

THE FUNCTIONARIES UNDER THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005: A CRITICAL ANALYSIS

*Dr. Alok Sharma**

I. INTRODUCTION

Freedom from any kind of violence is the first element of women's capability for survival and empowerment. However, it is unfortunate that domestic violence against women is a universally accepted reality, which is even justified under certain circumstances.¹ It appears that domestic violence remains concealed in the pretended notions of love, duty, and gender thereby legitimated in its various manifestations. Women in homes are made to suffer in various ways ranging from simple repression to cruelty, hostility, exploitation and subjugation.

At the international level, many initiatives have been taken by the United Nations (UN) regarding violence against women (VAW) in general and domestic violence in particular. At the national level also, the Constitution of India provides for equality and dignity of women in its various provisions. It also provides specifically under Article 15(3) for the affirmative actions to be taken in favour of women so that they can get the substantive equality. It is in this context the Protection of Women from Domestic Violence Act, 2005 (hereinafter the Act) was enacted by the Indian Parliament.

The Act has put in place a comprehensive machinery to ensure the proper implementation of its provisions. It has envisaged the appointment of many functionaries to aid the victims of domestic violence in availing of various reliefs provided for under the Act. The functionaries include the Magistrates, the Protection Officers (generally women), the Service Providers, and lastly police. The reason being that the Act recognises that women hesitate to approach the police to report and resolve the issues involving domestic violence which police generally considers as family matters. Thus, the approach adopted in the Act is victim-oriented and does not depend on police action only however simultaneously, it does not preclude the possibility of getting relief under criminal law through police.

Nevertheless, the most important question arises whether the domestic violence victims are really getting any benefits after creating such important

* Assistant Professor, Faculty of Law, University of Delhi, Delhi.

¹ See, Saravanan, Sheela, *Violence Against Women in India, A Literature Review*, INSTITUTE OF SOCIAL STUDIES TRUST (ISST), March 2000.

and special functionaries or like other pro-women enactments remains on paper only. In this paper, an attempt is made to touch upon this aspect of availability and efficiency of these functionaries created under the Act with special reference to the capital of the nation.

II. EVIL OF DOMESTIC VIOLENCE

Prior to 19th century, women led somewhat insecure lives in practically all societies of the world. All the ancient legal systems acknowledged the right of husbands to chastise their wives even using force. Women were completely dependent on men and the standard of their lives related to that of their fathers, husbands and sons.² They were confined within the household, so they did not have any political rights and had limited civil rights. In Indian context, it has a peculiar dimension that it is not only inflicted by husband alone but also by other members of his family especially the mother-in-law.

Various social, cultural, political and legal factors are responsible for infliction of domestic violence on women. It continues unabated. After marriage, they are told that they must stay in their marital homes till their death. Instead of being appreciated and cared for, women in their marital homes are made to struggle, serve and satisfy their husbands and in-laws and while doing it if she does anything wrong she invokes rage of her husband and is maltreated. They are the sufferers of domestic violence, deserted or abandoned by their husbands and forced to live in their parental house and generally they do not get any help from police.

The observance of polygamy in some religious and socio-economic groups is a different type of violence that women from these groups must deal with. Notwithstanding the special protections specified for them under Indian Constitution, they continue to be shamed, ill-treated, tormented and deprived of the basic right to live a life with dignity and respect within their marital family.³ They also face many devastating consequences of domestic violence against them viz., impact on health; on family and children; and on development and economy of the country.

² Narada argues "the creator has made women dependent as women even of good family fall into ruin by independence." Although *Yaj-II-175*, said "woman should be loved but added protected." Quoted from V.K. Dewan, *LAW RELATING TO OFFENCES AGAINST WOMEN* (Orient Law House, New Delhi, 1996) p. 33; *Manu* clearly said that a woman needed to be taken care of throughout her life, "Her father guards her in childhood, her husband guards her in youth, and her sons guard her in old age. A woman is not fit for independence." Quoted from Wendy Doniger & Brian K. Smith, *The Law of Manu* (Penguin Books, India, 2014) pp. 197-198.

³ Lawyers Collective, *Domestic Violence and Law, Report of Colloquium on Justice for Women – Empowerment through Law*, LAWYERS COLLECTIVE WOMEN'S RIGHTS INITIATIVE (Butterworths, New Delhi, 2000)pp. xiv, xv.

In 2014, National Crime Records Bureau of India has included data on domestic violence under the Act for the first time and reported total 426 cases with rate of 0.1 during 2014.⁴ Kerala (140 cases) followed by Bihar (112 cases), Uttar Pradesh (66 cases), Madhya Pradesh (53 cases) and Rajasthan (17 cases) have reported the maximum such cases during 2014.⁵ A total of 461 cases were registered during 2015 with the rate of 0.1, showing an increase of 8.2% (from 426 cases in 2014 to 461 cases in 2015) during 2015 over 2014.⁶ Bihar (161 cases) followed by Kerala (132 cases), Madhya Pradesh (91 cases), Himachal Pradesh (15 cases), Rajasthan (14 cases) and Haryana (11 cases) have reported the maximum such cases during 2015, these six States together accounted for 92.0% of total such cases reported in the country during 2015.⁷ However, it seems that the women who are the victims of domestic violence are either not reporting such cases or unable to report them.

III. INITIATIVES AGAINST DOMESTIC VIOLENCE

At the international level, many initiatives have been taken by the UN regarding VAW in general and domestic violence in particular. The most important of them were Recommendation 19 (GR 19) issued by the Committee on Convention on the Elimination of Discrimination Against Women and the UN Declaration on Elimination of Violence Against Women that called on States parties to take immediate steps to end gender-based violence in family, in community and by State. They called on the States parties to enact national plans of action; to train and sensitize their criminal justice systems; to provide social support to victims and survivors and to collect data and information of VAW in their societies.⁸ Therefore, international instruments have forced the nations to enact or modify the legislation on prevention of domestic violence.

As far as India is concerned, in view of Article 51-C⁹ and Article 253¹⁰ of the Indian Constitution, the Indian Parliament had enacted the Domestic Violence Act pursuant to the recommendations of the UN Committee on CEDAW and incorporates all provisions of Specific Recommendations that

⁴ National Crime Records Bureau of India, CRIME IN INDIA 2014, available at <http://ncrb.gov.in> (last visited on August 2, 2016).

⁵ *Id.* at 91.

⁶ Available at <http://ncrb.nic.in/StatPublications/CII/CII2015/chapters/Chapter%205-15.11.16.pdf> (last visited on October 10, 2017).

⁷ *Id.* at 91.

⁸ Radhika Coomaraswamy, *Human Security and Gender Violence*, 40 ECONOMIC AND POLITICAL WEEKLY, October 29, 2005, p. 4729.

⁹ Indian government has an obligation to follow international norms and standards.

¹⁰ It confers on the Indian Parliament power to enact laws in pursuance of international conventions and treaties.

form part of GR 19 of 1992.¹¹ The Act is in conformity with the UN Model Legislation on Domestic Violence that provides comprehensive guidelines for States parties in drafting legislation on domestic violence.¹² Therefore, standard set in the international instruments have been the main source of inspiration for enactment of the Act.

IV. THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005

A. Introduction

The Act¹³ is an endeavour on the part of Parliament to recognize and strengthen women's right to home without violence. It is the first step towards bringing women's human rights into their private lives. It provides a civil remedy for protection of women from domestic violence and to prevent its incidence in the society.¹⁴ Domestic violence is considered as a silent crime, which was not defined in Indian legal discourse prior to 2005. The Act is a landmark legislation in this regard as it provides a statutory definition of domestic violence in a comprehensive manner by including not merely physical abuse but also multiple kind of abuses viz., emotional, economic and sexual, in which violence within family is manifested and affects women.

Further, under section 37 of the Act, the Central Government made the requisite Rules, for the proper implementation of the Act. These Rules have laid down complete procedure to deal with trial of domestic violence complaints filed under the Act, judiciously and promptly so that the women victims are not put to harassment. The Act also takes into consideration some other issues for the convenience of the victims. The Act seeks to generate an impact by providing

¹¹ Statement of Objects and Reasons.-

Domestic violence is undoubtedly a human right issue and serious deterrent to development. The Vienna Accord of 1994 and the Beijing Declaration and the Platform for Action (1995) have acknowledged this. The United Nations Committee on Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) in its General Recommendation No. XII (1989) has recommended that State parties should act to protect women against violence of any kind especially that occurring within the family.

¹² Article 11: "All acts of gender based physical and psychological abuse by a family member against women in the family, ranging from simple assault to aggravated physical battery, kidnapping, threats, intimidation, coercion, stalking, humiliating verbal abuse, forcible or unlawful entry, arson, destruction of property, sexual violence, marital rape, dowry or related violence, female genital mutilation, violence through prostitution, against household workers and attempts to commit such acts shall be termed 'domestic violence'."

¹³ The Protection of Women from Domestic Violence Act, 2005 was brought into force on 26.10.2006.

¹⁴ Preamble: "An Act to provide for more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto."

an uncomplicated manner of approaching the legal system by creating special machinery under it.

Hence, it provides for an alternative system i.e. the system of Protection Officers (PO) and Service Providers (SP) that is easier for the victims of domestic violence to understand and provides an atmosphere of security. The PO is supposed to be a friend, well-wisher and accessible to ensure the victims that they get timely reliefs. Thus, the purpose of the Act is laudable. Following is the critical analysis of the availability and efficiency of the functionaries created under the Act to check the success of the Act in the desired area.

B. The Functionaries under the Act

The Act in Chapter III has created a comprehensive machinery to ensure the effective and speedy implementation of its provisions and has appointed many functionaries to assist the aggrieved persons in availing the reliefs provided by the Act. Section 5 of the Act imposes a common duty on all the functionaries (police officers, service providers and Magistrate) to inform the aggrieved persons of their available rights, reliefs and services under the Act. The various available functionaries are as follows

(i) Central Government and State Governments

The Government is the administrative authority to enforce the Act, therefore, there are many duties which are assigned to the Central Government as well as to the State Government. Under Section 37 the Central Government may make rules for carrying out provisions of the Act. Under Section 11 every State Government is required to take all measures to ensure that the Act is given wide publicity through public media at regular intervals; to give periodic sensitization and awareness to all functionaries (government officers, police and the judiciary); effective coordination between services provided by all ministries and departments concerned and conduct periodic review; and Protocols for functionaries (including courts) are prepared and put in place. Further, State governments have to appoint POs and register SPs; list of SPs must be given to POs and published in newspapers and government websites.

(ii) Metropolitan Magistrate

The most important functionary under the Act is the Metropolitan Magistrates¹⁵ as the primary responsibility to implement the Act rests on them.

¹⁵ Section 2(i): "Magistrate" means the Judicial Magistrate of the first class, or as the case may be, the Metropolitan Magistrate, exercising jurisdiction under the Code of Criminal Procedure, 1973 in the area where the aggrieved person resides temporarily or otherwise or the respondent resides or the domestic violence is alleged to have taken place.

It is important to note that for determining whether any act/omission/commission or conduct of respondent is domestic violence or not is left to the wisdom of Magistrate.¹⁶ An effort has been made under the Act to simplify and make effective methods of filing domestic violence complaints and obtain reliefs, for example an application to seek any relief for aggrieved person can be filed by aggrieved person herself or a Protection Officer or any other person to the Magistrate who can grant relief after considering the Domestic Incident Report (DIR)¹⁷ filed by PO or SP. The reliefs sought for may include issuance of an order for payment of compensation or damages for acts of domestic violence¹⁸; protection order¹⁹; residence order²⁰; monetary relief²¹; custody order²²; and compensation order²³. To provide speedy justice the Magistrate shall fix the first date of hearing in 3 days from date of receipt of application and dispose it in a period of 60 days from date of its first hearing.²⁴

Under Section 13, the Magistrate gives notice of date of hearing to Protection Officer to serve or get it served within 2 days or any reasonable time from the date of receipt. Further, as the emphasis of the Act is also on reconciliation, the Magistrate can direct respondent or aggrieved person, either singly or jointly under Section 14 to go through counseling with any member of SP and fix next date of hearing within 2 months. Due to same spirit under Section 15, the Magistrate can take assistance of a Welfare Expert, preferably a woman. If the Magistrate considers it proper, Section 16 permits her to conduct proceedings in camera and under Section 24 she may provide copies of her orders free of cost to the parties, police, and SP. However, interestingly, Protection Officers are not included here which is a lacuna as Protection Officer has no information about the progress in any case. Further Rules 6 and 7 provide for filing of application and affidavit to obtain *ex parte* orders

¹⁶ Section 3, Explanation II: For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes "domestic violence" under this section, the overall facts and circumstances of the case shall be taken into consideration.

¹⁷ Rule 5. - Domestic incident reports.- (1) Upon receipt of a complaint of domestic violence, the Protection Officer shall prepare a domestic incident report in Form I and submit the same to the Magistrate and forward copies thereof to the police officer in charge of the police station within the local limits of jurisdiction of which the domestic violence alleged to have been committed has taken place and to the service providers in that area.

(2) Upon a request of any aggrieved person, a service provider may record a domestic incident report in Form I and forward a copy thereof to the Magistrate and the Protection Officer having jurisdiction in the area where the domestic violence is alleged to have taken place.

¹⁸ Section 22.

¹⁹ Section 18.

²⁰ Section 19.

²¹ Section 20.

²² Section 21.

²³ Section 12(1) and (2).

²⁴ Section 12(4) and (5).

respectively to the Magistrate.

(iii) Protection Officer

The second most important functionary who is the backbone of the Act is the Protection Officer.²⁵ The entire machinery of the Act hinges on the Protection Officers, who shall act as a link between the judicial machinery and the victims. The appointment of Protection Officer is based on the idea that women require more than police alone therefore, a Protection Officer is needed to enable a multiagency and synchronized response so that women would be facilitated in accessing various social services.²⁶ The State Government shall appoint them and they should be preferably women having requisite qualifications and experience. They are under control and supervision of Magistrate and have to perform duties imposed on them by the Magistrate and the Government. The rules also lay down the procedure for receiving information about commission of domestic violence.

Any woman who is the victim of domestic violence may initiate proceedings before the Magistrate, or any such proceedings may be initiated by the Protection Officer who may be informed of such domestic violence by any person who has reason to believe that it has occurred. After receipt of such a complaint, the Protection Officer shall prepare a Domestic Incident Report which shall be forwarded to the police officer of that concerned area and the service providers in such area. It shall also be sent to the Magistrate for taking cognizance of the matter.

Therefore, the Act prescribes many duties and functions of Protection Officer. It says that the Protection Officer will assist the Magistrate in the discharge of his functions; submit DIR to the Magistrate upon receipt of complaint of domestic violence; make an application to the Magistrate for aggrieved person claiming issuance of a protection order; ensure that aggrieved person is provided legal aid; maintain a list of all SP providing legal aid, counseling, shelter homes and medical facilities; make available a safe shelter home if aggrieved person so requires; get the aggrieved person medically examined; ensure that order for monetary relief under section 20 is complied with and executed; and perform other duties.²⁷

In addition to these duties, Rule 8 also prescribes many duties of

²⁵ Section 2(n): "Protection Officer" means an officer appointed by the State Government under sub-section (1) of section 8."

²⁶ Indira Jaisingh, *Bringing Rights Home: Review of the Campaign for a Law on Domestic Violence*, 44 ECONOMIC AND POLITICAL WEEKLY, October 31, 2009, p.51.

²⁷ Section 9(1).

Protection Officer including to provide aggrieved person information about her rights; to prepare a "Safety Plan"; to inform SP that their services may be required; to invite applications from them seeking particulars of their members to be appointed as Counsellors or Welfare Experts; to scrutinize their applications and forward list of available Counsellors to the Magistrate; to revise this list once in three years and forward revised list to Magistrate; to provide all possible assistance to aggrieved person and her children; to liaise between the aggrieved person and others; and to protect the aggrieved persons from domestic violence.

The Rules further prescribes certain other duties of Protection Officer.²⁸ However, Protection Officer is not a police officer and does not have any authority to forcibly seize any article or take over possession of any premises. Further, Protection Officer cannot probe into cognizable offences and are not expected to confiscate weapon(s) involved in domestic violence. The Protection Officer and members of SP are considered as public servants under section 21, Indian Penal Code²⁹ and no legal proceeding can be instituted against them for any damage caused or its likelihood which is done or intended to be done in *good faith*.³⁰ Further, Protection Officers can be penalized for failing/refusing to discharge their duties³¹ with a proviso that prior sanction of State Government is required.³²

(iv) Service Provider

Service Provider,³³ generally NGO, is another additional functionary to aid and assist the Courts, the Protection Officer and aggrieved person. They have been identified by Government. They belonged to five subcategories providing different services. A Service Provider is any organisation whose objective is the protection of women and is involved in providing legal aid, medical or financial assistance to women. Thus, a voluntary association registered under Societies Registration Act; a company registered under Companies Act or any organization whose objective is protecting the rights and interests of women by

²⁸ Rule 10: The Protection Officer, if directed to do so in writing, by the Magistrate shall conduct a home visit of the shared household premises and make preliminary enquiry if the court requires clarification, in regard to granting ex-parte interim relief to the aggrieved person; after making appropriate inquiry, file a report on the emoluments, assets, bank accounts or any other documents; restore the possession of the personal effects including gifts and jewellery of the aggrieved person and the shared household to the aggrieved person; assist the aggrieved person to regain custody of children and secure rights to visit them under his supervision; assist the court in enforcement of orders in the proceedings under the Act; take the assistance of the police in confiscating any weapon involved in the alleged Domestic Violence.

²⁹ Section 30.

³⁰ Section 35.

³¹ Section 33.

³² Section 34.

³³ Section 2(r): service provider means an entity registered under sub-section (1) of section 10.

any lawful means including providing of legal aid, medical, financial or other assistance can be appointed by the State Government as a service provider for the purposes of this Act.³⁴ Rule 11(3) provides detailed guidelines and requirements for their registration. The Act prescribes their duties and powers to record of DIR; to get aggrieved person medically examined; and to provide shelter in shelter homes.³⁵ Further, Counsellors³⁶ shall also be appointed from these organizations for reconciliation between the parties. They are protected for all *bona fide* actions done in exercise of their powers under the Act to prevent commission of domestic violence.³⁷

(v) *Police Officials*

Apparently, there is not much role assigned to the police officials under the Act, but it is found that role of police is mentioned in many provisions of the Act. As police is existing functionary of the State so large majority of victims approach the police stations to file their complaints. From this stage the role and functions of police begin. Firstly, if the information reveals commission of any cognizable offence like grievous hurt, dowry death, Section 498A etc. then police must perform their normal duties and take appropriate action of investigation, arrest etc.³⁸ Secondly, Section 5 requires them to tell the victim about her rights and reliefs available under the Act. Thirdly, they can refer the victim to the Protection Officer for recording of DIR and further actions. Fourthly, they must take cognizance of breach of Protection Order and file a charge sheet. Fifthly, they must comply with all the orders issued by the court requiring their assistance and lastly, police are entitled to get the copies of all the documents filed by various functionaries under the Act and copies of all orders passed by the court so that they are aware of the progress of the cases. However, in practice police expressed the opinion that they have no role to play under the Act and thus they do not follow their duties.

V. THE CRITICAL ANALYSIS OF AVAILABILITY AND EFFECTIVENESS OF THE FUNCTIONARIES UNDER THE ACT

While a commendable effort has been made to create an alternative, speedy and effective mechanism for the protection of the aggrieved persons

³⁴ Section 10(1) of the Act and Rule 11(1).

³⁵ Section 10(2).

³⁶ Rule 2 (c) "Counsellor" means a member of a service provider competent to give counselling under sub-section (1) of section 14;

³⁷ Section 10(3).

³⁸ Section 5 and Section 36. Act not in derogation of any other law.—

The provisions of this Act shall be in addition to, and not in derogation of the provisions of any other law, for the time being in force.

nonetheless there are certain lacunas in the implementation of the Act regarding the functionaries under the Act which has potentially hazardous implications. There are many severe issues related to the infrastructure and facilities requisite for the proper implementation of the Act. Although the Act has endeavored to put in place adequate machinery for its implementation but the deficiency of the functionaries under the Act is impeding its successful implementation.

The Metropolitan Magistrates are the central functionary under the Act as its success depends on how they implement it. For this purpose, they have ample freedom even up to coin their own procedure for trial of certain cases under the Act. However, they rarely coin their procedure to speed up the trial of such cases. The MMs rarely conduct the proceedings in camera. The most unfortunate thing is that they have failed to follow the dicta of the Act as to the time framework for trial of the cases, may be due to heavy workload. There is lot of delay in trial of the cases as the MMs fix the first date of hearing from one and half month to one year and the cases are pending even after 3-4 years. Another grave problem is the implementation of their orders as they are rarely implemented because the Act has not expressly provided for any procedure to be followed in this regard. Therefore, this prevailing situation is quite problematic and pathetic for aggrieved persons.

Further, the courts issue *interim* orders frequently but *ex parte* orders sparingly. The MMs do not generally alter, modify or revoke their orders. The MMs try the breach of protection order as an offence under the Act but imposed punishment of fine only. The MMs do not decide these cases upon the sole testimony of the aggrieved persons and do not frame charges under other sections of Indian Penal Code, 1860 or Dowry Prohibition Act, 1961. The MMs rarely direct the POs to perform any functions for proper implementation of the Act owing to the practical difficulties they face. The MMs have never been assisted by any SPs or Welfare Experts in discharge of their functions as they do not know anything about them. In their absence, the MMs refer matters to the mediation cell in the court for counselling. Therefore, MMs are not able to perform their requisite functions.

The Protection Officer is the second most important functionary especially created under the Act which is mainly responsible for its effective implementation. They are appointed by concerned governments, but all the requirements prescribed for their appointments have not been strictly followed. The department has not appointed any POs on the permanent basis and managing its work by contractually appointed POs who are working in the pathetic conditions. Further, Protection Officers appointed are usually fresh graduates

from non-legal fields and appointed on ad-hoc basis. The MMs and Police officials have undergone compulsory periodic trainings provided by Government for awareness and sensitization on the issues pertaining to the Act but none of the POs undergo any such training because of which they have no information about the DIR or other provisions of the Act at the time of their appointments. They do not have any infrastructure and support staff to assist them. As a result, DIRs are generally sketchy, and possibility of manipulation cannot be ruled out.

The POs have the primary duty to assist the court and the aggrieved persons; receive their complaints; prepare DIRs; and assist them to get legal aid, monetary relief, medical facilities and shelter facilities etc. However, the POs do not make any applications to the MMs on behalf of the aggrieved persons rather advocates file it generally. They were intimidated while serving summons on the respondents and police also do not cooperate or recognize their authority. Therefore, POs do not serve the notice of hearing on the respondents except in rare cases and it has been sent through the process agency/SHO concerned/Nazarat Branch. They also receive reports of breach of protection orders from the aggrieved persons but do not help them much due to their own limitations. Therefore, it appears that except preparing the DIR they do not perform any other functions. Further, they neither get any support from SPs nor from police as they help them only if they have court's orders in that regard.

The Service Providers are generally NGOs but only a few states have listed few of them. However, no SPs have been registered but only identified by the concerned department. The Service Providers, generally have not been provided any training about the Act therefore, they are not aware about their duties and functions under the Act. Similarly, medical and shelter facilities are not available in many states. Insufficiency of funds, lack of transparency in resource allocation, and under-spending of money allocated are common complaints.³⁹

Police, the other functionary, do not consider the fact that they have any role to play under the Act. Police do not deal with the breach of protection order as a cognizable and non-bailable offence as provided by the Act and thus do not arrest abuser in such cases of breach of protection order. Police only act when directed by the court to do so. However, the POs and SPs take police assistance in emergency situations of infliction of domestic violence and the

police accompany them to the place of occurrence, but police do some preliminary inquiry only and do not take any concrete action as directed by the Act.

The Governments do not provide any periodic training to various functionaries for awareness and sensitization about the Act despite being obliged by the Act. Further, Government is not maintaining proper coordination among different functionaries under the Act. Therefore, it appears as if the government is not serious enough to implement the Act in true spirit.

There is a complete lack of coordination among various functionaries under the Act despite being provided for cooperation. The MMs do not have any list of SPs and thus SPs do not get any orders for counselling from the MMs. It is the duty of the POs to do all these formalities and then coordinate among different functionaries, but they do not perform even a single duty required by the Act except filing of DIR and that too in mechanical ways. The main purpose of creation of the POs under the Act was to coordinate among MMs, SPs, Police and aggrieved persons but they had failed miserably. Another reason for lack of coordination among them was non-following of the prescribed guidelines under the Act by them. The resulting impact is the pathetic conditions of the aggrieved persons.

VI. CONCLUSION

It can be said that violence against women is a world phenomenon. It operates to maintain and reinforce women's subordination. Many countries including India enacted legislations prohibiting domestic violence and protecting women from multiple manifestations of its occurrence. The Act has reduced procedural formalities thereby making it easier for the victims to approach the system as it provides for an inbuilt mechanism to facilitate the entire system of access to justice.

However, the implementation of the Act is not uniform across the country due to lack of infrastructure, requisite functionaries, funds and facilities. The *Mahila* courts are heavily overburdened resulting in delay in trial of these cases. Moreover, due to shortage of courts there is high pendency of cases and the prescribed time frame has not been implemented at all thereby victims are not getting any requisite reliefs more than a decade after the Act came into existence, Protection Officers are yet to be appointed in every district as proposed by the Act and only a few states have appointed full time/permanent Protection Officers with independent charge. The Protection Officers are responsible for filing DIRs, helping the aggrieved person in accessing medical aid, legal aid etc. and if they are not available how these functions can be performed. Moreover, they neither

³⁹ Lawyers Collective, THE FIFTH MONITORING AND EVALUATION REPORT 2012, available at lawyerscollective.org (last visited on September 10, 2014).

have any experience nor any training to handle and discharge their functions. The lack of general information about the POs and their inadequate numbers were considered as a serious handicap to victims accessing the law. Similarly, SPs have not been registered but notified in some cases. Therefore, the availability and effectiveness of the various functionaries under the Act is not satisfactory at all rather completely failed.

It can be rightly said that merely enacting laws cannot provide justice to the victims in a patriarchal orthodox society. The State must provide all requisites to implement the Act. Lots of funds, personnel, and courts are required to implement the Act as expected. Further, what is more important is the intention of the State to implement it. Thus, if the State is considerate about protecting women at home, it should create appropriate institutions and mechanisms, with proper monitoring, to realize the desired aim of violence free homes. In addition, it is to generate awareness about the Act and inspire people to abide by the laws apart from improving the infrastructure comprehensively for the justice delivery system. However, it is true that the Act does ensure that women are not completely at the receiving end but have at least some weapon to fight back.