercurrents must be taken into consideration (Adkins, 2010).

Lastly, it can be said that there exists no substantive evidence that supports the argument that counselling done during the litigation, under the supervision of the court is more beneficial for the women than pre-litigation counselling. In fact, the majority of Protection Officers, who act as nodal officers of the PWDVA, strongly believe from their experience that pre-litigation counselling of both the victim and her abusive husband often acts effectively in curbing the menace of marital abuse, as reflected in Fig. 3 on the previous page. They further stated that they have seen that due to pre-litigation family counselling conducted by them, oft-times violence is no more resorted to by the husband and marital bond gets restored and there remains no need for the victim to approach the court any further, yet a contrasting result ensues when the victim makes a formal complaint to the police or the court, leaving no space for mending the marital ties between the couple, especially in cases with no aggravated violence and where normalcy could have been restored just by counselling without resorting to litigation. There have been numerous reports of increased violence and harassment by the husband against not only the aggrieved wife but also against her relatives and her support groups, to intimidate her to withdraw her complaint from the court. Hence this power imbalance and its blatant display exist at both levels, pre-litigation counselling, as well as the court, supervised counselling (Dave and Solanki, 2000).

Herein the authors would like to put forward two data showing the attitudes that lawyers and judges have towards counselling, especially counselling *pendente lite*.

Figure 4: When judges were asked to state the most effective and commonly granted relief under the PWDVA, their least preferred relief was ‘counselling’, and this ‘counselling’ is the one which takes place after the litigation has started before the court. The percentage of judges choosing to counsel as most effective and their most favoured choice of relief is so dismally low that it barely secures a mark. This clearly shows that even in the stage of counselling undertaken by the court, there is no surety that it will go in favour of the woman. For counselling done during the proceeding to be effective, the judge has to be an avid believer of this method and must also be responsible enough to oversee as to how efficaciously it is being performed, only then can this method of counselling *pendente lite* benefit victim women. As for now, it seems to be a total failure in the State of West Bengal.

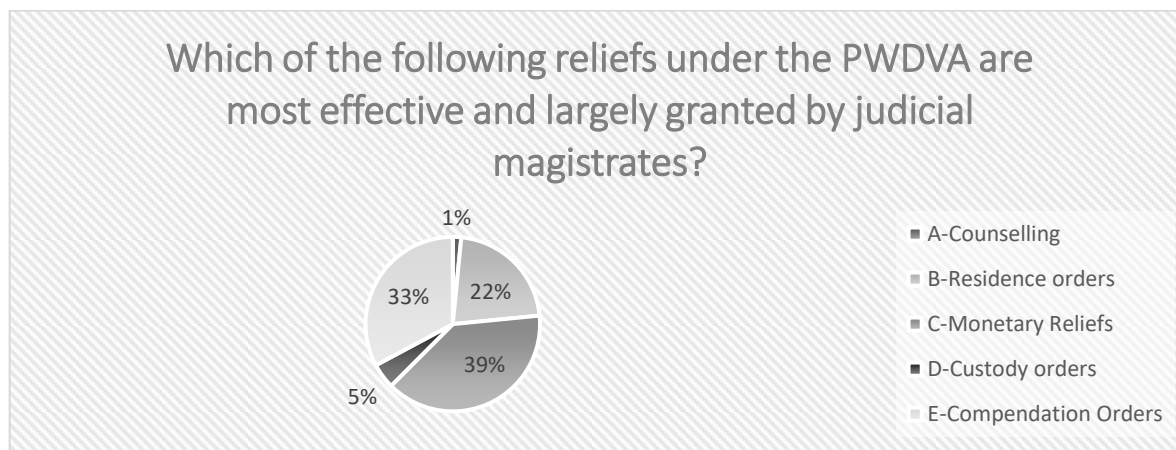


Figure 4: Question for Judicial Magistrates on most favoured reliefs under the PWDVA

Source: Author

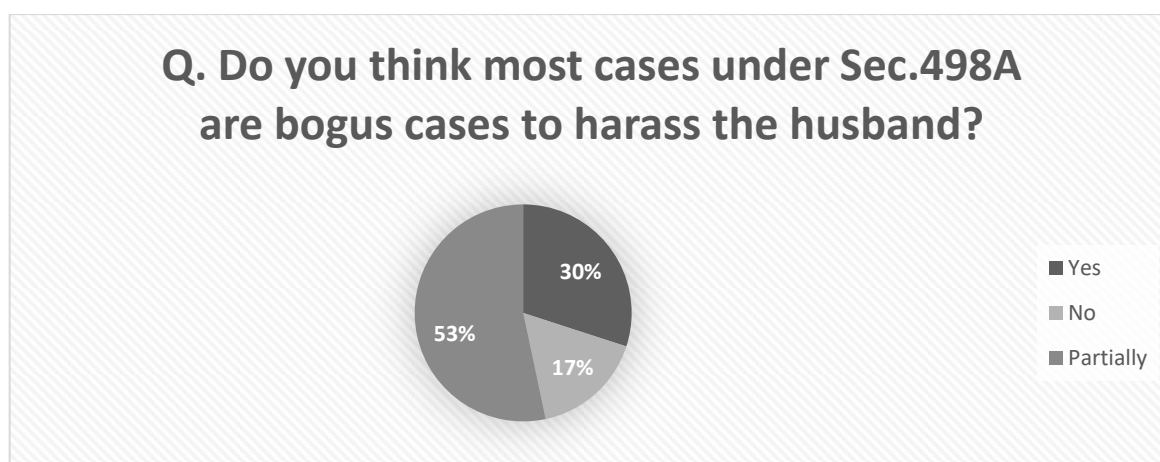


Figure 5: Question for lawyers regarding genuineness of Sec. 498A cases

Source: Author

Figure 5: Shows the attitude of lawyers when asked about the genuineness of the majority of cases under Sec. 498A of the Indian penal Code, most of them believed that it is partially true that most cases of domestic abuse are false and the next majority outrightly stated that in their opinion most of these cases are truly false. The effectiveness of counselling conducted during litigation, if undertaken by such lawyers, can very well be imagined. It will not be wrong to say here that most lawyers are skeptical not only about the truthfulness of the victims' and their cases but also about the method of counselling itself. They simply treat the victim women with suspicion and see counselling either as a strategy to elongate the court procedure or a method to exhaust the opposite party to make them withdraw their case or just another way to manipulate the disputing parties to reconcile, even when it is not expedient to do so.

Under both the above-mentioned circumstances, 'counselling' comes under the mercy of the judges or the lawyers and there is a greater chance that it will not prove to be beneficial to women. Moreover, as lawyers do not even go through sensitization trainers under the PWDVA, the risk of them mishandling the counselling process during the litigation is even more. Hence it seems more conducive, if victims of domestic violence, whatever may be the nature of such violence, be allowed to draw the benefit of pre-litigation counselling and proceed from thereon.

CONCLUSION

The Bombay High Court's judgment has after a long time broken the tradition that earlier judgments on similar issues have done, that is, it has shied away from upholding the sanctity of marriage and the need to preserve the same for the continuation of our society. It has expressed sensitivity by upholding women's autonomy in making choices for herself and also has recognized the contribution of the Indian feminist movement towards the emancipation of women from domestic violence. Yet by imposing compulsory supervision of the court on victims of marital abuse, the court took away this very autonomy from these women by denying them the right to choose their course of action. The authors can partially understand the mind-set of the judges when deciding on this point; the judges might have feared that the Indian women, groomed in gender role stereotyping since childhood, have become habituated with the phenomenon of male dominance in all phases of their life, so consequently they might not be able to take the correct decision to choose rightly under the PWDVA, they might end up only by sharing their stories of violence and staying content with mediating with

their husbands with the help of NGO workers, continuously hoping for a little better future. This might not seem to be enough for the judges and instead, they thought it prudent to take decisions ‘for’ her. Here, they have gone wrong; having their intention in the right place, the judges have erred by denying these women off their agency, undermining their competence to choose rightly. Instead, the judges could have focused on the structural challenges that exist in our society that make the lives of women hard and especially regarding victims of domestic abuse and prevents them from walking away from the violence. These judges failed to see that it was not because of their inability to choose rightly that these women end up making bad decisions, but it is about their survival and that of their children in our gendered society, which makes them choose poorly; this belief among the judges is reflected in **Fig. 4** which clearly shows their preference towards granting reliefs like custody orders or monetary orders, their lest granted relief being counselling. By choosing these reliefs and not counselling, the judiciary reiterates its stand on the imposition of the ‘act of separation’ on the victims’ women from her abusive husband, thus denying her the right to choose, her right to expect a successful conciliation and her right to hope for a better future with her husband. Another distinct picture that emerges from this discussion is that there seems to be a complete contrast among the judicial institutions in the application of the PWDVA in different parts of our country; in one part of the country counselling by officers of the court is preferred yet in another a contrasting view exist where counselling is the lest opted relief given by judicial officers. Yet the Bombay High Court judgement could have been a turning point on the issue of domestic violence in India paving a way for other courts to follow; unfortunately, it could not go all the way and fell short when it needed to rise.

LIMITATION & STUDY FORWARD

This research only concentrates on the practical application of the method of ‘counselling’ which is a unique feature of the Act, 2005. The finding of the research is quite disheartening which calls for further on-field surveys to inquire about the practical applications of other reliefs provided by the Act, to see how far and with what efficacy such policies are being practiced by the stakeholders.

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APPENDIX 1

QUESTIONNAIRE ON DOMESTIC VIOLENCE

1a. Name:

b. Age: Present -----, At Time of Marriage -----

c. Religion:

d. Social status: homemaker/professional

e. Address:

f. Marital status: married/divorced/separated

g. Educational qualification: illiterate/up to class 10/graduate/post-graduate

h. Monthly income:

i. Husband's Family structure: joint family/nuclear family

j. Duration of marriage:

k. Nature of marriage: love/arrange/love cum arrange.

l. No of Kids:

2A. When did the violence start?

a. 0-1yr

b. 1-3yrs

c. 3-5yrs

d. 5-7yrs

e. 7yrs above

2B. Was there any witness?

a. yes

b. no

3A. Was there any demand for dowry at the time of marriage from your husband or in-laws?

a. Yes,

b. No

3B. Did your father fulfill the demand for dowry?

a. Yes

b. No

c. Partially

4. Was there any preference of sex of the child from the in-laws' side?

a. yes

b. no

c. does not arise

5A. Do you know about The Protection of Woman from Domestic Violence Act, 2005?

a. Yes

b. No

5B. How did you come to know about the Domestic Violence Act, 2005?



- a. Electronic media
 - b. Police
 - c. Lawyer
 - d. Friend/Family member
- 5C. To whom did you first report/complain about domestic violence
- a. Relative
 - b. Friend
 - c. Police
 - d. Lawyer
 - e. Protection Officer
6. What was the nature of the violence? [You can tick more than one]
- a. Verbal
 - b. Emotional
 - c. Physical
 - d. Financial
 - e. All of the above
7. Who were the perpetrators of the violence?
- a. Husband
 - b. Mother-in-law
 - c. Father-in-law
 - d. Brother/sister-in-law
8. What was the frequency of violence?
- a. Daily
 - b. Weekly
 - c. Monthly
 - d. Occasionally
9. What was the reason for the violence?
- a. Dowry
 - b. Alcoholism
 - c. Incompatibility
 - d. Ego
 - e. Extra-marital affair
 - f. Unsatisfied sexual relation
 - g. Interference of relatives
 - h. Other reasons
10. Did you ever protest when you were abused?
- a. Yes
 - b. No
11. Did your parents support you when you informed them about the abuse?
- a. Yes
 - b. No

12. Do you know about Sec.498A of The Indian Penal Code, 1860?

- a. Yes
- b. No

13. Did you file any complaints against your husband before the local police?

- a. Yes
- b. No

14. Did the police help?

- a. Yes
- b. No

15. Are you aware of any emergency telephone number or email id of the Protection Officer under the DV Act for emergency cases?

- a. Yes
- b. No

16A. Did you file any case?

- a. yes
- b. no

If Yes then which case/s

- a. PW Under the Domestic Violence Act.
- b. Under 125 Cr.P.C.
- c. Under 498A of I.P.C.
- d. Under 13 A/B of Hindu Marriage Act
- e. Can't say

16B. Did you want to move the Court or compromise with your husband?

- a. Yes
- b. No

17. If compromised, what was the reason?

- a. In the interest of children
- b. In the interest of family status
- c. Lack of financial support
- d. For your social security
- e. Domestic violence is common

18. If you have not compromised, what was the reason?

- a. Self-esteem
- b. Economic independence
- c. Parental support
- d. Irreconcilable differences
- e. Women's organisation support

19. Do you have any idea about family counselling under the DV Act?

- a. Yes
- b. No

20. Do you want any maintenance from your husband after divorce?



- a. Yes
 - b. No
21. Did you get help from the Protection Officer under the DV Act?
- a. Yes
 - b. No
22. Did the Protection Officer file a Domestic Incidence Report?
- a. Yes
 - b. No
23. Did the police file the Domestic Incidence Report?
- a. Yes
 - b. No
24. Did you get any support from any Service Provider under the DV Act?
- a. Yes
 - b. No
25. What is the status of your case?
- a. Pending before family court
 - b. Undergoing counselling under the DV Act
 - c. Divorced
 - d. Case withdrew

DISCLAIMER

All the information collected through this questionnaire will be used strictly for research purpose and the identity of the person will not be disclosed.

APPENDIX 2

QUESTIONNAIRE FOR PROTECTION OFFICERS

- 1a. Name
 - b. Occupation
 - c. Years of service
 - d. Qualification
- 2a. The Act requires the appointment of Protection Officers in each district. Do you think an adequate number of Protection Officers have been appointed under the Act?
- i. Yes
 - ii. No
 - iii. Partially
- 2b. Who according to you should file be responsible for filing the '*domestic incidence report*'?
- i. Protection officer
 - ii. Judicial Magistrate
 - iii. Police officer
 - iv. A Service provider(NGO worker)
- 2c. Do you think the contact number/email id of the Protection Officer is easily available to the victims, either through publication in police stations or workplace of the NGO worker?
- i. Yes
 - ii. No

iii. Don't know

iv. Partially

2d. Do you think the State Government should establish a helpline for victims in cases of emergency?

i. Yes

ii. No

2e. Do you think the Protection Officer has sufficient infrastructure provided by the State Govt., to perform his duties under the Act?

i. Yes

ii. No

2f. What are the obstacles in front of the Protection Officer in performing his duties under the Act?

i. Lack of manpower/overburden

ii. Lack of coordination between Protection Officer and Police Officer

iii. Lack of coordination between Protection Officer and Service Provider (NGO worker)

iv. Lack of awareness of the victim about the Protection Officer

3a. Do you think the adequate number of Service Providers are working under the Act, in each district?

i. Yes

ii. No

3b. Do you think the State Govt., provides adequate funds to Service Providers to execute their powers under the Act?

i. Yes

ii. No

iii. Don't

iv. Know

v. Partially

3c. What according to you are the obstacles in front of the Service Providers to work under the DV Act?

i. Lack of funds/infrastructure

ii. Lack of interest in social work

iii. Lack of faith of the victims to approach Service Providers

iv. Non-cooperation from police

v. Non-cooperation from Protection Officer

4a. Do you believe 'counselling' as provided under the Act, is effective in curbing the menace of violence in the marital relationship?

i. Yes

ii. No

iii. Partially

iv. Not sure

4b. Do you think the DV Act is effective in curbing the menace of domestic violence in the present India society?

i. Fully effective

ii. Totally ineffective

iii. Partially effective

4c. Which following reliefs under the DV Act are most effective and largely granted by Judicial Magistrates, according to you?

i. Counselling



- ii. Residence orders
- iii. Monetary reliefs
- iv. Custody orders
- v. Compensation orders
- vi. Protection orders

4d. Do you think the DV Act is an invasion into the privacy of a marital bond?

- i. Yes
- ii. No
- iii. Partially

4e. When a victim complains to you about domestic violence, what do you do?

- i. Counsel the victim and request her to adjust as it is a private family matter
- ii. Counsel the perpetrator of the domestic violence and strongly warn him as to not continue with the violence
- iii. Advise the victim to file a criminal case under Sec.498A of the IPC
- iv. File a '*Domestic Incidence Report*' under the DV Act
- v. Advise the victim to contact the Protection Officer under the DV Act
- vi. Advise the victim to seek the help of any service provider (NGO worker) under the DV Act

DISCLAIMER

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