

Protection of lives and dignity of women

Report on violence against women in India



Human Rights Now
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Human Rights Now (HRN) is an international human rights NGO based in Tokyo with over 700 members of lawyers and academics. HRN dedicates to protection and promotion of human rights of people worldwide.

info@ngo-hrn.org

Marukou Bldg. 3F, 1-20-6, Higashi-Ueno
Taitou-ku, Tokyo 110-0015 Japan

Phone: +81-3-3835-2110 Fax: +81-3-3834-2406

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ABBREVIATIONS AND ACRONYMS

AP	Aggravated Person
CDPO	Child Development Protection Officer
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
DIR	Domestic Incident Report
DPA	Dowry Prohibition Act 1961
DPO	District Probation Officer
DSW	Department of Social Welfare
DV	Domestic Violence
DV Act	The Protection of Women from Domestic Violence Act, 2005
DWCD	Department of Women and Child Development
FIR	First Information Report
First M&E Report	Staying Alive: The First Monitoring & Evaluation Report 2007
HPI	Human Poverty Index
HRLN	The Human Rights Law Network
HRN	Human Rights Now
ICRW	International Center for Research on Women
IndiaSAFE	Indian Studies of Abuse in the Family Environment
IO	Investigating Officer
IPC	Indian Penal Code 1860
JICA	Japan International Cooperation Agency
LC	Lawyers Collective
LCWRI	Lawyers Collective Women's Rights Initiative
M&E	Monitoring & Evaluation
M&E Report	Monitoring & Evaluation Report
MWCD	Ministry of Women and Child Development
NCRB	National Crime Recode Bureau
NCW	National Commission for Women
NFHS	National Family Health Survey
NGO	Non-Governmental Organization
NLSA	National Legal Services Authority
PO	Protection Officer
PWDVA	Protection of Women from Domestic Violence Act, 2005
PWDVR	Protection of Women from Domestic Violence Rules, 2006
Second M&E Report	Staying Alive: The Second Monitoring & Evaluation Report

RUWA	Rajasthan University Women's Association
SHGs	Self-Help Groups
SP Service Provider	Service Provider
UN	United Nations
UNDP	United Nation Development Programme
UNFPA	United Nations Population Fund
UNICEF	United Nations International Children's Emergency Fund
UNIFEM	United Nations Development Fund For Women
VAW	Violence Against Women

I. Summary

1. Purpose of the research mission

Human Rights Now (HRN), a Tokyo-based international human rights NGO¹ conducted an investigation on violence against women in India during its research mission of the “violence against women project” from September 15 to September 22, 2008 and published this report with recommendations.

HRN’s Violence Against women project aims: to build a network with women’s organizations and NGOs fighting against violence in Asia and to improve the current situation of violence by conducting investigations and making policy proposals in cooperation with such organizations. Another goal of the project is to change the aid policy of the Japanese government which has almost no targeted aid plan to exterminate the violence against women in Asia despite being one of the main donor countries in the region.

The research focused on India, the region where the violence against women is reported to be severe: the violence against women includes domestic violence, dowry-related violence, sati, acid attacks, “witch hunting”, violence related to child marriage, and rape.²

The research focus is on domestic violence (DV), which is an urgent problem in India since a great number of women have been killed by their husbands and husbands’ family members. Various NGOs have been making efforts to improve the situation by pressuring the government to enact laws against DV. As a result, the Protection of Women from Domestic Violence Act 2005 (DV act) was enacted. Although the enactment of the DV act was a significant step towards changing the situation, the implementation of the act has been far from successful. Thus, the main focus of this research is, along with the investigation of the reality of DV, to observe the role the DV act plays in real life—particularly to identify the cause of problems as well as possible solutions. Due to time restrictions, the HRN research mission selected two areas in India – Delhi and Rajasthan. The capital, Delhi, was chosen to examine the status of implementation of the law and to gain an overview of how the law is enforced nation-wide. Rajasthan was chosen since the state is seen as facing serious and typical problems of violence against women.³

The mission found serious gaps between law and reality related to VAW (Violence Against Women) in India and its causes, as well as made several recommendations at the end of this report to fill the gap in order to protect women from violence.

HRN expresses its deepest thanks for the cooperation and support given to the research mission by numerous organizations and individuals.

¹ Human Rights Now is a Japan-based NGO established by a group of lawyers, researchers and activists working for the promotion and protection of human rights worldwide, with special focus in Asia.

² A lot of reports on the violence against women have been issued by many international organizations and the Government of India. For instance, ICRW (International Centre for Research on Women) published a report (http://www.icrw.org/docs/DVIndia_Report5_702.pdf). The Department of Women and Children (Government of India) also issued a report named the “Report of the Working Group on Empowerment of Women” (http://planningcommission.nic.in/aboutus/committee/wrkgrp11/wg11_rpwoman.pdf) in 2007.

³ Lawyers Collective Women’s Rights Initiative, “Staying Alive First Monitoring & Evaluation Report 2007 on the Protection of Women from Domestic Violence Act 2005, at <http://www.unifem.org.in/violenceagainstwomen.html>.

2. Research Activities

(1) Research Mission to India (September 15 to September 22, 2008)

The following is the activities of HRN research mission.

Date	Organization/ Content	Location
Sep.15th, morning	The Institute of Development Studies, Jaipur. Exchange of opinions with representatives from DV act-related organizations.	Jaipur, Rajasthan.
15th, noon	Chat with a woman from one of the NGOs mentioned above.	"
15th, afternoon	Visit to Rajasthan State Commission for Women. Hearing from the staff.	
16th, morning	Visit to a shelter run by Rajasthan University Women's Association : RUWA. Chat with management staff and a hearing from shelter patrons.	
16th, afternoon	Visit to Women's Police Station, <i>Mahila Thana</i> . Hearing from police officers.	
	Jaipur city police office. Visit the DV prevention seminar organized by an NGO.	
16th, evening	Chat with Dr. Pawan Surana, former chairperson of Rajasthan State Commission for Women	
17th, morning	Visit to NGO Vishakha	
17th, noon	Visit to Sedhereyo Ki Dani, a village participating in a project organized by Vishakha. Hearing from project participants.	Sedhereyo Ki Dani, Jaipur, Rajasthan
17th	Visit to United Nations Fund for Population Activities: UNFPA, Jaipur office. Hearing from staff.	Jaipur
	Visit to Department of Women & Child Development office. Hearing from staff.	"
18th, morning	Visit to female NGO Jagori office.	
18th, afternoon	Visit to Delhi office, Lawyers Collective.(LC).	
19th	Visit to Delhi high court. Attend the lawsuit over Indian penal code section 377.	
	Exchange of opinions with Judge of Delhi high court about DV act.	
	Hearing and an exchange of opinions with a protection officer coordinated by LC.	
20th	Visit to Human Rights Law Network: HRLN. Hearing about various forms of violence against women.	
	Meeting with the head officer of YWCA Delhi.	
21st, morning	Chat with a reporter from Asahi newspaper.	
21st, evening	Exchange of opinions with UNICEF	
22nd. morning	Visit to JAICA	
	Visit to NGO Multiple Action Research Centre : MARC, an NGO aiming to empower women through law.	

(2) Monitoring

After the mission, HRN continues its monitoring on the situation of implementation of the DV Act in India and legal arguments surrounding the Act based on the data, interview with NGOs and observing legal cases. This report includes our continuous research on VAW in India.

3. Findings and Recommendations

HRN found that Indian DV Act includes many innovative and progressive provisions and systems to prevent DV and protect victims of DV. At the same time, however, it found that the actual implementation of the Act has numerous problems and cannot save women from day-by-day violence. There is a huge gap between the Act and the reality because of the lack of budget and the lack of political will to implement the Act. The violence and fear prevent sound development and empowerment of women, and cannot improve women's status in the society.

After the research on violence against women focusing on DV, having a recognition that the government of India has primary duty to eliminate all form of violence against women in India, Human Rights Now makes the following recommendations in order to eliminate DV and implement the Act properly:

(To Government of India)

1. Research and Analyze the implementation of DV Act, identify the cause of malfunction and take all necessary measure to solve problems.

1) To conduct a nation-wide survey on the number of application for protection orders, number of the orders granted, the enforcement of the protection order, and the duration by the decisions of orders to be granted, in order to understand the implementation of the Act as the Government.

In particular, specific researches on cities and rural areas/ castes and minority tribes should be conducted.

2) In the course of analysis, following points should be taken into consideration.

A) The cause of difference with respect to the numbers of application and grant per capita shall be analyzed, such as gap of access to justice, access to protection officers, access to free legal aid, or gap of dissemination among general public.

B) To identify the cause, when the number of granted protection order is fewer than 70% of application, or application for relief or when orders are not granted within 60 days, and take necessary measure to improve the situation.

2. Establish a mechanism of coordination between the central government and state governments for the effective implementation of the Act

As CEDAW points out, although India has progressive women-related legislations, implementation of legislative and policy initiatives is often left to the states and union territories as well as its jurisdictions, which cause lack of coordination between the central government and states, results inadequate implementation of the legislations. HRN recommends to establish necessary mechanism of consultation, coordination and partnership between central government and state governments in order to ensure effective implementation of the all legislation related to violence against women.

The central government should send governmental official as necessary to monitor and have consultation with state governments with respect to implementation.

The central government as well as each state government shall establish executing plan of implementation and conduct periodic review of implementation.

National Commission of Women and state commission of women shall also strengthen the coordination and collaboration to effective implementation of women related policy.

(To GOI and state governments)

3. Budget for the DV Act

The central government shall disclose the budget used for DV Act, evaluate and review how the budget

was allocated and used and how it contributed effective implementation to the public. Each State government shall have separate independent budget for implementation of the DV Act and disclose the use and evaluation to the public.

4. Dissemination and outreach of the DV Act

Because of lack of knowledge of DV Act as well as means to use the Act, only small percentage of women actually use the DV Act in India. According to the Article 11 of the DV Act, central and state governments are responsible for disseminating the Act. It is necessary to inform the DV Act and its contents to women including in rural areas about DV Act and promote access to justice.

HRN recommends to both central government and states governments to make effort for outreach and legal literacy training.

5. Budget and institutional building for PO's office

In order to improve the accessibility to the Act, it is necessary for POs, the first contact point to the Act from women to be accessible from women, to operate their mandates as the Act expected. However, Po's situation is one of the serious causes of malfunction of the Act.

The HRN research mission heard many complaints from Pos, such as: salaries or travel expenses are not provided, infrastructure is not sufficient for the office, the number of officers is extremely insufficient. In order to implement and enforce the Act properly, appointment of full-time POs and the administrative support for their work are crucial. The central government as well as each local government shall take immediate measure including sufficient budgeting to improve the situation. In particular,

- (1) The full-time PO shall be appointment and accessible for women at every city and village.
- (2) PO is provided with an independent office and budget
- (3) PO shall be provided sufficient professional training in order to prevent inadequate practice and harm. PO shall be provided protective assistance from police at the time of enforcement of orders.
- (4) 6. Budget for SP

According to DV Act, through registers as SP, NGO can support victim of DV as PO does. In reality, however, the lack of budget for SP keeps the number of the SP extremely low. Sufficient budget shall be provided for SP so that NGO can contribute the implementation of the Act as SP.

6. Increasing the number of counselling centre

The lesson from Rajasthan is that the more place for women to consult, such as counselling centres in rural areas, women's police station as well as counselling centre next to police station, more application of protection order. In this regard, both central and each state government shall expand of places for consultation, such as counselling centres and women's police stations.

7. Establish and strengthen the function of shelters and medical facilities

(1) Establishment of shelter and medical facility

Although the DV Act demands the establishment of shelter and medical facility in every state, only small number of states appointed shelters or medical facilities for victims of DV

Each state shall fulfil its duty and build shelter homes and medical facilities for victims.

(2) Trainings for doctors and counselling centres in hospitals

According to the statistics, only two percent of DV victims consult police.

Since women under severe DV might visit hospital, it is important to train doctors and medical workers for the occasion, because even if victims do not tell doctors about DV, well-trained doctors might be able to recognize and intervene the situation. It is recommended to follow the progressive example, counselling centres locating at hospital.

8. Strengthening and support for helping scheme such as public hearings

ADR scheme such as public hearing operating in Rajasthan would provide effective measure for protection of ordinary women in rural area who are hesitant to access to justice, especially under the situation that protection order still take long time to be granted.

Public hearings are accessible, immediate and effective measure since it take place in respective rural villages where DV victims reside so that women do not have to move, as well as intended to solve the case within the day of hearing. On the other hand, it is necessary to pay attention if the speediness is not giving women unsatisfying results. The follow-up to make sure that the women are not being revenged for taking action before public hearing is also necessary.

9. Provide support to grassroots NGOs

NGOs play crucial roles in the fight against DV: they establish counselling centres and shelter homes in rural areas where state or international organizations do not reach by their hands, provide shelters, consultation services, 24hour helpline, job trainings, legal assistance, and community education. Without NGOs, it is extremely difficult to guarantee the women's rights. Therefore, it is recommended to provide financial support for these grassroots NGOs to implement the DV act.

10. Comprehensive national policy of gender equality and women's empowerment

The vicious circle of India's gender issue is that violence against women derives from their low socioeconomic status and such violence ties women to the low status. Taking it into consideration, it is crucial to mainstream policy of gender equality and women's empowerment along with the fundamental elimination of violence against women within national policy.

HRN recommends to establish concrete action plan on education for women, improvement of literacy, action plan to decrease child marriage, support for women's economical independence, and equal employment at office is crucial. (Justice, police, judicial and administrative related workers)

11. Reform of legal aid system to ensure access to justice for women

Under the Legal Service Authority Act, women in poverty are given right to receive free legal aid in India. The DV Act mandates police to inform victims about the legal service.

However, as CEDAW stated in its report, women in rural areas cannot receive legal services. LC reports says that in order to receive legal service, victims need permission from courts which makes it hard for ordinary women to utilize the service.

HRN recommends drastic reform on legal aid system to increase accessibility for all women suffering from violence to the free legal aid.

12. Strengthen judicial officials' capacity and promote training on DV Act as well as gender sensitivity

The research mission sees the low level understanding of the DV act and other gender related problem among judges, lawyers and law enforcement.

There are cases reported to the mission that judges deal with cases of protection order without a proper knowledge of the DV Act. There are also cases reported that inadequate response of police to DV cases because of lack of awareness and knowledge. In addition, it is pointed out that the bar association is not active in disseminating the Act nor representing victims of DV.

Such situations slow down the immediate protection for women suffering from violence.

HRN recommends

- (1) to conduct systematic and periodic training on the content and implementation of DV Act for all judicial and law enforcement workers dealing with DV act including judges, public officers, lawyers, prosecutors and police officers.
- (2) to conduct systematic and periodic gender sensitive training for judges, lawyers, prosecutors and police officers.

HRN also recommends the bar association to play a leading role to disseminate the DV Act by; providing systematic internal trainings for lawyers about the Act and practical methodology, as well as providing external legal education and dissemination about the Act for general public especially in order for victims to use the Act.

13. Fundamental improvement of the court procedure on Protection Order

Despite the Act demands that courts to finish the trial within 60 days, in reality the order takes long time to be granted. Court needs to conduct a research to find out why it takes longer and plan a fundamental solution to it.

In case the cause of delay stems from lack of methodological training or knowledge of the DV act, the systematic nationwide training shall be introduced for all judicial personnel in charge.

In case the cause of delay stems from lack of de facto capacity of judiciary, the court budget shall increasingly be allocated to appoint sufficient numbers of magistrate and other staffs in each local courts.

14. Ensure the right to home for women

HRN express its concern on the tendency to deny residence order under DV act after the Supreme Court judgment on Batra v Batra case.

In order to exercise state obligation to protect women's right to home from arbitrary or unlawful attack, the judicial interpretation of the scope of Batra v Batra shall be strictly limited to what the judgement said.

Also, in case that victimized women are in the scope of Batra v Batra, state shall provide alternative measure to ensure their right to reside as well as right to effective remedy for violation of right to home.

15. The criminal justice reform to end impunity

Many DV crimes are unpunished and perpetrators enjoy impunity under low conviction rate. The cause of low conviction rate stems

India has not yet taken appropriate measures to prevent recurrence of violence against women.

During the research, the cause of impunity was pointed out. One is that incapability of police to collect the evidence contributes significant number of acquittal. Other is that excessive number of cases compare to judicial capacity causes enormous delay of court proceeding. It is a unique Indian phenomenon that in order for a criminal case to be convicted, it takes seven to ten years. Without an effort to change the situation, the elimination of violence against women is extremely difficult.

It became clear that the fundamental reform of criminal justice system is necessary to end impunity.

Increasing number of judicial budget, increase the number of judges, gender sensitive education for judges, judicial personnel, prosecutors, lawyers and police is required.

Also, with respect to criminal investigation, capacity building of police and prosecutor is required. Special focus should be given to scientific evidence as well as modernised technique of autopsy.

(Recommendation to Japanese government, international organization, and donors)

16. Strategize its aid policy for elimination of violence against women

Gender equality and women's rights should be prioritized in development aid policies. Since the violence against women deteriorates human development and security of entire female population in India, policy to address violence against women shall be prioritized in development policy.

Special attention and support should be provided for NGOs working for women suffering from violence in rural area.

II. Overview of India and the Status of Women

1. The nation of “diversity”

(1) Overview

The Republic of India is located in the centre of South Asia, occupying most of the Indian subcontinent. The capital is Delhi and the country has a population of over 1 billion people.⁴ At 3,287,263m,² the area is as large as the European continent. It is divided into 28 states and seven union territories. India has the Ganges River, Indus River, Himalaya Range, Vindhya Range, and the southernmost part faces the Bay of Bengal, Arabian Sea, and Indian Ocean. Andaman and Nicobar Island and Lakshadweep Island are also Indian territories. The West Bengal area, located in the east of India and facing the Bangladesh border, is the largest delta area in the world. Rajasthan state, which is located in the west and shares a boarder with Pakistan, has a vast desert area.

As diverse as Indian geography is the Indian demography: various factors such as ethnic groups, religions, languages and castes create rich varieties of people within the country. Major ethnicities are Indo-Aryan, Dravidian, and Mongoloid. According to the census in 2001, 80.5% of the population is Hindi, 13.4% Muslims, 2.3% Christians, 1.9% Sikhs, and 0.8% Buddhists, and 0.4% Jains. Language is also diverse – other than the official language Hindi which has many speakers in north India and the subsidiary official language English, there are 18 other major languages listed in the Eighth Schedule of the Constitution.

(2) Political System

India has a democratic, federation system: since its independence, India has been holding elections every five years without almost any interruption and is considered the “world’s largest democratic nation.”⁵ The head of the nation is a president who is selected through an indirect election by central parliament and state parliament elections. However in reality administrative power belongs to the central government with a federal prime minister as head. The constitution states the areas central government and state government administer: defence, foreign affairs, transportation, communication and currency belong to central government and police, sanitation, education, forest and other topics related to local issues belong to state government. Central government has strong influence over state government by controlling finance as well as appointing bureaucrats to local governments.

On the other hand, the central government has been promoting the establishment of a unique Indian local administrative system, named *Panchayat* since its independence. It is an institution consisted of three levels: the smallest level is village-*panchayat*, middle level is block or taluka, and the largest level is district. Since 1992 this organization of *Panchayat* has been recognized as autonomous and given rights and money to administer programs to develop local economy and society. In the same amendment which created Panchayat (73rd and 74th constitution amendment), the reservation of scheduled castes and scheduled tribes as well as reserving a third of seats in parliaments for women are stated.

⁴ Government of India, Census of India 2001. This census has been taken once in 10 years.

⁵ Exclude the period of a state of emergency from 1975 to 1977.

(3) Caste System

Caste is a system of Indian exclusive social groups, which restrict their members' lifestyles such as marriage, dining and occupation. The caste system in India is a combined social system of hierarchy and economical, power relation based on caste. Caste is sometimes understood as four-class system – *Brahmins* (scholar, priest), *Kshatriyas* (warrior, king), *Vaishyas* (merchant, agriculturist), and *Shudras* (artisans, labourers). Such division, however, is called *Varna* in India. Another system which creates castes together with *Varna* is called *jati*. *Jati* is consisted of much elaborate distinctions than *Varna*: it has distinctions of 2000 to 3000 different jobs and each *jati* belongs to one of four *Varnas* except Dalit who are considered as untouchable. In this report caste refers to *jati*.

Indian constitution bans discrimination based on caste and declares elimination of Dalit (section 17). There are reservation for scheduled castes, scheduled tribes and Other Backward Castes as measures to protect socially and economically vulnerable people. For instance, there are seats reserved for such castes during federal and state congress elections, selection of public servants and entrance to public schools. Despite the constitutional clauses, discrimination based on Caste as well as discrimination against Dalit are still persistent in Indian society.

(4) Secularism and communalism

Having many different religions within the country, secularism has been a core value in Indian constitution to create a united country. Secularism in India is against communalism that claims the superiority of one religion to another and is in inseparable relationship with democracy.

Politically, the Indian National Congress was in power for half a century and promoted an economic policy to provide equal benefit of development to the society. However, in the 1980s, due to the failing economic policies, the Indian National Congress decided to launch an election campaign appealing to constituents' Hindu identity. It resulted in allowing Bharatiya Janata Party (BJP) to expand their power whose main supporters are Rashtriya Swayamsevak Sangh (RSS) – Hindu nationalists.

Related to such a political situation, the "communal conflict"⁶ is escalating between Muslims and Hindus. The chief examples are the bombing of a mosque in Ayodhya, Uttar Pradesh by Hindu extremists in 1992 and a bombing of a train full of Hindus coming back from Ayodhya in Ahmedabad, Gujarat in 2002 which was followed by revenges of Hindus against Muslims.

2 .Women and Development in India

(1) Human Development Index (HDI)

Especially after 1992, globalization has been accelerating in India and Indian economy is in the midst of a great developmental process. On the other hand, problems such as a growing gap between rich and

6 In many parts of the world, communalism is a modern term that describes a broad range of social movements and social theories which are in some way centered upon the community. However, in South Asia, "communalism" is seen as existing primarily between Hindus, Muslims, Sikhs, and Christians. In contemporary India, "communalism" designates not only the conflicts between extremist religious communities, but also those between people of the same religion but from different regions and states.

poor and the failing equality under law are pointed out as the negative side of the development. In the UNDP HDI report in 2007-2008, India is ranked as number 128.⁷

India's rank in the Human Poverty Index is 128: the related data shows that 34.8% of population lives on a income under 1 dollar per day, and 80.4% lives on two dollars per day (1994-2005). Literacy is 39% (1995-2005), people who have no access to clean water is 14% (2004), people who are malnourished is 20% (2002-2004), and underweight children(under age 5) is 47 % (1996-2005). The average life expectancy is 62.9 (2000-2005), infant mortality rate is 56/1,000 (2005), and the maternal mortality rate is 450/100,000(2005). The richest 20% of the population earns 76.4% of the entire national income (2004-2005): here the extreme gap between rich and poor is visible.

(2) Sex ratio

A census is conducted once in ten years in India. In this section, the comparison between 1991 and 2001 censuses on the transition of sex ratio is made. The sex ratio in India (1,000 male to the number of females) is shown below:⁸

1) Sex ratio of the entire population

2001			1991
Rural	Urban	Total	Total
946	900	933	929

In 2001 census, Kerala had the highest female ratio (1,056) and Haryana had the lowest (861).

2) Sex ration between the ages 0-6

2001			1991
Rural	Urban	Total	Total
934	906	927	945

The female ratio among 0-6 years old dropped 18 points from 1991 and the situation has not been improved.

(3) Budget measures for female equality

As the ratio above has shown, the ratio of female in India is 48%: however 4.9% of national budget is spent on female-related projects.⁹ In the 1980s, the Indian central government, in their Integrated Rural Development Programme, indicated that 30% of their budget should be spent on women.¹⁰ However, measures have not been taken.

(4) Development goals and women

Human development of women is in extremely severe situation.

⁷ UNDP, "Human Development Report 2007-2008", at http://hdr.undp.org/en/media/HDR_20072008_EN_Complete.pdf.

⁸ The Census of India 2001, "Office of the Registrar General & Census Commission,; India", at <http://censusindia.gov.in/>

⁹ Ministry of Child and Women Development, "Gender Budgeting in India", at <http://wcd.nic.in/>

¹⁰ According to the hearing from Professor Kanchan Mathur, The Institute of Development Studies in Jaipur.

According to the Human Development Index report¹¹ by the UNDP, India's Gender-related development index (GDI) is ranked 113: women's average income is 1620 (USD) when men's is 5194. Only 34% of women engage in economic activities and work for 7 hours and 37 minutes on average when men's is 6 hours and 31 minutes.

Sixty-two percent of the Indian population works in the farming industry: of all the women committed to economic activities, 78% work in farming industry. Although women have double-responsibility of working at the farm and home, they are underpaid and their work is not fairly credited. Even if they have the same occupation, women are paid 75% of what men are paid which is ¼ of household income.

According to the statistics by the Working Group on Empowerment of Women, 25.7% of the office workers are female (2001). The male-female wage gap is remarkable: when considering male's wage as 100%, female wage is the following:

Rural 2000 – 15.83%, 2005 – 20.38%

Urban 2000 – 24.55% 2005 – 31.23%

In summary, despite the great contribution of women both at home and work, they still have disadvantages socially and economically.

Human Development Index report says 85% of girls enter elementary school (93% compared to boys as 100%), 50% of girls enter middle school (80%, same), and 9% of girls enter high school (70%, same). According to State of World Population, the ratio of Indian children's entrance to middle school is 59% for boys and 47% for girls in 2007 and 59% for boys and 49% for girls in 2008.

Illiteracy under the age of 15 is 27% among men and 52% among women (2007 and 2008 State of World Population). In other words, more than half of the female population in India is illiterate.

In recent India, the maternal death ratio is 540 (2007) and 450 (2008) in 100,000. According to the statistics by UNICEF in 2004, the rate of birth control is 47%, pre-birth care is 60% and the birth with professional help is 43%¹².

III Overview of violence and violation of human rights against women in India¹³

1. Forms of violence and violation of human rights

There are various forms of violence against women in India. In addition to familiar types of violence such as violence by a spouse, sexual harassment at work, and rape, there are unfamiliar types of violence such as sati, dowry death, female infanticide, acid attack, and witch hunting. There are also phenomena which in themselves are not violence yet deprive women of their rights and a decent future and are likely to develop into violence. They include child marriage, purdah, and the prohibition of remarriage of widows.

• **Dowry Death** : Dowry is a property which a bride brings to a husband's family in marriage. Although bringing a dowry is prohibited by the Dowry Prohibition Act implemented in 1961, its effect is almost

¹¹ UNDP, *op. cit.*

¹² UNICEF, "The State of the World's Children 2004 - GIRLS, EDUCATION AND DEVELOPMENT", 2004.

¹³ Mala Sen, "Death by Fire: Sati, Dowry Death and Female Infanticide in Modern India", Rutgers Univ. Press, 2002.

non-existent. When a husband's family is not satisfied with the amount of dowry, a wife can be abused and it is not rare for a wife to commit suicide because of the unbearable abuse, or even be killed. Murder cases including burning brides to death related to dowry--so called dowry killings--are reported. However, since such killings are often disguised as suicides by perpetrators, many cases are considered suicides by the authority.

- **Sati** : Sati is a funeral practice among some Hindu communities in which a recently widowed woman would either voluntarily or by use of force and coercion immolate herself on her husband's funeral pyre. It has been forbidden since 1892 under the rule of Britain. However, in 1987, it was reported that an eighteen-year-old widow named Roop Kanwar was burned to death at her husband's funeral: the incident triggered a re-enforcement of Sati Prohibition Act. However, this practice is not totally abolished.

- **Female Infanticide** : According to the Census of India 2001, the sex ratio of infants from the age 0 to 6 is 1,000 males to 927 females. In 1961, the ratio was 1,000 to 976. Obviously, the female birthrate and/or the infant survival rate are significantly deteriorating.¹⁴ Traditionally, male infants are preferred to female, and because of dowry, female infants are heavy financial burdens for the family. Many female babies are killed by the parents before or after their births: it is a current trend to abort a female fetus as the result of prenatal diagnosis.

- **Acid Attack** : There is a phenomena that men spill acid over women to teach them a "lesson" when women do not follow men's will. It happens between significant others and even non-significant others. Often times, acid is spread over women's faces in order to damage their dignity by destroying the very female features. The attack causes severe damage such as completely deforming faces and skin until the original features are unidentifiable.

- **Witch Hunting** : Witch hunting is a phenomenon where some women are labeled as witches and severely abused, tortured, murdered, made to commit suicide or chased away from villages. Women labeled as witches usually have no children, are widows and active in their own economic activities: in other words they do not play regular roles that women are expected to take. The witch hunting often happens in tribal communities.

- **Child Marriage** : Although child marriage has been prohibited since the British government introduced a law in 1929, the custom still deeply persists in India until now. Recently the child marriage is pointed out as damaging the wellbeing of women throughout their lives and creating a vicious cycle: young girls receive no education, the lack of education leaves young wives who suffer from DV without any sense of human rights, underdeveloped women bear unhealthy infants, unhealthy mothers raise weak children, and those children also marry young.

- **Purdah** : Purdah, originally meaning "curtain" in Persian, is a custom of segregating women that is widely practiced in South Asia. The practice includes: separating women from the rest physically, covering the body by cloth outside of their houses, and covering the body and speaking no word even at home if wives are in front of certain people and strangers from the family of the husbands. In India it was not only

¹⁴ India Together: No Country for Women, 29 April 2008, (<http://www.indiatogether.org/>)

common among Muslims but among Hindu women from high castes in North and East India. On the other hand, some families from lower castes practice purdah in order to raise their social class by imitating the high-class custom. Purdah is still practiced under the name of culture and tradition. It prevents women from going out in public and being active as well as increases women's dependence on men and male supremacy.

- **The prohibition of remarriage of widows** : In 19th century Hindu society, the prohibition of widows' remarriage was the regulation among high castes such as Brahmin. Under Hinduism, women are to serve one man throughout their lives. Often times, widows had to economically depend on others to feed them, they were discriminated and disrespected in the society. Also, like purdah, sometimes people from lower castes prohibited widows to remarry in order to raise their social class. Likewise, Muslims of high rank also discouraged women to remarry although Islam itself does not have such a regulation. In 1856, under British rule, Hindu Widow's Re-marriage Act was enforced.

2. Data on violence against women

Data on the reality of violence against women can be attained from various institutional data as well international organizations and NGOs' reports. Using reliable data is crucial in order to know the reality of the violence and establish a workable preventive strategy.¹⁵

According to the data by the National Crime Records Bureau (NCRB), a bureau under Ministry of Home Affairs, 185,312 cases of violence against women were reported in 2007. Compared to 164,765 in 2006, the number increased by 12.5%.¹⁶ Such comparison shows the increasing level of violence against women. In the chart below, the rates of prosecution and conviction are based on reported cases. It is noticeable that the conviction rate is only around 30 percent.

Figure 1 The number of crimes against women according to the types of crime and the rate of increase/decrease comparing 2006 to 2007

	2003	2004	2005	2006	2007	Compare 2007 to 2006 (%)	Prosecution rate 2007 (%)	Conviction rate 2007 (%)
Rape (IPC376)	15,847	18,233	18,359	19,348	20,737	7.2	94.6	26.4
Kidnap (IPC363~ 373)	13,296	15,578	15,750	17,414	20,416	17.2	77.0	25.2
Dowry (IPC304 B)	6,208	7,026	6,787	7,618	8,093	6.2	92.8	33.0
DV (IPC498 A)	50,703	58,121	58,319	63,128	75,930	20.3	93.9	20.9
Insult and violence against women	32,939	34,567	34,175	36,617	38,734	5.8	96.4	29.0

¹⁵ Secretary General's In-Depth Study On All Forms of Violence against Women, 2006, pp.182-186, A/61/122/Add.1, at <http://daccessdds.un.org/doc/UNDOC/GEN/N06/419/74/PDF/N0641974.pdf?OpenElement>, <http://www.jauw.org/iinkai/jyoseichii/jyoseinochii-news-01-1.pdf>.

¹⁶ The National Crime Records Bureau, Ministry of Home Affairs, at <http://ncrb.nic.in/cii2006/home.htm/>.

(IPC354)								
Insult against women (IPC509)	12,325	10,001	9,984	9,966	10,950	9.9	97.3	49.9
Traffic girls (IPC366 B)	46	89	149	67	61	-9.0	92.1	11.9
Anti-sati act 1987	0	0	1	0	0	--	--	--
Anti-dowry act 1961	2,684	3,592	3,204	4,504	5,623	24.8	--	--
Total	134,048	147,207	146,728	158,662	180,544	82.4	--	--

NCRB website

(1) **Rape** (Indian Penal Code, section 376,)

When analyzing the statistics state by state, Madhya Pradesh has 3,010 reported numbers which is the highest in the country and 14.5% of the entire cases. The prosecution rate is 94.6% and the conviction rate is 26.4%.

(2) **Dowry Death** (Indian Penal Code, section 304 B)

The number of dowry deaths, a type of DV, rose from 7,618 to 8,903. Uttar Pradesh has the highest number of all the states, 2,076, followed by Bihar's 1,172. The prosecution rate is 92.8% and conviction rate is 33.0%.

Also the number of cases reported for breaking Dowry Prohibition Act increased by 24.8% in 2007. One fourth of the cases, 1,460, were reported in Orissa.

(3) **Violence against spouse s**(Indian Penal Code, section 498 A)

Violence against women by a spouse or their families increased by 20.3% from 2006 to 2007. 14.9% of the case were reported in Andhra Pradesh.

(4) **Insult and violence against women** (Indian Penal Code, section 354)

Compared to the year 2006, the number increased by 5.8%. The prosecution rate is 96.4% and conviction rate is 29.0%. Madhya Pradesh has the largest number of cases which accounts for 17.5% of the national total.

(5) **Insult and sexual harassment against women** (Indian Penal Code, section 509)

Andhra Pradesh recorded 3,316 cases of sexual harassment against women (the largest number) and accounts for 30.3% of the national total. Uttar Pradesh follows with 2,882 cases and accounts for 26.3%. The prosecution rate is 97.3% and the conviction rate is 49.9%.

The above is an important statistic, yet it does not show the reality of violence against women in India accurately. In other words, women, especially in rural area and minority women in particular, have poor access to the justice system. Taking such a situation into consideration, the number the statistics show is only a small portion of what is actually happening in reality.

IV. Realities of violence against women in India and the transition of legal system

1. Reality of violence against women in India

(1) Gender restrictions in South Asia¹⁷

Gender restrictions in South Asia are not a matter which can be generalized: it depends on regions, communities and, in some extreme cases, families. Such customs have been changing historically over time. Generally, in Hinduism, the higher the caste, women's field of activities is limited.¹⁸ This plays an important role to sustain the order of caste system: in order to protect the “purity” of castes, controlling the sexuality of members of each caste was necessary. “*Pativrata*”, a female figure who remains faithful to her only husband throughout her life, has been functioning as a strong concept of an ideal woman within upper caste.

Sati, purdah, dowry, child marriage, and prohibition of re-marriage have been practiced as tools to actualize such an ideology. Among high castes such as Brahmins in Northern India, if they have tendency to prefer to make woman of family get married to a man from upper caste, dowry is necessary.

Therefore, the family longs for boys and killing female infants became a trend. After marriage, the wives' most important duty is to have a boy. In order to sustain the blood of the paternal family, faithfulness is considered as a virtue. Purdah severely limits women's opportunities to go to public places. Wives who practiced sati represent the virtues of self-sacrifice and faithfulness and are worshipped by the community. Women who decide to become widows are almost destined to live a hard life: they cannot remarry, are thought as ominous, must shave their heads, take off jewellery and wear white saris all the time. Because of child marriage, there were many tragic cases of very young women being widows. On the other hand, men were allowed to remarry and have multiple wives.¹⁹

When Britain became a suzerain, they saw such discriminatory customs against women as symbols of the backwardness of India²⁰ and considered the reformation of such a society as an appropriate task as a part of their “civilizing mission.”²¹ Groups of people including Indian activists worked to improve the society. They were mostly active in Bengal and also worked on the issues of women and achieved the implementations of several laws. However, their perspective on the issues was that solving the problem is necessary to resist against the colonization. Groups of people who tried to develop an independence movement based on Hinduism praised Hindu women's self-sacrifice and faithfulness as superior to the west and as something to be protected and preserved. A sequence of implementations of laws on customs

¹⁷ Toshie Awaya “Minami Asia Sekai to Gender: Rekishiteki Shiten kara (Gender and South Asia from historical perspective)” Hiroyuki Kotani ed, *Gendai Minami Asia 5: Shakai, Bunka, Gender(Contemporary South Vol.5 Asia: Society, Culture and Gender* 2003, Tokyo: University of Tokyo press, pp.159-190.

¹⁸ Toshie Awaya “Caste Chitsujo to Gender: Shodakunenreiho(1891) wo Megutte (Caste system and Gender: Some Debates on 1891 Age of Consent Act)” Yoshihiko Amino ed., *Iwanami Koza: Tenno to Oken wo Kangaeru Vol.7 Gender to Sabetsu (Iwanami Series: Thinking Emperor and Kingship)*, 2002, Tokyo: Iwanami Shoten, pp.197-224.

¹⁹ Takako Inoue, “Dentou to Kindai no Hazama de Kunou suru Josei tachi (Women toffering in between tradition and modernity)” Takako Hirose etal eds., *Gendai India wo Shiru tame no 60 shou (60 Chapters to Know Contemporary South Asia)* 2007, Tokyo: Akashi Shoten, pp.208-212.

²⁰ Takako Inoue, Ibid pp209

²¹ Ibid pp.210.

restricting women's freedom during the colonial period can be seen as a platform where these three forces competing against each other over how Hindu society should be.

Women from lower castes were relatively free from such repressing customs. However, the trend of *sanskritisation* became more popular and even such women gradually lost their freedom. *Sanskritisation* is when people from lower castes emulate the rituals and practices of upper castes. Muslim women shared *pardah*, prohibition of divorce and re-marriage and dowry.

Although Britain intervened in such customs as a part of "duty to spread the civilization," her basic strategy was to focus on the profit making in India and to minimize actions which might cause chaos or riots of natives: hence to minimize the intervention to the native customs. Because of such a policy, marriage and castes-related²² lawsuits became the jurisdiction of personal laws depending on the religion of people. The jurisdiction almost overlaps itself with the jurisdiction of family law. This area used to allow people from different regions and communities wide interpretations: however, since *Dharmaśāstra* was used as a basic source, it generalized the idealistic and *Brahministic* value in Indian Hindu society. The written law allowed Brahmins to interpret the written law and control the public opinions. Also, since the jurisdiction of family law overlaps with the personal laws, women became a symbol to represent the unity of communities in the communalism movement.

Since the 1980s, as the tension between Hindu and Muslim communities became intensified because of the rise of a Hindu nationalistic political party, communal oppositions have been radicalizing. When the communal opposition takes the form of violence, many women become victims of such incidents. Also, since the identity of communities is sustained and strengthened through dominating women, at times the issue of women's rights becomes a scapegoat of communal oppositions and surpasses the disputes over communities itself.²³

(2) Historical background of limitation by law

Under the colonization of Britain, many laws which outlaw customs which infringe upon women's rights were enforced. The list of laws includes: enforcement of the act to regulate sati in 1829; enforcement of the Hindu Widow's Re-marriage Act in 1856; and the enforcement of an act to regulate child marriage 1929. Britain, however, was afraid of potential resistance movements opposed to their intervening in Indian cultures and customs and decided to leave the family law to India. Hence, most of the discriminatory customs against women remained and violations of human rights were also ignored.

When India became independent, the Constitution guaranteed gender equality (article 14) and stated that the

²² Toshie Awaya "Minami Asia Sekai to Gender: Rekishiteki Shiten kara (Gender and South Asia from historical perspective)" Hiroyuki Kotani ed, *Gendai Minami Asia 5: Shakai, Bunka, Gender(Contemporary South Vol.5 Asia: Society, Culture and Gender* 2003, Tokyo: University of Tokyo press, pp.159-190.

²³ Related to this, the Shah Bano case was a controversial divorce lawsuit in India, in which Shah Bano, a 62 year old Muslim woman and mother of five from Indore, Madhya Pradesh, was divorced by her husband in 1978 and was subsequently denied alimony. The case created considerable debate and controversy about the extent of having different civil codes for different religions, especially for Muslims in India. This case caused the Rajiv Gandhi government, with its absolute majority, to pass the Muslim Women (Protection of Rights on Divorce) Act, 1986 which diluted the secular judgment of the Supreme Court and, in reality, denied even utterly destitute Muslim divorcees the right to alimony from their former husbands.

country takes special actions to protect women and children (article 15). Despite the regulation the constitution has, discrimination against women – mostly based on Hindu traditions – such as DV, dowry, child marriage and female infanticides continued.

(3) Constitution, CEDAW, legal system and women's rights

1) Equality clause and legislation relate to gender equality.

Section 14 of Indian Constitution underscores;

“The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.” This includes the equality between men and women as well.

Section 15 states:

- The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, and place of birth or any of them.
- No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition.
- Nothing in this article shall prevent the State from making any special provision for women and children.

These clauses allow the special treatments based on gender, age and castes. Constitution amendment section 73 (amended in 1992) states that in local parliaments, 33% of representatives have to be female as an affirmative action.

In reality, however, there are few laws that systematically guarantee equality of opportunity and elimination of discrimination. There is no law that mandates the fair opportunity of employment between both sexes: the only law related to the subject is Equal Remuneration Act in 1976²⁴. The Maternity Benefit Act amended in 1988 mandates employers to grant maternity benefit and leave as well as prohibits employers from firing or discharging pregnant employees.

The Indian constitution guarantees women's right to own private property including land: in reality, however, women are discriminated against having assets and estates. The Hindu Succession Act of 1956 states the gender equality of succession: despite the law, it is rare for women to receive property in succession because of the traditional patriarchy. Such a tradition is especially persistent in terms of the succession of farmland; many states have laws different from the Succession Act. Right to tenant farmland does not fall under the Succession Act.

2) Family law and practice

In India, there is no universal civil code: as a result different marriage acts are employed according to people's religions.²⁵ Each religion has a marriage law which allows a couple to be divorced and demands

²⁴ Concerning employment relationship, Minimum Wage Act (1948), The Contract Labour (Regulation & Abolition) Act(1970), The Factories Act(1948) and The Workmen's Compensation Act(1923) have been applied to both men and women.

²⁵ Hindu Marriage Act, 1955, Hindu Succession Act, 1956 are applied to Hindus. Addition to the customary law, The Muslim Personal Law (Shariat) Application Act, 1937, Dissolution of Muslim Marriage Act, 1939 are applied to Muslims. Indian Divorce Act, 1869 is applied to Christians.

the male provide the female with alimony. In reality, however, only few couples choose to get divorced even if their marriages are the failed ones.

In India, being a “good mother and wife” is of a primary importance for women’s social status: therefore marriage has a great significance for women.²⁶ Naturally, society and communities are extremely critical about women who dropped out from marriage, and ²⁷ Divorced women are seen as dishonourable and even parents do not usually accept daughters’ divorce or support them after divorce.

Although women have rights to alimony and distribution of property under law, the law is rarely enforced. In case the payment is provided, the amount is often too little for a woman to live a normal life. Since little portions of women are engaged in their own economic activities and there is no law to enforce the equal treatment of both sexes in the working place, the employment condition is extremely tough for women who want to be independent. Under such situations, it is extremely difficult for women to decide on divorce and they often tolerate family violence without any solution nor place to escape.

3Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

India ratified the CEDAW convention in 1993. The ratification is generally said to have brought positive changes to Indian society; through the regular examinations and recommendations made by Committee on the Elimination of Discrimination against Women (CEDAW), it raised Indian society’s awareness about the violence against women.

On the other hand, the Indian government reserves the ratification of two articles: they are both crucial for the elimination of gender-based discrimination in society and enjoyment of rights of women at home, the articles 5 and 16. Article 5 deals with modifying all customs based on female inferiority and women’s formulated roles: article 16 deals with elimination of sex discrimination in marriage and family, both of which are fundamental clause of the convention which aims to eliminate the discrimination against women. CEDAW strongly recommends the elimination of these reservations.²⁸

However, because of the strong influence Britain left, the large part of laws about women’s rights was unchanged.

(4) Movement to change laws and its limitation²⁹

Indian women’s organizations and activists for women’s rights began to raise their voices against such violence in 1970s. During the early period of the movement in 1970s to 80s, they focused on raising awareness about the reality – dowry death, rape, raping restrainers, sati, promoting abortion of female killings using pre-natal diagnostic techniques, female infanticides, sexual harassment, human trafficking,

²⁶ In Hinduism, marriage is regarded as the most important rite.

²⁷ Not only divorced women, but also widows have received undeserved treatment.

²⁸ CEDAW/C/IND/CO/3, Concluding comments of CEDAW; India,02/02/2007,

²⁹ HRN mainly referred to the following prominent works:

Flavia Agnes, “*Protecting Women against Violence? Review of a Decade of Legislation, 1980-89*”, Economic and Political Weekly, April 25, 1992.

Kanchan Mathr “*Body as Space, Body as Site: Bodily Integrity and Women’s Empowerment in India*”, Economic & Political Weekly, April 26, 2008

prostitution and sexually inappropriate use of words by media through mass media.³⁰ At the same time, they actively campaigned to amend related laws. As a result, many laws were revised and modified: however, amendments did not often reflect the opinions of experts nor demands of women's movements well enough and lacked effectiveness. As a result of law-reform to prevent violence against women, the sentences of crimes against women became stricter. At the same time, the requirement to establish such crimes became stricter. As a result, there were very few convictions of gender based crime. Even after the revision of laws, the number of cases of violence against women increased. In 1990s, the activism to modify the law relapsed: until now, several laws were amended and some special laws were enacted. The reality is, however, that these changes of laws are not directed to the fundamental change of the women's rights. It is in India's unique point that even if the central government enacts or changes laws, they are in reality not put into operation. In other words, India has a huge gap between law and reality. This partly derives from the combination of lack of political will among central government, state government, police, politicians and related organizations and the traditional and conservative attitude of administrators, judicial branch and police officers who are supposed to enforce such laws. The summary of the main types of violence against women and overview of legal transitions are discussed in the following sections.

2. Violence related to dowry death

(1) Phenomenon

Dowry is property that brides bring for the husband's family when they get married.³¹ Although dowry was prohibited to both bring and receive by law in 1961, it was not respected or followed because of its imperfectness. Therefore, the custom of dowry still persists and even expands. For instance, in recent years, the demand of dowry continues even after the married life begins and the content includes not only cash but durable goods such as a television.

How big dowry is depends on a husband's job and status although the trend of the demanding amount expanding is universal. It is not common for a wife's family to be in huge debt for they had to provide a suitable dowry to the husband's status. Dowry makes poor families even poorer.

Of all the DV cases in India, dowry related violence accounts for big percentage. If a woman could not pay the required amount of dowry, she can be physically abused as a punishment and even killed.

(2) Law

1) History

In the mid-1970s, there were many cases that husbands and their families burnt brides to death for not paying sufficient amount of dowry. This news provoked many protest across India.³²

³⁰ F. Agnes, *op. cit.*, p.19.

³¹ Jagori explained that this custom means distribution of parents' wealth. This is a way of protection that protect brides from any dangers lurked in the new life. Women have no right to succeed her parents' fortune because they are regarded as husband's belonging and have no social position.

³² Concerning this incident, The Progressive Organization of Women in Hyderabad launched the protest

In early 1982, a huge anti-Dowry rally was organized by Anti-Dowry Awareness Raising Forum – *Dahej Virodhi Chetna* – consisted by thirty different female organizations in Delhi. During this demonstration, they argued that the government and police are indifferent to violence against women and that investigations of crimes against women takes extremely long and are often in vain.

The problem of the dowry prohibition law enacted in 1961 was that the definition of dowry was very strict: therefore, many cases of dowry were not recognized as dowry by law. Even if the offender is found guilty, the heaviest punishment is six months of imprisonment or 5,000 Rs fine with the possibility of bail. In addition, if one wants to prosecute a husband who demanded dowry, the victim herself needs to apply for relief within a year and the approval of the government was necessary which makes it hard for the victims to make the use of the law.³³

As the resistant movement intensified, representatives of the parliament initiated drafting an amendment of the law. As a result, the Indian Penal Code was amended in 1983 and 1986: the new Penal Code included new regulations against dowry harassment and dowry death. It was a reflection of women's demands for the protection of law from violence enacted by someone who they depend both financially and mentally in a private space.

2) Current law

A) Anti-Dowry Act

As a result of the series of amendments stated above, the definition of dowry was expanded and the punishment against the violators became stricter. The new definition of dowry is any kind of property given before, during, and after marriage either directly or indirectly excluding a traditional gift. The fine is 15,000 Rs or the equivalent amounts of dowry – whichever one is higher. When one asks his wife's family or relatives for dowry, he will be imprisoned from six months up to two years. Burden of proof shifted to the defendant side. Dowry started being treated as a serious crime: police is obligated to investigate the case whenever they receive a report. The statute of limitation was eliminated.³⁴

B) Indian Penal Code

When Anti-Dowry act was amended in 1986, article 304B was newly created: this decides that when a woman dies within seven year after the marriage because of burns, injuries or unnatural circumstance and it is proved that she was abused, not only a husband but his parents are the subjects of punishment.

C) Indian Evidence Act, 1872 (amended in 1986)

In 1986, the Indian Evidence Act was also amended: when a woman killed herself within seven years

campaign in 1975. Kanchan Mathur, "Body as Space, Body as Site: Bodily Integrity and Women's Empowerment in India", *Economic & Political Weekly*, April 26, 2008, p.56.

³³ There were little complaints by applying this Act. Before the amendment, there were only 6 cases the aggrieved persons complained. (F. Agnes, *op. cit.*, p.24)

³⁴ The Dowry Prohibition (Maintenance of list of presents to the bride and bridegroom) Rules 1885 prescribes that list of gifts, and other items should be made and kept. Where the death of a woman is caused by any burns or bodily injury within 7 years of her marriage and shown that soon before death she was subjected to cruelty or harassment by her husband or any relatives is known as dowry death and punishment is for not less than 7 years but which may extend to life term imprisonment.

after her marriage and if it was proven that she was abused by a husband, her husband's family or relatives, courts can assume that they instigated the suicide.

(3) The reality of violence against women related to dowry

Despite the series of amendments, the problem is still persisting and the number of reported suicides and dowry death is steadily increasing in major cities.³⁵ According to the statistics by NCRB, 8093 dowry deaths were reported in the whole of India in 2007. (7,618 in year 2006, 6,787 in year 2005)

The number of suicides caused by dowry is 2,276 in 2006 and 2,305 in 2005. On average, every day twenty women are killed and six women commit suicide because of dowry. It should be noted that many suicide cases are thought to be disguised murder cases.³⁶ The number of unexplainable deaths of newly wedded wives is also increasing.³⁷

However, the data shown above does not reflect the reality, since dowry is an embedded Indian custom and the cases reported as crimes or suicide are the tip of the iceberg. Remarkably, only a few cases are taken through to conviction among the cases shown above. This is surprising considering the amended law gives burden of proof to defendant if a wife commits a suicide within seven years of marriage. The reasons behind this are that the perpetrators tend to hide the fact of violence and do not admit guilt, inconvenience because of long prosecution process, bribery from the husband side to judges and the family of the dead wife, judges' bias and lack of understanding about the reality of the violence.

3. Domestic Violence(DV)

(1) Phenomenon

Dowry related violence is a typical case of DV. However, it is obvious that DV in India not only derives from dowry. Case studies based on hearings the research team conducted are attached at the end of this report in order to promote the better understand of DV.

1) Statistical data on DV

The statistics on DV are of crucial importance in order to understand the reality of DV. The excerpts of recent statistic – third (2005-2006) and fourth (2007) research results of National Family Health Survey (NFHS) and Indian Studies of Abuse in the Family Environment (IndiaSAFE)'s results collected through

³⁵ F. Agnes pointed out as follows: 'Reported cases of suicides and murders steadily increased in every major city. The demands for dowry in the forms of gifts to the bride and groom and continued demands for money became a predictable way in which young brides would be humiliated. The parents of the girls (some of whom who would not spend money on educating the girls or in making them independent) spent huge amounts of money on lavish weddings to impress the in-laws and tried to meet all demands for gifts and valuables with the hope that the girl would never return to her native home, creating a 'stigma'. Young women discovering that there was no place for them in their parents' homes resorted to committing suicide in a desperate bid to escape humiliation and violence. At times when they had a premonition of the impending disaster, and had sought the parents' help just before the murder, the parents had sent them back to be murdered.' (F. Agnes, *op. cit.*, p.25)

³⁶ Jagori and other women's human rights NGOs speculates that the cases reported as suicide are in fact, mostly murder cases.

³⁷ A. K. Srivastava, P. Arora, Suspicious Deaths in Newly Married Females –A Medico legal Analysis, Journal of Indian Academy of Forensic Medicine, 2007-29(4), pp.63-67, Indian Medical Center. <http://www.medind.nic.in/jal/t07/i4/jalt07i4p62.pdf>.

1998-2000 – are introduced below.

A) Reality of the violence

According to the research NFHS conducted from 2005 to 2006,³⁸ the forms of physical violence from a husband to a wife³⁹ are: pushing, shaking, throwing objects, slapping, twisting arms, pulling hair, punching, kicking, dragging, repeatedly beating, choking, burning, threatening with weapons and attacking. The most common form is slapping – 34% of married women reported having experienced being slapped by their husbands. Fifteen percent have experienced having their hair pulled and arms twisted; 14% experienced being pushed, shaken, and having objects thrown at them. A full 62% of women who experienced violence in marriage said the violence began within two years of marriage.

Thirty-six percent of women who answered to have experienced the physical or sexual abuse reported cuts, bruises and pain. At least 38% of women who reported to have experienced physical or sexual abuse experienced one of these injuries. According to IndiaSAFE, one in four women is abused severely. The violence occurs continuously: the chance of DV occurring during pregnancy is 50%.

B) Violence and socio-economic background

Physical or sexual abuse by husbands happens much more commonly among the poorest class by 49% compared to 18% among rich families. 46% of married women without education have experienced violence from their husbands. 47% of married women have experienced violence from husbands who have never been educated. According to the data collected by IndiaSAFE, physical violence was observed more in city slums and villages and less in city non-slums. The explanation for this might be that people from the city are more aware of the expected social behaviours and therefore avoid reporting the violence. Twelve to fifteen percent of women who have opportunities to receive help from their family, friends and colleagues have experienced violence whereas 27% to 34% of support-less women have experienced violence. Also, when a wife is more educated or has a better job than a husband, she is likely to be used to violence.

C) Recourse

Only one in four answerers has an experience of asking for help when they were abused physically. Most people who consult to their family, only two percent of wives asked police for help.

(2) Legal system

1) History

When anti-dowry rallies spread across the country in the beginning of the 1980s, the awareness about DV issues also expanded. At that time, the police were hesitant to help women who reported DV even if it fell under a charge of injuring since it was considered as a family issue. Women campaigned against it and ask for the implementation of a new law. As it was stated above, dowry-related laws were amended in 1983 and 1986. As for non-dowry related violence, new articles in Indian Penal Code – article 498(a) – were enforced to deal with the issues which categorize such violence as a subject of criminal punishment.

³⁸The survey focused on 124,385 women living in 29 States of India. Their age was from 15 years old to 49 years old. For married women, violence from domestic relationship was the subject of the research. And for single women, any acts of domestic violence by the boyfriends and relatives was the subject.

³⁹About 16% women have experienced mental abuse.

2) Current Law

A) Indian Penal Code article 498(a)

Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also is liable to a fine.

Explanation- For the purpose of this section, "cruelty" means-

(a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

The problem, however, is not solved. Even if the Indian Penal Code prohibits such violence, DV in reality is rarely judged on the basis of the Penal Code.⁴⁰

Since the word "grave" limited the range of violence applicable to the article, many charges related to daily DV were not accepted. Also, when the article 498(a) was enacted, police assumed that charges unrelated to dowry harassment are not applicable to the article, in reality it was not used to solve DV.

It also lacked the protection service of women subjected to violence and the support system to for those women to be independent. The complicated procedures of criminal and civil charges to get divorced often resulted in reconciliations after making pleas.⁴¹

Because of these malfunctions, the need of creating new laws specifically to deal with DV was recognized in 1990s. Finally in 2005, the DV act, which includes the protection of victims and punishment of defendants, was enacted. The content, evaluation and the implementation situation are discussed in the next chapter.

4. Sati

(1) Situation

Sati is an old Hindu funeral custom in which a recently widowed woman would either voluntarily or by coercion immolate herself on her husband's funeral pyre. Sati has been practiced since a long time ago and spread all across India in the middle ages. Many villages have stone monuments to honor sati. In Sanskrit literatures from the Middle Ages, the virtue of sati was awarded for it diminishes the religious sins of the family. In reality, however, ethics of soldiers, the falling status of women and the miserable life of widows encouraged this custom.

The implication of sati differed in each state. In 19th century Bengal, it was only practiced by upper castes, especially Brahmins whereas in Rajasthan it was common among both of lower and upper castes. At times monuments were built awarding women who practiced sati and were worshiped as goddesses. In

⁴⁰ F. Agnes, *op. cit.*, p.26.

⁴¹ According to F. Agnes, even the aggrieved women tried to chose the divorce, in most cases; they have to meet conditions that demand its withdrawal. (F. Agnes, *op. cit.*, p.26.)

Rajput, polygamy and the political-economical environment of nowadays are related to sati. In Rajasthan, women practiced sati when widows without the right of succession were afraid of the poverty without their husbands or when widows had no son or had other reasons that could cause social and economical hardships.

(2) Law

1) History

The first time sati was legally banned was in 1829 under the British rule. At that time, opponents claimed that the ban invaded the freedom of religion. These opinions were rejected by an opinion that the freedom of religion could not infringe universal norm of humanity and justice. In other words, sati was not banned because of it was the violation of women's human rights. Despite the enactment of the law, the practice of sati continued.

After independence, sati again caught public attention in 1987: on the fourth of September, in a village called Deorala in Rajasthan, Roop Kanwar, a *Rajput* young widow, was burned to death at the funeral of her husband. After this incident women's organizations in Rajasthan launched an anti-sati movement and it spread across the country.⁴² The government keenly reacted to the movement. Rajasthan state government implemented The Rajasthan Sati (Prevention) Ordinance, 1987 a month after the incident. The central government also enacted Commission of Sati (Prevention) Act, 1987 immediately after the incident

2) Current law: Commission of Sati (Prevention) Act, 1987

This law gives defendant a burden of proof: therefore it encourages the prevention of violating human rights rather than preventing sati itself. As a result there were many cases where only spectators were arrested. This law only imprisons women who attempted sati for 1-5 years and fines them 5,000 to 20,000 Rs. The strong belief to protect women's rights ironically resulted in punishing women who attempted sati. Therefore, it is said that however hard the new law effectively suppresses the practice of sati, it does not give the right protection to the victims.

5. Female infanticides and foeticide

(1) Situation

In India, traditionally, parents want boys rather than girls: the reason is the future financial burden of dowry attached to girls.

There is a tradition of killing newly-born girls called *Dudhapiti*. The common ways of infanticides are: apply opium on nipples of a mother and nurse the baby, choke the baby laying her on a carpet, nurse the baby with toxic oleander berries and treat the baby roughly.⁴³ In order to stop the murders, central

⁴²Dr. Dawan Surana, the ex-chairperson of Rajasthan National Commission for women, the ex-secretary general of RUWA is one of the women activists who launched the anti-sati campaign at that time. 10 days after the incident,

An anti-sati demonstration was hold in Jaipur. 350 people took part in this action. And 2 day after the demonstration, the same demonstration was hold with people from all over the India. In this time, about 14,000 people participated. The participants include Rajput people and this became an object of public concern.

⁴³ Kanchan Mathur, *op. cit.*, p.56.

government budgeted and made the educational expense of girls free although it is not an effective way to prevent the killing.⁴⁴

In recent years, the progress of pre-natal diagnostic techniques is causing a new problem- foeticide: although the diagnostic system is originally aimed to find out the abnormality of fetus, it is now abused by people seeking foeticide. People who can afford to use pre-natal diagnostic techniques tend to choose abortion which gives less guilty feeling than infanticide.

In fact, according to census in 2001, the male-female ratio of Indian babies from age zero to six is 1000 to 927. In 1961, the number was 1,000 to 976. This clearly shows that either female birthrate or survival rate is dropping.⁴⁵

(2) Law

1) Course of legislation

The protest against pre-natal diagnostic techniques began in early 1980s by women's organizations and doctors in Mumbai.⁴⁶ Through this movement, the reality of sex-determination being abused for the purpose of sex-selective abortion was revealed.⁴⁷ State and central governments started drafting the law addressing the problem in 1987.

2) Current law

By the Pre-natal Diagnostic Techniques Regulation and Prevention of Misuse Act, 1994,⁴⁸ any institution that conducts genetic research⁴⁹ including genetic counseling centre was banned from conducting pre-natal diagnosis other than the purposes stated in the law (chromosomal abnormalities; genetic metabolic diseases; haemoglobinopathies; sex-linked genetic diseases; anomalies; other abnormalities or diseases as may be specified by the Central Supervisory Board, article 4 (4)). In addition, even if the diagnosis is done legally, the sex of the killing cannot be hinted to a woman, husband nor

⁴⁴ According to the hearing from Dr. Dawan Surana

⁴⁵ India Together: No country for women, 29 April 2008, <http://www.indiatogether.org/>

⁴⁶ The campaign was initiated by The Forum against Sex-Determination and Sex-Preselection Techniques and The doctors against Sex-Determination and Sex. However, ironically, the issue had hit the headlines when a male foetus whose father happened to be an influential government official was erroneously aborted. (F. Agnes, *op. cit.*, p.31)

⁴⁷ F. Agnes pointed out as follows, 'the issue which to be confronted were not so simple and straightforward as they had initially seemed. Especially, many people pointed out that protecting an individual female foetus' rights to life might violate the women's right to the abortion (In India, abortion was an offence under the IPC until 1971. But the Medical Termination of Pregnancy (MTP) Act, 1971 laid down liberal grounds through which women obtained the rights to safe, scientific and legal abortions.) It was extremely difficult to establish a nexus between sex determination and selective abortion. At times they were not even conducted at the same clinic. The campaign group claimed that sex determination tests are violation of Article 21 of the Constitution 21—the right to life. The only logic on which all the arguments could be based was that sex determination leading to selective abortion amounts to sex discrimination and is violations of Article 14 and 15 of the Constitution—equality before law and prohibition of discrimination on the grounds of sex.' (F. Agnes, *op. cit.*, p.31)

⁴⁸ <http://nrcw.nic.in/shared/sublinkimages/78.htm>

⁴⁹ In this Act, "pre-natal diagnostic procedures" means all gynaecological or obstetrical or medical procedures such as ultrasonography foetoscopy, taking or removing samples of amniotic fluid, chorionic villi, blood or any tissue of a pregnant woman for being sent to a Genetic Laboratory or Genetic Clinic for conducting pre-natal diagnostic test.

relatives (article 5 (2))

If a doctor or technician discloses the sex information or anyone asks for the diagnosis, one is subject to a fine. If a pregnant woman was forced to do so, she is not a subject of the fine (article 23 (3)) although the burden of proof belongs to the pregnant woman (article 24).

3) Current situation

The enactment of law did not improve the situation.⁵⁰ The level of decreasing number of female infants is more severe in cities than rural area. This shows that middle-class families which can afford pre-natal diagnosis pressure women to go through the procedure.

6. Child marriage

(1) History

Child marriage was first regulated in 1929 by the Child Marriage Restrain Act. It restrains marriage of a man under 21 years old and women under 18 years old (article 2). Men who contracted the child marriage and parents who organized the child marriage and guardians are punished (article 3, 4, and 6).

However, this law did not have any effect on the persisting custom of child marriage in India. According to The 2005-2006 National Family Health Survey (NFHS-3), the percentage of women who get married under the age of 18 was 54.2% in 1992-1993 whereas in 2005-2006 the number dropped to about 20% although it is still high.⁵¹

(2) Current law: the Prohibition of Child Marriage Act, 2006

In 2006 the Indian parliament enacted a new law to prohibit child marriage. This law provided the minimum age of marriage (18 for women and 21 for men). It also places Prohibition Officer in each state that organizes cultivating activities on preventing child marriage and provides legal assistance for whoever needs it. It also mandated each state to create its own guideline to supply the law.⁵²

Under the new law, the marriage between a female under 18 and a male under 21 is prohibited: however, in reality, there are many couples who violate the rule. Couples who do not fulfil the age requirement can invalidate the marriage only when they request to do so.

(3) Reality

Even after the new law is enacted, child marriage is still embedded in rural villages. Administrators who enforce the law have great difficulties to get into the community to eliminate the custom.⁵³

7. Sexual violence

⁵⁰ Hearing from UNFPA and HRLN.

⁵¹ http://www.unicef.org/india/child_protection_1536.htm

⁵² However, this Act took effect in 2007, and the only two States made out the guideline in September 2008.

In India, people have no legal obligation to register their marriages. And under the present conditions, the Christian women are forced to register their marriages, while Hindu women, Muslim women and Zoroaster women do little registration because they attach importance to religious ceremony. The government is trying to urge them to register securely. (Hearing from HRLN.)

⁵³ According to the hearing from UNICEF (2007), the participants of the anti-child marriage campaign made the community angry, and participant-targeted gruesome incidents happened one after another.

(1) Rape

1) Course of legislation

Rape-related articles of Indian Penal Code –article 375 and 376 – had not been amended since 1860s. However, the women’s movement protesting against the Mathura judgement⁵⁴ triggered the campaign on amending these laws since 1979: in Mathura case, two police officers who raped an underage girl from a tribe were acquitted by the Supreme Court.

In the course of the protest movement, it became clear that discrimination against women and the wrong rape myth were embedded spreading among public officers, judges and judicial officers. It also became clear that the element of classes and castes cause negative impact on gender justice and women’s rights. In the late 1980s, the effort to amend the law began: a committee to amend the rape-related penal code was set up and they openly asked for citizens’ opinions. In 1982 the report was publicized and finally the law was amended.

2) Current law: Indian Penal Code 376

There are two progressive points about the code amended in 1987:

First, it added a new clause which assume the case is a rape when people in power (police officers, public officers, administrators of public hospitals and detention centres, guards of prisons and such) have sexual intercourse with women regardless of women consents. For instance, intercourse by public server with woman in his custody (376B), intercourse by superintendent of jail, remand home, etc (376C), and intercourse by any member of the management or staff of a hospital with any woman in that hospital (376D) are all assumed to be rape.

Second, the lightest sentence was decided for the first time. Rape by a person in public position, rape by a group of people, rape against a pregnant person and rape against a female child under the age of twelve are worth imprisonment of over ten years: other rapes are over seven years.

3) The effect of amended law

Although the amendment did not necessarily reflect all the voices of women, it is still recognized as a progressive step acquired by women’s movement. However, in reality many courts decisions ignored the amended law.⁵⁵ Most of the judgements were based on the traditional moral views which value faithfulness,

⁵⁴ Mathura, 1 16-year old tribal girl, was raped by two policemen within a police compound. The session court acquitted the policemen on the ground that since Mathura had eloped with her boyfriend she was ‘habituated to sexual intercourse’ and hence she could not be raped. Further the court held that there is a world o difference between sexual intercourse and rape. The high court convinced the policemen and held that mere passive or helpless surrender induced by threats or fear cannot be equated with desire or will. The Supreme Court set aside the high court judgement and acquitted the policemen and held that since Mathura had not raised any alarm, her allegations of rape were untrue. (F. Agnes, *op. cit.*, p.20)

⁵⁵Especially the Suman Rami case was a jolt. The Supreme Court had reduced the sentence from the minimum of 10 years to 5 years in case of police rape. The review petition filed by women’s groups against the reduction of sentence was also rejected. This brought into focus the need to review judicial trends in rape trials since passage of the amendment. A close scrutiny of judgements of the decade revealed that the Suman Rani judgement was not an exception. It was merely adhering to the norm of routinely less that the minimum sentence in rape trials during the post-amendment period. Here is a glimpse of some important judgement during the decade. (F. Agnes, *op. cit.*, p.20)

virginity and marriage. There were also many cases where defendants were sentenced less than ten years imprisonment which contradicts with the amended law. In short, the amended law is currently not respected.

(2) Sexual harassment

1) The growing recognition of sexual harassment and the set-up of guidelines

Until the 1990s, sexual harassment had been disregarded as molesting or teases. Neither the judgement against the offender nor any aid of the victims really existed. Women had kept campaigning that sexual harassment is a form of violence against women and the appropriate legal action should be taken. The government started listening to such women's voices after the incidence in Rajasthan where the volunteer staff members of Women's Development Programme organized by the state government became victims of a group rape in 1992.

In 1997, the Supreme Court of India issued landmark decision on the sexual harassment, which pronounced that sexual harassment at work is violence against women and violates the basic human rights. The Court underscore that the state is obligated to enact laws to prevent sexual harassment in order to implement CEDAW's obligation as a state party. In the judgment, the Supreme Court Opinion established "a guideline to prevent sexual harassment in working place",⁵⁶ which is now known as "Vishakha guideline.

2) Current law

A special law addressing sexual harassment has not been enacted. Instead, the guideline formulated by the Supreme Court is used as a guide to prevent sexual harassment.

According to the guideline, sexual harassment includes causing not only physical damages but psychological damages such as sending personal e-mails. Employers are responsible for taking means to prevent sexual harassment at work and protect victims.⁵⁷ Any office with over fifty employees must create a sexual harassment complaint committee.⁵⁸ However, according to a national research conducted by female organizations, there are almost no public organizations or private corporations which have sexual harassment complaint committee.⁵⁹ Even if there are committees, they lack authority and are only formal. Therefore, the choices of most victims are bearing the harassment or quitting the job.

Currently, there is The Protection of Women against Sexual Harassment at Workplace Bill 2007⁶⁰ made by Ministry of Women and Child Development waiting to be discussed.

8. Other extreme forms of violence

⁵⁶ VISHAKA & ORS. VS. STATE OF RAJASTHAN & ORS., 13 August 1997, Supreme Court of India, <http://judis.nic.in/supremecourt/helddis3.aspx>.

⁵⁷For example, changing the place of aggrieved woman's work or guarantying the measure of her travel to work in order not to contact the offender. (F. Agnes, *op. cit.*)

⁵⁸ Sexual Harassment Complaint Committee should include ①female chairperson, the majority of female committee members, ③an NGO or other organization- which is familiar with sexual harassment. (F. Agnes, *op. cit.*)

⁵⁹ F. Agnes, *op. cit.*..

⁶⁰ The Protection of Women against Sexual Harassment at Workplace Bill 2007

(1) Witch hunting

1) Situation

Witch hunting is a phenomenon where in villages women labelled as witches are killed, made to commit suicides, and chased away from their villages. CEDAW (2007) expressed its concern over the increasing number of witch hunting in India. The target of the hunting is low castes unmarried women who own property in villages or tribal societies. These women are rumoured as witches and eventually become victims of witch hunting.

Witch hunting begins by isolating a woman. Eventually it develops into violence against the woman: she is stripped in front of the villagers, hanged from a tree, punched, set fire, burned, and made to drink urine. At the same time, the woman threatened by the violence has nothing to but giving up her property.

Because of the characteristic of witch hunting which involves the entire community, victims are normally too scared to go back to the community. It is estimated that many women are killed because of such violence, yet the number is not attained. The reality of witch hunting is revealed only when the victim is kicked out of community, survives and starts talking about the past. However, since most of these women are from the lowest caste, they barely have an opportunity to be heard their stories and receive legal supports. The background of the witch hunting makes the situation even more complicated: the hunting happens when the dual discrimination – low-caste origin and old single women – takes a violent form. It is thought that witch hunting is encouraged by people from high castes who feel bitter of affluent low-caste women and desire to prevent the improvement of economic situation of these women.

2) Law

Mainly northeast states and central states including Assam have state laws to prevent the witch hunting. In reality, however, it is reported that they do not function and police officers do not know the existence of such laws.⁶¹

(2) Acid attack

1) Situation

Acid attacks are a form of violence to spill acid over women when they take actions against men's wills. It is intended to warn women by destroying the parts of their body which they care the most or represent the femininity as well as destroying the dignity as women.

Acid attacks can happen between married couples, lovers, colleagues, and sometimes from men who are one-sidedly found of the women (rejection of date, courtship or engagement can be triggers).

In recent years, the cases of acid attacks are increasing:⁶² Campaign and Struggle Against Acid Attacks on Women (CSAAAW) is actively campaigning.⁶³

⁶¹ Hearing from HRLN.

⁶² According to the hearing from HRLN, 56 cases of the criminal trials are acid attack-related. However, victims do not expect for trials and tend not to raise criminal proceeding. Therefore, we can suppose that there is more number of the real outbreak.

⁶³ Exemplify below a case based on hearing from HRLN. As for the case of the acid attack that happened in Bangalore in 1990's, the assailant was sentenced to the life-time imprisonment in High Court. In addition, the application for bail was rejected, too. This case is discussing now in the Supreme Court. For six years, a trial has

2) Law

There is no special law to specifically deal with acid attacks. National Commission for Women drafted Prevention of offence (by Acid) Act 2008.

9. Correlations

The different forms of violence and the human rights violation against women are not isolated but correlating with each other.

(1) The low status of women creates violence

As stated earlier, under the influence of Hinduism, castes system is functioning as gender system in the whole Indian society. In addition, there is a persisting traditional gap between men and women – hence the low status of women. These two factors are the origins of violence against women. In Hindu society, women are often seen as useless existences, and this recognition reflected embedded custom and tradition, for instance, women cannot gain houses and property natal from family by succession; they are not even allowed to light a candle at their parents' funerals. As stated before, even if women have a right to inherit estates and property by law, it is in reality extremely difficult. Work that women contribute to is not properly valued at home and working place: independent economic activity is very limited. The situation keeps the social and economic statuses of women low.

Since the status of women is notably low even at home, girls are not well-treated and they rarely receive education. The child marriage persists and female infanticides regularly happen. Since women are deemed unnecessary, they have to provide dowry with them as a “compensation” to join the family of the husband. Dowry becomes a huge financial burden on the brides' families. The burden of dowry creates a further hatred toward the birth of female infants which accelerate the custom of female infant killing and abortions of female killing. The hardship of women continues after their marriages. DV is quite common especially among wives who married young since they did not receive any education and have poor understanding of the rights they have. Since their health is out of consideration, pregnant women are not treated properly which causes the high rate of maternal deaths.

Although dowry was a tradition among high castes, *sanskritization* introduced the tradition to lower castes. As Indian society becomes more and more market-economized, ever-stronger materialism also made people demand for more dowry: if a woman cannot satisfy the amount of dowry, she can be a victim of DV and possibly be murdered. As stated, since society and even women's parents are not supportive but critical on divorce, women have to suffer from violence without any alternatives.

already continued. The aggrieved woman B once worked in the same job with assailant man A. Because B got a new job, she resigned from the former job. Then A required B to return to his job. However, B did not obey A's demand, then A did acid attack to B when she was going to work. Because the guard who watched a figure of B crouching down covered B with a blanket, acid seeped more, and the damage became terrible. By this acid attack, B lost both her eyes and nose. The judicial administration underestimated the damage of the acid attack at first. Therefore both a photograph after having received the attack and a photograph of previous B were submitted in High Court. The judge watched a photograph and finally understood a serious nature and meaning of the acid attack and sentenced A to a severe punishment. Documentary film "Burnt, but not defeated" which serves as a reference is produced.

The lower caste and *Dalit* women suffer from the dual discrimination of being women and being members of most discriminated class.

(2) Gender and Development

The violence and violation of human rights cause serious problems for human development. As stated earlier, the current situation of Indian women is far behind the development goal. Various development indexes comment that women receive insufficient education; women's literacy is low; women's health is retarded; women's income is little; and women are not empowered enough. It is not easy to imagine that discriminated women in such a weak position easily become targets of violence.

On the other hand, it can be said that violence is an obstacle of women's human development. Violence exercised daily is a cause of entrapping women's daily lives into and intervening "human security."

Even if policies to empower women are enforced (e.g. improvement of education and literacy and creation of self-help groups), without being freed from violence, women cannot determine their own lives through free decision-making processes. In other words, empowerment policies will not function effectively if the fear of violence is not removed. In short, violence, women's low social status and the delay of social development create a vicious cycle.

(3) Gap between law and reality

India owes women organizations, feminist movements, NGOs and campaigns an improvement of human rights related laws. Chief examples are Penal Code amendment campaign and enactment of the DV Act. However, these laws are, in reality, not enforced properly. There is a huge gap between laws and reality.

In fact, the customs prohibited by laws to protect women's rights (e.g. child marriages and dowry) are still deeply embedded. On the one hand, traditional communities lack the will to follow the laws and judicial department, police. On the other hand, central and state governments lack effort and political will to implement the laws. This gap between laws and the reality also exists in the field of DV act and DV related Penal Code. This reality will be discussed in the following chapter.

V. The DV Act and implementation

1. Campaign to enact DV act to rescue, not to prosecute

Before the enactment of the DV Act in 2005, the only means to save victims of DV was to use civil laws related to divorce or Indian Penal Code 498a which criminalizes the act of violence against q wife by q husband.

Both laws had the same problem: they burdened women financially and prosecution took a long time. The situation made it difficult for them to find justice. An even bigger problem is that if a woman makes a complaint before a court or police, she will be kicked out of a house she lives in with her husband as a traitor who "made her own husband a criminal." In other words, an unjustified situation is thriving where victims of DV are punished, evicted from their houses, and are left with no way to sustain their lives only because they seek help. Because of this, women who have no prospect of earning their own living and are

not able to go back to their parents give up seeking help and bear the current situation. It can be said that only the Penal Codes are not sufficient as aid: they do not fulfil women's hopes to be free from violence and force them to stay in an unsafe condition.

Below is the typical case of DV and women's desire. ⁶⁴

A wife who suffers from DV lives with her husband, children and her husband's family. She is beaten by her husband every day and is not provided with living expenses. The police do not take the violence seriously and take no action even if DV happens while they watch because they do not recognize DV as a crime.

The victim wishes to have a peaceful life without violence and does not want to divorce: she has nowhere to live if she is separated. There are few shelters for DV victims and public housing does not exist. The only place victims can go back is their parents' home. This woman, however, cannot do so since her brothers at home do not want her to come back. Her hope is to keep living in her husband's house and live a violence-free life.

Ms. Flavia Agnes, who is herself a former victim of DV, and is now a prominent lawyer acting for women's rights stated as follows:

“ When faced with violence, most women do not opt for divorce for fear of being rendered shelterless, as they may not be accepted in their natal families. During the marriage, they have built support structures around their matrimonial home, which are important to their survival as single women. A single woman is vulnerable to harassment and it would make the situation easier for the wife if she can continue to reside in an area with which she is familiar and has a support structure. If women have children, the displacement from their schools or home environment may cause them further distress.”⁶⁵

Ms. Flavia Agnes further described the situation of women under violence in India ⁶⁶

“The most common manifestation of violence that a married woman faces in Bombay today is her dispossession from the matrimonial home. ~ The biggest hurdle that we face is to convince a woman that her husband has no right to beat her. And further, upon marriage she has acquired a right to reside in the home; the husband cannot throw her out at his whim and fancy and that she is entitled to a protective order from the court.”

“I had learnt my lesson the hard way, after repeatedly being thrown out of my husband's home with three small children, during the thirteen years of a violent marriage. Every time I was thrown out I had felt even more violated than when I was beaten. I strongly believed that the contract of marriage gave me a right to reside in the home since I was primarily a home maker and knew of no other shelter except my matrimonial home.”

What becomes clear is the importance of reserving the right to reside at home for women. In a society

⁶⁴ Hearing from Delhi based NGO, Multiple Action Research Centre

⁶⁵ F. Agnes, “Matrimonial Home and Women's Rights- Women's rights and family law- Recent Trend”

⁶⁶ F. Agnes, ‘Making Laws Work for Women- The Potential of Existing Laws against Domestic Violence’, Sep-Oct 2006 Manushi, No.156, pp.25-26

where a divorce or the independence of women is not fully accepted and supported as an alternative to a marriage, the women desperately need to be protected from violence while sustaining the economic status, home, and residence they are entitled to through marriage..

A campaign was started in the late 1990s to enact a law aiming at saving victims other than Penal Code and divorce law. Lawyers Collective,⁶⁷ an NGO mainly consisted of lawyers, has been involved in the drafting process of DV Act since 1998 in corporation with women's organizations in order to address the need of victims. The draft was made by the collective effort through national consultations to hear opinions of victims and supporters. After the draft was made, again the opinions were asked for from citizens for further improvement. An NGO-led draft was made and finally the DV Act, almost identical to the draft by NGOs, was enacted in the Parliament.

2. Content of DV Act, 2005

As a result of the collective effort, the DV Act (The Protection of Women from Domestic Violence Rules, 2005) was enacted in 2005 and has been enforced since 2006.

(1) Definition of DV

The definition of DV is broad in the Act: it is any form of violence which threatens women's health, safety and happiness. DV defined in this act is an action which can fall under one of the following items (DV Act 3):

- 1) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or
- 2) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or
- 3) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or
- 4) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

The target of the DV Act is not limited to the legal spouse. It includes everyone who lives or used to live with the victim.

The two notable and progressive points of the Act are: first, it does not limit DV to physical abuse but includes sexual, verbal, psychological and economic abuse. Second, it intends to protect all the women who are subject to violence at home.

(2) Access to support organizations and help

Victims of DV have several options for assistance. They are: Protection Officer (PO), Service Provider (SP), medical facilities or shelter, and police.

PO is a newly introduced public-officer as a key implementing agency of the law to protect victims of

⁶⁷ Established in 1981, the Lawyers Collective is one of the leading public interest service providers in India with a proven record of setting high standards in human rights advocacy, legal aid and litigation.

DV. First, POs shall be located in every single state in India. They shall listen to the victims' complaints and help them when applying for protection orders. POs are the professional staff appointed by state governments to provide victims with information on available supports, consultation, and introduction to various professional organizations and help when applying orders and making complaint.

When a PO is consulted by a victim, the officer first files a Domestic Incident Report (DIR). Afterwards the various procedures begin. When a victim seeks for a protection order, a PO files the request form of application of protection order according to rules. At the same time a victim will be taken to a hospital to obtain a medical certificate which will be sent to a court as a proof of the DV.

After the order is announced, a PO assists the judges and makes sure that the order by the court is respected and enforced.

Another system to directly assist victims is Service Provider (SP). An SP is an organization registered to a state which provides services needed by victims (Article 10), such as counselling, providing shelter and medical facilities, helping application of protection order: it is notable that, once registered as SP, the organizations or individuals are given obligations and rights concerning their activities.

When a NGO registers as an SP, they can provide an equivalent support to victims such as an application for protection order. Measures taken by an SP to save victims cannot be reversed. An SP is also given the right to file DIR.

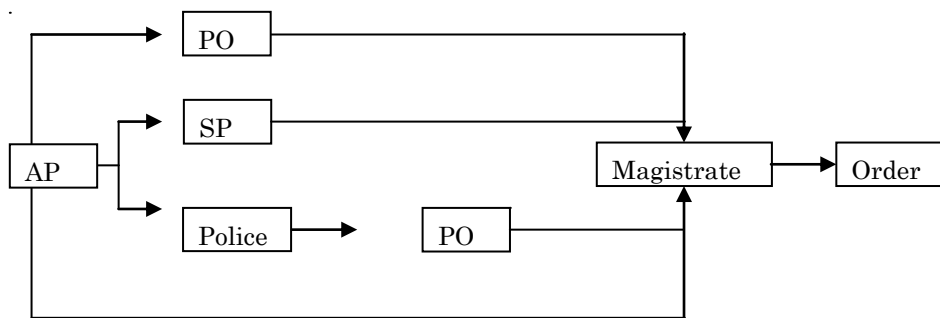
PO, SP and victims themselves are allowed to file protection orders (Article 9 and 12). Therefore, victims are able to promptly receive protection order with help from PO or SP without asking the help for lawyers.

When consulted by DV victims, police, PO, SP and magistrate are obligated to inform them: that they are able to receive assistance through protection order: that they can utilize PO: the information about PO and SP: that victims are entitled to receive legal support for free under "the Legal Services Authorities Act",⁶⁸ and that prosecution is possible based on Indian Penal Code 498 A. PO and SP are considered as public officials when they are on mission.

(3) Support system

Victims, agents, PO and SP each are entitled to request a protection order (Article 9 and 12). The Magistrate shall take appropriate protective measures in consideration of Domestic Incident Report submitted by the protection officer or the service provider (Article 12 (1)). The Magistrate shall fix the first date of hearing, which shall not ordinarily be beyond three days from the date of receipt of the application (4). The Magistrate shall endeavor to dispose of every application made under sub-section (1) within a period of sixty days from the date of its first hearing (5). The Magistrate may, at any stage of the proceedings under this Act, direct the respondent or the aggrieved person, either singly or jointly, to undergo counseling with any member of a service provider who possess such qualifications and experience in counseling as may be prescribed (Article 14).

⁶⁸Any citizen of India whose annual income from all sources does not exceed Rs.18,000 (eighteen thousand rupees) shall be entitled to legal services under clause (h) of section 12 of the Act.



[The access to the court] AP stands for Aggravated Person, which is a victim in this case.

As means to save DV victims, there are Protection orders (Article 18), Residence orders (Article 19), Monetary reliefs (Article 20), Custody orders (Article 21), Compensation orders (Article 22), and Power to grant interim orders and ex parte orders (Article 23).

Protection order prohibits all the violent and harmful acts against a victim which intends to save the victim.

Residence order prevents victims from being evicted from shared household. Sometimes a judge orders a husband to provide an alternative residence or to evict the resident. DV Act states that all women have the right to reside in a household they share with their husband (Article 17) and the right does not change during the process and after the protection order.

Monetary relief is a means to legally save victims from paying living expenses and medical expenses.

Custody orders are temporary orders to protect a child's wellbeing while the victim's protection order is undecided. It has no influence over custody.

Compensation orders are to compensate for the mental and physical damages caused by illegal actions.

Interim and ex parte orders are a system where when the case is judged as having a certain amount of evidences (prima facie case) without disproof, the order as the victim demanded is made.

A breach of protection order, or of an interim protection order, by the respondent shall be an offence under this Act and shall be punishable with imprisonment of either description for a term which may extend to one year, or with fine which may extend to twenty thousand Rs, or with both (Article 31).

(4) Duties of Government (Article 11)

Duties of Government.-The Central Government and every State Government, shall take all measures to ensure that-

- 1) the provisions of this Act are given wide publicity through public media including the television, radio and the print media at regular intervals;
- 2) the Central Government and State Government officers including the police officers and the members of the judicial services are given periodic sensitization and awareness training on the issues addressed by this Act;
- 3) effective co-ordination between the services provided by concerned Ministries and Departments dealing with law, home affairs including law and order, health and human resources to address issues of domestic violence is established and periodical review of the same is conducted.

3. The significance of the DV Act and its characteristics

The enactment of the DV Act in 2005 has had a great significance concerning the elimination of violence against women.

(1) First, this law established the definition of DV and clearly details protection for victims and punishment for perpetrators. The enactment itself is a strong manifestation for the society that DV is not a family problem or tradition police should not intervene with, but a public problem that the state has a responsibility to address and solve. Also, unlike former laws trying to solve problems only by punishing perpetrators, the DV Act guarantees the right of women to live with dignity as the first goal: the protection orders and the expansion of the support system for victims are progressive points. Second, it should be noted that the Indian DV Act has progressive characteristics which cannot be found in other countries' equivalent laws: the DV Act is progressive compared to others for its innovativeness, the flexibility which meets the unique needs of Indian women and the thorough support system. The unique characteristics are explained below:

1) The wide coverage

This law aims to cover all the family-related violence against women. Various kinds of abuse including physical, sexual, psychological (deriving from verbal) and economic are all defined as DV. It is historically significant that dowry is also stated as a form of DV for the first time in this act. It also targets all the violence that happens at home: all the women who live with perpetrators are the objects of protection given by the act. Scope of protection includes wives, sisters, widows, mothers, daughters, women who live together, victims of polygamy, single women and any woman and child who is subjected to the violence. Because of this, the act is even praised for being "revolutionary."

2) The pronouncement of women's right to reside in the shared household

DV Act Article 17 clearly states "every woman in a domestic relationship shall have the right to reside in the shared household." It also states that a victim cannot be kicked out of the house during the procedure of filing a protection order. Correspondently, residence order was also created as a part of protection order. This law guaranteed a women's right to keep residing at the shared household without having to leave. If requested, husbands have to provide alternative housing. Also, an order to move can be issued without setting any particular time period.

3) Guarantee for the access to the help

The DV law takes various measures to provide accessible assistance to victims. PO and SP are the new positions created by the Act to facilitate the accessibility. As it was explained above, victims are able to file protection orders, be provided with a shelter, or receive a treatment in medical facilities by consulting with PO or SP (Articles 6 and 7). The one-stop service saves victims from complicated processes and guarantees women easy access to various necessary assistances. PO and SP are available on the phone and via e-mail which enables even swifter access. It is also notable that police is obligated to give explanations about available supports when victims consult them.

The Act also has an innovative way to treat NGOs: NGOs which have been supporting DV victims can

register themselves as SPs (Article 10). Staff from NGOs registered as SPs are considered as public official while on duty (Article 30), and the procedures taken for justice cannot be accused (Article 10). The title of SP also allows NGOs to support victims through medical support and shelter service. In other words, NGOs were legally recognized as playing crucial roles in the fight against violence against women.

4) Various support systems

Courts are empowered to issue various orders to protect victims from DV and provide measures suited to each victim's situation. For instance, protection orders prohibit all harmful actions against victims. Residence orders include, along with the right to reside in a household, the prohibition of husbands from entering the place of employment of the aggrieved person or, if the person aggrieved is a child, its school or any other place frequented by the aggrieved person (Article 18). The article creates a situation where victims and perpetrators live together yet avoid contact, which results in preventing DV. Furthermore, courts can order perpetrators to provide monetary relief for maintenance and recovery (Article 20) as well as to pay compensation (Article 22). Courts can also order victims as well as perpetrators to receive counseling.

4. The problem related to the implementation

(1) Overview

Although the enactment of DV Act has had an innovative significance, there are several problems to be noted:

1) Recognition of the Act and the access to the assistance

The DV Act does not enjoy sufficient recognition from society: the existence of the Act itself, the knowledge of how DV Act can support the victims, and how victims can access the system are not widely known. The administrators of the Act also lack sufficient knowledge and have never undertaken training. Judges who are supposed to give orders to protect victims, lawyers who are supposed to be representatives, and police officers who are supposed to be responsible for the protection do not have sufficient knowledge and sometimes even have never heard of the Act. Some administrators still believe in the claims of anti-DV Act campaigns and argue that the DV Act is a negative law which destroys families.⁶⁹

2) Lack of budget

The government has not budgeted enough financial resource to implement the DV Act. To make the Act function properly, different projects including empowerment and education of citizens, trainings and education of public officials who enforce the Act and the activities of implementing institutions such as PO and SP need to be budgeted. The current un-financed situation signifies the lack of financial backup and support of the Act from the government.

3) Realities of the main actors

POs are not employed sufficiently as opposed to the demands by the Act. The number of full-time POs is definitely lacking. Since POs are not budgeted enough, they work in poor conditions and cannot complete work as the way they are required by the Act. Therefore, the accessibility of the Act for women is

⁶⁹ HRN interviews with legal professions

far from satisfactory.

There is lack of service providers since they are not budgeted for: This causes many NPOs to fail to register.

Also, training for POs and SP is lacking, therefore they cannot handle the DV cases smoothly and the support of victims cannot be actualized.

4) Low numbers of protection orders

Because of the ill situation explained above, the number of petitions itself is few. Of all the petitions, even fewer were swiftly dealt with according to the Act. This mostly derives from the incapability of magistrate, POs and SP.

(2) Implementation situation– national research

The Lawyers Collective(LC), a Non-Governmental Organization based in Delhi, with support of UNIFEM, published a report on the implementation situation of the DV Act after 10 months of being into force. It was published in 2007 (Lawyers Collective report, 2007)⁷⁰ followed by the second report in 2008 (LC report 2008).⁷¹ Lawyers Collective further published the third report in 2009(LC report 2009).⁷² The numbers used in the following sections are drawn from each report.

1) Petition to courts and the orders

A) Application

Within the first 10 months of the DV Act being in force, from November 2006 to July 31 2007, there were 7,913 cases applying for protection orders.

The listed below is the number of application of protection orders state by state from the most to the least: Rajasthan (3,440), Kerala (1,028), Andhra Pradesh (731), Delhi (607), and Maharashtra and Goa (603). Arunachal Pradesh, Meghalaya, Mizoram and Nagaland had none.

During the period of April 2008 – July 2009, following cases were filed to seek protection order by protection officers: Uttar Pradesh(3892), Delhi(3463), Kerala(3190), Karnataka (2933), Madhya Pradesh(367) and Andhra Pradesh(1984). The States that had least numbers of case filed were, Meghalaya(12) and Sikkim(8).⁷³

It is impossible to explain the gap between states by neither population nor the frequency of DV. A fair analysis is to attribute it to how well DV Act is known, how accessible the judicial system and how well established support systems are.

B) Protection Orders

⁷⁰ Lawyers Collective pointed out as follows; “This is not a thing by statistics of the government. The Indian government does not record data of the number of the applications and the number of this law-related cases and so on. This report is not a thing declaring a future prediction for a judicial tendency and process.”, “Staying Alive First Monitoring & Evaluation Report 2007 on the Protection of Women from Domestic Violence Act 2005” at <http://www.unifem.org.in/violenceagainstwomen.html>.

⁷¹ Monitoring and Evaluation report (M&E) 2008 report of the Lawyer`s Collective and the Women`s Rights Initiative, <http://www.unifem.org.in/>

⁷² “Staying Alive” Third Monitoring & Evaluation Report 2009
[http://www.unifem.org.in/PDF/Staying%20Alive%20Third%20M&E%20Report%202009%20\(final\).pdf](http://www.unifem.org.in/PDF/Staying%20Alive%20Third%20M&E%20Report%202009%20(final).pdf)

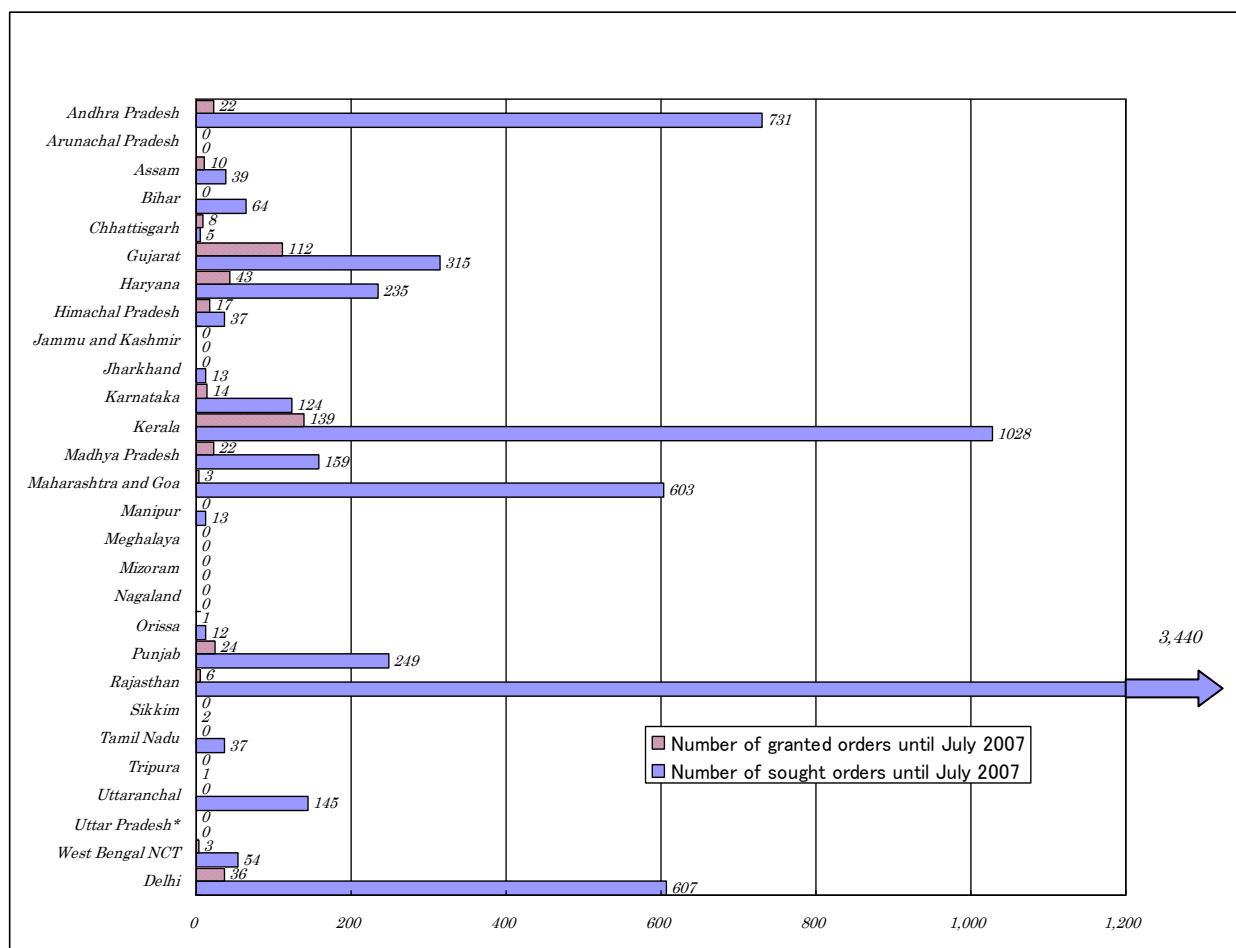
⁷³ 38 page the LC third report.

During the first 10 months(November 2006 to July 31 2007), the number of granted protection orders is 460. The breakdown is:
Kerala high court (139), Gujarat high court (112), Delhi high court (36), Andhra Pradesh high court (22), Rajasthan high court (6) and other high courts (8).

	Number of sought orders	Number of granted orders	
	until July 2007	until July 2007	(%)
Andhra Pradesh	731	22	3.0
Arunachal Pradesh	0	0	-
Assam	39	10	25.6
Bihar	64	0	0.0
Chhattisgarh	5	8 ⁷⁴	160.0
Gujarat	315	112	35.6
Haryana	235	43	18.3
Himachal Pradesh	37	17	45.9
Jammu and Kashmir	N/A	N/A	N/A
Jharkhand	13	N/A	N/A
Karnataka	124	14	11.3
Kerala	1,028	139	13.5
Madhya Pradesh	159	22	13.8
Maharashtra and Goa	603	3(Bombay)	0.5
Manipur	13	0	0.0
Meghalaya	0	0	-
Mizoram	0	0	-
Nagaland	0	0	-
Orissa	12	1	9.6
Punjab	249	24	0.2
Rajasthan	3,440	6	0.0
Sikkim	2	0	0.0
Tamil Nadu	37	0	0.0
Tripura	1	0	0.0
Uttaranchal	145	0	0.0
Uttar Pradesh*	N/A	N/A	5.6

⁷⁴ In the LC report, there is no description of the reason why the number of granted orders is more than that of the applications in Chhattisgarh. They have 8 granted orders despite having only 5 applications.

West Bengal NCT	54	3	5.9
Delhi	607	36	5.8
Total	7,913	460	9.6



According to the Third report, the number of protection orders in 3 states is provided. During 2008 – 2009, Delhi had 72 protection orders, Maharashtra had 602 orders, and Gujarat had 178 orders.

What becomes obvious from the data is that the number of granted orders is far less than that of the applications.

Statistic shows that even in the states with a substantial numbers of granted orders, it took months until the orders were granted. In the states without any granted order, many answered the cases are “still under examination”. Slow judicial procedures are clearly delaying relief for the victims.

C) The orders and their enforcement

To analyse the orders which have already been issued, the most granted orders are monetary relief, residence and orders for protection. The most common temporary orders are monetary relief. In some cases where the court was ordered to pay monetary relief by keeping back an amount from the salary, the defendant’s employers directly paid the victims.

In some residence-orders cases, the residence orders were rejected when the household was under the husband’s parent’s names, not husbands’.

In states having POs, orders are enforced by POs with the support of police.⁷⁵ In the states without POs, police enforce the orders.

2) Institution building

A) Protection Officer (PO) -Situation of appointing PO

According to Lawyers Collective, POs are mainly appointed by districts: in some cases the tuluka/block plays the same role, but it is much less common.

Following is the number of appointed POs in 2007, 2008 and 2009 LC report:

	2007	2008	2009
Maharashtra	800	3,687	3,892
Madhya Pradesh	361	367	367
Himachal Pradesh	324	385	377
Karnataka	212	212	214
Delhi	19	18	17
Rajasthan	0	548	548
Punjab	0	148	148
Andhra Pradesh	23	104	104

According to LC report in 2008, other states either appoint less than above number or no appointment.

Beside above, highest is Uttar Pradesh with 70 POs, all the other states are as low as 31 to zero.

Four of the states have not appointed any and seven of the states have less than ten.

According to LC report in 2009, there is no significant change with respect to the numbers of PO.

The states in which the numbers of PO increase are quite limited; such as Maharashtra(3687→3892) and West Bengal(19→39).

⁷⁵ Related to this, they point out that the police do not provide enough support with the PO.

In some states, such as Himachal Pradesh (385→377) and Delhi(18→17), the numbers decreased. Considering the reality of PO in Delhi as described later, decreased numbers show the problematic situation. Least numbers of appointed PO in 2009 is: Chandigarh(3), followed by Sikkim(4), Meghalaya(7), Manipur(8), and Mizoram(9).

B) Reality of the selected POs

There are several problems in operation of POs' task:

First, most of POs are public officials who have other main occupations. They are not appointed as full-time POs.

Second, most of them have no licence of social worker or have no legal knowledge and experiences. Despite the fact, only 64% of them have received any sort of training when appointed as POs.

Third, the infrastructure to operate the PO activities is insufficient. In many areas, many POs find themselves without any office. Even if there is an office, POs still have difficulty as it is often not equipped with computers or stationery. Also, many POs find themselves isolated and extremely busy without any administrative support from local government or practical support from police.

Since they have to handle many cases without any support from administrative branch or police, considerable amount of POs find the job over responsible and frustrating.

C) Service Provider (SP)

According to Lawyers Collective (LC report in 2007), SPs are not registered in many states: some states even have not started the registration process.

[Registered SP]

Registration situation	Number of Service Providers	Number of states
Registered	Andhra Pradesh(72), Orissa(59), Uttar Pradesh(39), two other states (31)	5
Being processed	Himachal Pradesh, Karnataka, Kerala and six other states	9
Requesting to be registered	Sikkim, West Bengal, and one other state	3
Process not begun	Rajasthan, Delhi, Maharashtra and 14 other states	17

The sign of improvement can be seen in 2008 although the registering process of SP is quite slow.

D) Lack of PO and SP and the problem during seeking for protection orders

The DV law states that with the help of a lawyer, whether directly or indirectly through PO or SP, victims can apply for a protection order. However, most of the states do not have registered SPs and some states even do not have PO. In the case where there is neither SP nor PO, it basically means that there is no one to assist with filling in the DIR. In New Delhi, non-registered NGOs and lawyers fill in DIR forms and apply for the orders. This however slows down the process since a DIR requires a signature from PO or SP. Another problem is that PO does not recognize some cases as DV in their own judgement and refuse to

request DIR. In other words, PO can be an obstacle to access the judicial system.

3) Administrative problems

There are further administrative and practical problems to protect victims.

A) Medical facilities and shelter homes: According to LC 2007, states with medical facilities or shelters which the Act mandated each state to facilitate are Andhra Pradesh, Himachal Pradesh, Karnataka, Kerala, Uttar Pradesh and seven other states. The number indicates that despite the legal responsibility, states do not make enough effort to set up facilities to take care of victims.

B) Legal aid: Article 39A of Indian Constitution states “the State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other.”

The Legal Services Authorities Act (1987) allows women to receive free legal aid service. This law also allows districts and *taluka*⁷⁶ to establish own legal service agencies. At this point, however, free legal aid service is only available to women who have already filed cases. . Also, the aid is offered by district but not by *taluka*.

C) Police: according to LC report in 2007, some police officers still refuse to receive a criminal complaint by women by saying “DV is a civil matter”, which is clearly against the DV Act.

4) Budgeting

The budgeting plan of the DV Act is a crucial problem in implementing the DV Act.

In 2005, 14 states appropriated special budgets for implementing the DV Act. According to Lawyers Collective, the data is obscure since the accessible date did not show where the money went nor how it was used.⁷⁷

LC report in 2009 reported that although 17 states have made budgetary allocations for the implementation of the PWDVA, it is still heavily contingent on each state since there is no systematic basis for making budgetary allocations.⁷⁸ According to the report, some states in 17 states have given clear details of budgetary allocation for the implementation of the DV Act, however, some states have not disclosed their detail budgetary allocations.

Because of the lack of budget, many regions lack infrastructure to implement the Act.

(3) Hearings from various organizations about the implementation of the DV Act

The HRN research mission conducted hearings from various related organizations other than Lawyers Collectives.

1) Delhi

A) NGO Jagori⁷⁹

⁷⁶ See 5p. *Taluka* is middle level of administrative unit, also called “block”

⁷⁷ LC report 2007

⁷⁸ LC report 2009

⁷⁹ Interview with HRN, September 2008

Ms. Nandini Rao(Jagori Coordinator)

Why is the number of applications for relief imbalanced? It is not that the situation is better in states with less applications and worse in Rajasthan and Kerala where there are many applications. It simply means that in many states The Protection of Women from Domestic Violence Act is not utilized since the Act is not recognized or accepted. Especially in Northeastern states, the tendency is visible that laws from the central government are not well implemented.⁸⁰

Since government, civil society, and women themselves do not have enough knowledge about the Act, the Act is not utilized. The bottom line is that society accepts violence against women. We need to increase awareness and make social consensus that “Women’s rights are human’s rights”.

Another problem is that the lack of infrastructure to implement the law causes delays of court orders under the Act.

Central government decides to budget for the DV Act and distribute it to state governments: in reality, however, the budget is not recognized by the states or utilized to implement the DV Act. It shows the lack of political will to use the budget to enforce the Act. Corruption is also involved.

C) Multiple Action Research Centre⁸¹

Vrinda Grover (representative)

My NGO aims to disseminate knowledge and information on the DV Act and provide training. While all the lawyers in India are members of the Bar Association of India, the Bar Association does not do such an activity. The Bar Association rarely gives training or awareness raising activities when new laws are enforced. In particular, the Bar Association does not show any interest in a new law intending to protect women’s rights such as the DV Act.

C) Delhi, PO⁸²

Protection Officer (anonymous, Delhi)

(1) Difficulties to conduct mandate

In Delhi, there used to be 19 POs, but five of them have already quit. The reasons were: tough work and dysfunctional offices. Look at the office. It should be obvious that the place is completely different from the office you work at in Japan. There is no phone, copy machine, or computers. There is no way we can do our job in this environment. There are PO offices all across Delhi, but each office has only two officers and there is no secretary. Since courts do not provide us with travel expenses, we pay by ourselves. We are told that the expense will be paid back later. However, it has never happened. There are so many things to do

⁸⁰ On the other hand, the staff of Impulse NGO Network, in Meghalaya said that the implementation of the DV Act has been improved in Northeast India. There is some possibility that the information sharing of the actual situation of the implementation is not carried out between Delhi and the provinces.

⁸¹ Interview with HRN, September 2008

⁸² Interview with HRN, September 2008

yet so few staff members. We are so busy going to courts and enforcing the orders that sometimes we cannot give enough care to victims. Since we are always out, women often have to wait for a long time in the office.

Whenever there are obscure points for judgement, courts order us to do a field investigation. For instance, they tell us to research where the victim lives or if the living address on the form is correct. Therefore we are always running around. However, travel expenses are, again, never paid.

(2) Unsupportive attitudes of related organizations

Neither police nor SP is supportive of our job. When there is a DV case, police only introduce the victims to us and does nothing more. Even if we ask them for the necessary protection, they wouldn't do anything. When one PO went to dispatch a protection order, she was attacked by the victim's husband and four women at his home. The dispatched document was torn and she was beaten by a cane. As a result she quit her job. Our safety is not guaranteed. No measure is taken against such violence. The police are uncooperative in terms of protecting us.⁸³

(3) Request to government and courts

The number of PO in Delhi is too few. We need at least 50 POs. Under current situation, we cannot achieve our task to protect women. Because of the lack of POs, it takes about three months for an order to be granted. Also, minimum infrastructure should be provided so that POs can work. Central government is supposed to distribute the budget to enforce the Act among states, but the money is gone.

2) Rajasthan

A) NGO Women's Rehabilitation Group and Women's Resource Centre⁸⁴

Dr. Renuka Pameeka (Women's Rehabilitation Group) and

Mr. Mowta Jaitoley (Women's Resource Centre)

After the implementation of the DV Act, a substantial number of POs were appointed. However, those officers are not full-time POs as the Act required. Since public officials who already have other jobs are appointed, we are severely lacking in the actual human resources of POs. To make matters worse, the governmental budget is not distributed. As a result, the law and PO are not advertised enough, the facilities necessary to deal with their work, such as desks and telephones are not provided and training to professionalize officers is not offered; in short, the title of PO is only nominal.

The job exclusive to PO is to file a Domestic Incident Report (DIR). In the situation explained above, DIR is not filed smoothly which results in many application for protection-orders reaching a deadlock.

The Protection of Women from Domestic Violence Act states that a victim of DV can ask a PO, medical facilities, shelter home, police, or SP for help. NGO can be registered as SP, but they are not registered. This is because in the current situation where SP is not provided with office or phone, they cannot function well enough as SPs.

⁸⁴ Interview with HRN, September 2008

Although there are organizations well capable of functioning as SPs if human and material infrastructure is provided, state governments do not provide them with financial aids. As a result, there are so few NGOs registered as SP and the SP system is no functioning.

5. Impunity of DV claim

The HRN research mission conducted hearings on the criminal punishment of DV and dowry death. As stated above, laws prescribing strict punishment on DV and dowry death related crimes exist. . However, these criminal provisions have not saved women from such violence.

Some hearing cases are introduced below.

(1) Interview with NGO

RUWA(Rajasthan University Women's Association), Rajasthan⁸⁵

1) Overview

For the 24 years since 1985, RUWA were consulted in 135 dowry related cases. The number of consultations is increasing year by year. However, this is because more women suffering from problem related to dowry ask for help from NGOs. It is estimated that 40 to 60% of dowry cases have not been brought to light: traditionally, in India, violence against women at home is seen as a matter of course and it was not common to talk about it outside.

Recently, the work of NGOs is becoming well known. Sometimes parents of a victim of dowry abuse or death come to consult the NGO. Nevertheless, out of 135 cases RUWA handled, there are two cases where RUWA experienced conviction. The following is one of the two winning cases.

2) Winning case

In the case where the nineteen-year-old woman was killed, her husband and others made a false statement that she committed suicide by hanging herself in the bathroom. A staff member of RUWA who happened to be nearby the crime scene heard the news of the hanging and visited the site. The staff did not find any strangle mark around her neck and witnessed her husband and his brother drinking alcohol and enjoying themselves at home. RUWA conducted detailed research of the site and found out that the ceiling of the bathroom is too low for a hanging. It became clear that the woman's husband and his brother killed her and disguised the murder as a suicide by tying a rope around her neck in the bathroom. The defendants were convicted.

3) Excuses by the husband

Clearly seen from the case above, the husband often tries to hide the fact that he has murdered his wife. For instance, when researchers visit husbands in other cases, husbands made up fake stories such as "she was burned to death while using the oven while cooking" or "she hanged herself" despite the fact that the husband burned her to death or strangled her. We are demanding that the government facilitate a better

⁸⁵ Interview with HRN, September 2008

autopsy system in order to disclose the truth of the deaths.

4) The problematic points of trials

Our feeling is that 60% to 70% of dowry-related murder is convicted in district courts. In higher courts the percentage drops: in high courts it becomes 20% and in Supreme Court the percentage seems to drop even more. The burden of proof is very strict. It also takes a great amount of time by the judgement. The first reason that comes to mind is the courts' low recognition of gender issues.

Courts do not have a good understanding of gender issues. In addition, husbands claim that the cases were suicides to avoid conviction. On the other hand, the wives' families are often too poor to hire a lawyer. What happens here is that husband's side bribes the wife's family and sometimes judges. They offer the wife's family money for withdrawing the charge against them. The problematic judicial system creates a vicious cycle and results in the number 2 conviction /135 criminal cases. In order to change the situation, gender education for judges is crucial. The key to change in the vicious circle is to have judges who make judgements not for money but for the achievement of justice

(2) Research in courts

Following is the interview of the HRN research mission with a Delhi high court judge:⁸⁶

(Q1) Why is the conviction rate low when it comes to DV cases and dowry death?

(A1) The statistic shows accurate rates, but it is certainly true that conviction rate is low. It is because in India prosecutions need to prove beyond a reasonable doubt to convict defendants. It is a structural limitation. A crime has to be proven by evidence, but none of the victims collect or preserve evidences. Not only do victims not collect evidence but also the police officers' abilities are quite limited. As a result, appropriate evidence is not collected and it causes significant numbers of acquittals. It can be said not only about DV cases but all the criminal cases. Under the new laws, when a wife dies within seven years of marriage, the burden of proof turns to the defendant's side; the reality is, however, that the conviction rate does not increase.

(Q2) We heard that since it takes a long time to get convictions, women give up hope and make a compromise with perpetrator while they are waiting for judgement. What do you think of the situation?

(A2) The problem is that the capacity of courts slows down processing cases. In Delhi, 150 judges deal with 750,000 cases per year. One judge handles 2-3,000 criminal cases per year. Under such a condition, the reality is that it takes seven to ten years for one criminal case to reach final judgement.

6. Legal challenge

1) Constitutional challenge

Since the enactment of the DV act, several petition challenging the constitutionality of the Act have been filed before various High Courts. Most allegation is related to the gender specific structure of the Act.

⁸⁶ Interview with HRN, September 2008

So far, all High Courts which render decisions dismissed such petition and affirm the constitutionality of the Act.

For instance, In *Aruna Parmod Shah v. UOI WP (Crl.) 425/2008*, the petition challenged the constitutionality of the DV act by saying that the gender-specific nature of the Act, by excluding men, is arbitrary and, hence, violates Article 14 of the Constitution. The High Court dismissed the contention on the grounds that, “there is a difference between class legislation and reasonable classification” The Court means that the gender-specific nature of the DV act was held to be a reasonable classification under the constitution. (High Court of Delhi, Decided on 07.04.2008)

2) Right to reside

In 2007, the Supreme Court of India issued a judgment with respect to residence order under the DV act in **S.R. Batra v. Taruna Batra** ((2007) 3 SCC 169 , hereinafter, *Batra v Batra*).

In this case, a wife victimized by DV asked a residence order by claiming that she had had a right to reside in the matrimonial home which was owned by the mother-in-law. Her husband had already left the matrimonial home, separated from both the wife and the mother in law and file a divorce case.

In this judgment, the Supreme Court examined the definitions of “shared household” under Section 2 (s) and the scope of right to reside under Section 17 & 19 the PWDVA, and held that “shared household” in the act means a house either owned or tenanted by the husband, or which is the joint family property in which the husband has a share. Hence, the right to residence of a wife would not extend to the house which is owned by the mother in-laws. The court also clarified that a claim for alternate accommodation under Section 19 (1) (f) can be made only against the husband.

This judgment has had the effect of restricting the right to reside of women who live in joint family in a house owned by the father or mother or other relatives in-laws as well as widows. In general, courts in India became reluctant to issue a residence order in case that shared household is not owned by the husband. It is obvious that scope of the **Batra v Batra** judgment has certain limit, however, court tend to deny the residence order without properly limiting the scope of the judgment.⁸⁷

7. Summary

(1) Gap between reality and the law and the lack of political will

Without a doubt, the enactment of the DV Act as a result of intensive consultations with women and a 10-year plus campaign is a big achievement for protection of women from violence. The Act clearly manifests to the society that DV and dowry death are “violence against women” and a serious violation of “women’s rights” and thus should not be overlooked.

However, there is a reality that the act is not implemented appropriately. Although it is too early to judge the implementation in reality of DV Act, it should be pointed out that there is a huge gap between the Act and the reality. The reason is, first of all, that the necessary means to function the Act are not taken. POs – crucial access points for victims to the judicial system with significant responsibilities and power – are not sufficiently appointed. It is a serious matter that even the appointed POs are not supported or trained well. At

⁸⁷ LC report 2009

the same time, there is no budget for SPs, no appointment of shelter homes as well as hospitals or no awareness raising activities in the society – especially among rural communities. In other words, there is a serious concern that the Act falls into a dysfunction if the basic administrative agencies needed for the Act to function are not established, put into effect and supported.

Politicians and political organizations sometimes lack the political will to implement the Act properly. They tend to avoid the issues of violence against women and women's rights, which require them to intervene in communities' values.

Second, agencies that are supposed to enforce the Act are not playing their expected roles.

Although judges should familiarize themselves with the DV Act and deal with cases in accordance with the Act, the HRN research mission recognized cases against it. Protection orders take a long time to be granted could result in the delay of saving victims. In addition, lawyers and especially the Bar Association of India who are supposed to be the forefront to use the Act to protect victims are not playing active roles. There are also many cases where police do not inform victims with the means of reliefs properly against the obligation under the Act.

Third, the situation of impunity, with little prosecution and punishment for DV cases is of serious concern. Most of laws to punish men who committed violence are not enforced by the police resulting in insufficient investigation and trial. Prosecutors are not very interested in trial activities and trials take a long time. As a result, it takes years until the judicial system confirms the truth and makes a judgement. Many victims give up justice before the justice is done: they tend to agree with the perpetrator's proposals which let them be acquitted. This is far from an ideal judicial system, which aims to recover the damage appropriately and promptly. In this situation, impunity is widespread and it even encouraged, not preventing a recurrence of the same types of violence. Gender biases and the lack of understanding of the violence against women within judiciary and the police contribute to this failure of justice.

(2) Right to reside at stake

HRN also expresses its concern that the low rate of protection orders compare to applications. In particular, HRN concerns the recent situation that court is reluctant to issue residence order affected by **Batra v Batra** judgment in the Supreme Court. In considering the history of the enactment of DV act and women's wish, the court reluctance to issue s crucial problem to solve. One of the most positive characteristic of the act is legally authorized the women's rights to reside in her matrimonial home while seeking protection from violence. If the nationwide trend becomes the denial of the residence order in case that shared household is not owned by the husband, the positive aspect of the act would be greatly denied and one of the objective of the act- women can live safely in her matrimonial home without fear of violence- cannot be well achieved.

The court need to make clear guidance of interpretation of the provision of DV act in question, such as "shared household" in order to avoid that lack of understanding among judiciary unfairly denied women's rights for protection.

(3) what shall be done

In order to function and implement the DV Act, it is crucial to address each problem stated above.

Central and local government is to be discharge its duty to implement the law as specified in article 11 of the DV act, wide publicity, periodic sensitization and awareness training for all government officers, police and judiciary as well as provide effective co-ordination for all human resources to address the DV. It is necessary to appoint POs, shift the focal point of women to justice and protection, as well as sufficient budgeting being indispensable for the successful functioning of the Act.

Central government is in the position to correct all the data of implementation of the act, number of protection order, numbers of appointed Pos and budget etc, and take all necessary measure to address current situation.

VI. Approaches by government, NGO and international organizations

1. Government agencies' approach

(1) Indian government – overview

1) Policies related to women's rights

Since the 1980s, Indian government frequently enact and amend laws related to violence against women. In recent years, they focus on monitoring and awareness raising campaigns. However, the series of policy amendments related to women's rights were led by the international pressure and civil society's campaigns, not by the strong political will of the government. Therefore, in reality, governmental agencies do not have strong political will to implement the laws on protection of women. They often lack effective coordination as well as information sharing among different agency, ministries or departments.⁸⁸

2) Women and developmental policies⁸⁹

The sixth five-year plan beginning in 1980 recognized the central role played by women in the field of development for the first time. In 1985, the Ministry of Women and Children Development, an independent institution was newly established as “national machinery”.

The recent tenth five-year plan ranked the issues of the violence against women as the top priority and made plans to tackle the problem from both short and long-term perspectives and national and state levels.

During this period, the recommendation was made to introduce severe punishment to the violence-against-women-related laws including the Indian Penal Codes. Also, through the joint project with NGOs, importance of awareness-raising on DV in society was recognized. The issues of violence against women are recognized as part of an urgent matter to be addressed in the interim report of the five year plan.

(2) Ministry of Women and Children Development

The Ministry of Women and Children Development started as a subsidiary agency of the Ministry of Human Resource Development in 1985. In 2006 it was promoted to be a ministry. Its main activities are: drafting legislations related to women and children and implementation of them, amending the laws and supporting organizations (both governmental and non-governmental) related to the development of women and children.

⁸⁸ F. Agnes, *op. cit.*.

⁸⁹ Immediately after the independence, welfare approach was taken for the women, and Central Social Welfare Board and State Social Welfare Board were organized. Generally speaking, the women were regarded as beneficiaries of the policies of the welfare rather than economic contributor in the development approach.

As a scheme to help women who face difficulties, the ministry operate a system called Swadhar. It is a system where the government entrusts works such as running hotlines, shelter homes, counselling, and rehabilitation to experienced NGOs.⁹⁰

The Ministry explains their approaches to the violence against women:

- To approach the issue effectively, efforts are made toward strengthening existing laws by re-examining and amending laws and improving the enforcing mechanism of laws.
- Supporting system for victims are: providing a place to stay for a short while, utilizing Swadar, setting up hotlines, offering trainings on legal literacy and legal awareness, opening courts focusing on violence against women which only takes short time for the trial, creating National Commission for Women (NCW) and State Commission for Women, employing more female police officers, setting up police stations exclusively for women within jurisdiction of other police stations and establishing supporting centres for rape victims.
- In addition, the ministry tries to raise awareness on gender issues among judicial personnel, police officers and government officials

(3) National Commission for Women

The National Commission for Women was established in January 1992 based on the “National Commission for Women Act, 1990”. It is an organization independent from the government, aiming for promoting women’s rights. It consists of a chair appointed by the central government and five board members. The goal of the commission is to monitor and evaluate if women’s human rights are protected and gender equality is ensured, and to advice the government. It conducts researches on women related issues, makes policy recommendations, drafts policies for the development of women and monitors the DV Act’s implementation and promotion.

There are independent organizations in each state that has similar functions to NCW – they are State Commission of Women (SCW). The SCW was established based on the State Commission of Women Act adopted in each state and works in cooperation with other women organizations including NCW.

For instance, in Punjab, State Commission of Women was established in 2001, eleven years after the establishment of National Commission of Women. They try to gain mutually understanding, information sharing and cooperation with SCW, by inviting one of the board members from NCW to the board (without a vote).⁹¹

(4) Implementation of DV act

Under the DV act, central and state government has duty to implement the law;

- Article 11(2)

the Central Government and State Government officers including the police officers and the members of the judicial services are given periodic sensitization and awareness training on the issues addressed by

⁹⁰ See the website at <http://www.tn.nic.in/socialdefence/swadhar.htm>. According to this website, there are 9 NGOs entrusted.

⁹¹ This comes under The Punjab State Commission for Women Act, 2001, Clause 4, Article 4-4.

this Act;

- Article 11(3)

effective co-ordination between the services provided by concerned Ministries and Departments dealing with law, home affairs including law and order, health and human resources to address issues of domestic violence is established and periodical review of the same is conducted;

As described previous chapter, the duty to implement the act of central and state government is far from satisfactory.

One problem is seen that although there are several public sectors working for women's issues, there are not well established coordination in order to implement the act. In order to overcome this fragmentation, state of Kerala initiated to establish a Coordination Committee to implement the act and this initiative is followed by other states in India.

According to the Lawyers Collective report in 2009, there is a significant progress with respect to establishments and activities of such Coordination Committees in states. These Coordination Committees are formed at district level in most of the states to ensure implementation of the Law. The member of the committee is different depends on the states. For instance, district level committee in Madhya Pradesh has the Collector, Superintendent of Police, District Law Officer, District Chief Medical Officer, District Programme Officer and District PO as a member. The member includes various types of appointment that plays different roles though the function of the all members is to coordinate and monitor the implementation of the Law.

However, it is not clear if these committees are effectively functioning in reality and playing meaningful role in monitoring and implementing the DV act.⁹²

2. The approaches by NGOs

One of the characteristics of Indian society is the existence of strong and active NGO activities both at a national and local level. Indeed, most of the law making and amendments, as well as institution building related to women are the results of steady campaigns by activists and NGOs. Below is a profile of NGOs dealing with national issues and playing different roles.⁹³

(1) Lawyers Collective - policy suggestion⁹⁴

Lawyers Collective consists of lawyers: it conducts campaigns related to women's rights, HIV/AIDS and civil rights. The mission of The Lawyers Collective Women's Rights Initiative is empowerment through legal systems.

Therefore, the Lawyers Collective initiated the DV Act campaign in 1998 in cooperation with other female organizations. This campaign finished with a great success with the enactment of the Protection of Women from Domestic Violence Act in 2005.

The Lawyers Collective continues its effort by monitoring the implementation of the Act on a national and

⁹² According to LC report in 2009, LC made numerous inquiries to these committees but unable to obtain information and data. Such data of the activities of these committees is not accessible(pp 64).

⁹³ We will discuss some grass roots NGOs in next chapter.

⁹⁴ HRN visited Lawyers Collective, September 2008.

regional level as a member of Core Group – a group consisting of NGOs and lawyers to deal with DV. LCWRI monitors the implementation of the Act, files reports and campaigns for decreasing gaps between the Act and reality. They aim to provide women with access to legal systems: as a part of their effort, they created a triaging guideline for POs – the crucial actors to make the Act work. In addition to awareness raising campaigns, they host workshops targeting lawyers, judges, NGO, women’s organizations and students.

(2) JAGORI – Protection, awareness and campaign⁹⁵

JAGORI (“awaken women” in English) is an NGO established in 1984. Staff members include lawyers, social workers and specialists of various fields including human rights and finance.

Their activities cover many fields: the NGO launches many advocacy campaigns mostly in Delhi to appeal the importance of protecting women’s rights. They also run shelter homes and counselling centres.

JAGORI puts special effort into making normal citizens aware of violence, health, education, development, empowerment of women and other issues important for women as well as advocacy campaigns for women’s rights and gender equality. They host workshops and show films to introduce their campaigns on television and radio. They also host a film festival aiming to nurture citizen awareness on the issue and improving women’s rights.

One of their campaigns, the Safe Delhi campaign, aims to protect women from sexual violence in the city. In order to eliminate sexual violence in any public space, JAGORI mobilizes other NGOs and individuals for campaigns to take action. They also run a 24-hour medical centre.

JAGORI conducts workshops and trainings to make people aware of women’s issues. Workshops deal with violence against women, women’s health, education and legal rights.

JAGORI makes posters, booklets, videos and other advocacy goods dealing with women’s human rights. Their newsletters are distributed in over 300 organizations in Hindu-speaking areas. They create posters on women’s issues comprehensible for illiterate people. All the efforts aim to promote a better awareness about women’s rights and gender equality among the general public.⁹⁶

(3) The Human Rights Law Network (HRLN) – Legal representation⁹⁷

HRLN is an organization created by lawyers and social activists. It aims to promote human rights through the legal system, fight against violence, and make access to the judicial system easy for anyone.

Along with the fight against sexism and violence against women, HRLN created the Women’s Justice Initiative (WJI) with a help from lawyers specializing in women’s rights and activists in order to improve the accessibility to the justice system which is crucial for the empowerment of women. WJI deals with various women’s issues including sexual violence, DV, sexual harassment in offices, abortion of female foetuses, human trafficking, and HIV/AIDS. In specific, the organization petitions and advocates for individual cases such as divorce, other problems between a couple, custody, detention, and property rights,

⁹⁵ HRN visited Jagori, September 2008.

⁹⁶ For a detailed information of Jagori, see Jagori’s website at <http://jagori.org/>.

⁹⁷ HRN visited HRLN September 2008

and brings public-interest litigations demanding for amendments of laws and changes of legal system. In addition, they take legal supportive actions for female prisoners as well as prepare a hotline for women with issues.

(4) Multiple Action Research Centre Improvement of legal literacy⁹⁸

Multiple Action Research Centre is a legal resource centre established in 1985. It consists by lawyers, sociologist and other staff. Since 1991, the NGO has been working for the legal education of women; such as organizing legal workshops on women's rights and related laws, distributing learning materials (include comic books and pictures) and CDs with simple languages across the country.

It also monitors women's legal accessibility in rural area and provide counselling and other material support for victims of violence.

3. Approaches by international organizations

(1) UNIFEM

UNIFEM supports the National Media Campaign by Ministry of Women and Child Development started in August 2008. This campaign promotes taking up issues of girls, nutrition and domestic violence on media. During the campaign, UNIFEM provided India with two televised advertisements, one poster and flyers in four languages (English, Hindi, Kannada and Marathi). The campaign uses other media forms such as radio, videos and internet to send out a message against domestic violence.

UNIFEM's DV Act related effort is to provide Lawyers Collective with fund and advertisement when they create a report on the implementation of the Act and a guideline to implement the Act.

(2) UNFPA

United Nations Population Fund (UNFPA) focuses on reproductive health, gender-free movement in sex selection of foetuses, and improvement of gender related violence. In India UNFPA develops an awareness campaign about female-foetuses killings.

As the uneven distribution of newborns' sexes is a huge issue in India, UNFPA gives support to national and state administrative branches based on Pre-conception and Pre-natal Diagnostic Techniques Act (PCPNDT) adopted in 1994.

(3) UNDP

UNDP administers five different developmental projects – poverty reduction, democratic governance, danger prevention and recovery, environment and energy, and HIV and development. Of all, the perspectives on gender equality are seen as concerns.

(4) UNICEF

The United Nations Children's Fund (UNICEF) has a project focusing on child labour, children's human trafficking and child marriage. In order to create an organizational plan and legal system to protect children, UNICEF gives support to Ministry of Women and Child Development and conducts research on children suffering from violence and child marriages.

⁹⁸ HRN visited MARC, September 2008

4. International community and donors

According to Development Assistance Committee (DAC) of the Organization Economic Co-operation and Development (OECD), the ODA between India and individual countries in 2006 is 65,303million dollars. The breakdown is below:⁹⁹

Country	U.K.	U.S.A.	Germany	Japan	Canada	Sweden	France	Italy	Australia
Amount (per 1 million dollar)	349.30	96.84	55.70	29.53	25.46	17.06	4.28	2.40	0.98

Foreign governments and developmental aid organizations are engaged in activities for the promotion of women's right and empowerment of women through development aid

The organizations outstandingly involved in most projects are SIDA from Sweden, DANIDA from Denmark, and USAID from USA. The Dutch government is involved in projects to support rural women and The EU is involved in projects to improve literacy.¹⁰⁰

Clearly seen from the data above, the countries which give a big amount of ODA are not the same countries as ones active in promoting women's rights. In fact, the reality seems to be opposite: organizations from countries with a small amount of ODA are active in the area.

Japan contributed the fourth biggest amount of ODA although the government has never launched a project related to women's rights.¹⁰¹

VII The reality of violence and the effort to eliminate violence in Rajasthan

It is extremely difficult to draw one conclusion and make one analysis about the reality of the violence against women, the cause of the continuing violence and the effort to eliminate the violence in such a diverse country. Each state is given a room to take a flexible approach to eliminate the violence against women and to enforce related laws according to the state's situation and demography. As a result, each state is unfolding unique approaches.

HRN research mission visited Rajasthan, a state that has both city and rural areas, to conduct an investigation. Women in Rajasthan have been actively campaigning against serious violence against women: the representative example is a huge anti-sati movement. As explained earlier, Rajasthan has the

⁹⁹ Ministry of Foreign Affairs of Japan website, at <http://www.mofa.go.jp/mofaj/>.

¹⁰⁰ "India: Country WID Profile" created by JICA in 2002 has a list of women's-rights related projects supported by various countries and organizations.

¹⁰¹ NGO-MOFA Regular Meetings Held in FY2008, The second NGO-MOFA ODA Consultative and Cooperation Promotion Committee at http://www.mofa.go.jp/Mofaj/Gaiko/oda/shimin/oda_ngo/taiwa/oda_seikyo_08_2.html.

most number of applications for protection orders under the DV act, yet very little number of granted orders: clearly, it is a problematic situation worth analyzing. the section below details the case study on Rajasthan.

1. An environment surrounding women in Rajasthan¹⁰²

(1) Overview

Rajasthan is the largest state in India and has the fastest growing population of all the states. In recent years, urbanization, industrialization and a flow of population into cities are accelerating. On the other hand, still most of the population inhabit in rural area and farm village. The farmer’s source of water is rain, which makes the families’ life unstable: Rajasthan is located in an arid and semi-arid area where drought occasionally hits.

In addition to the hard environment, like many other states, there are different social classes such as castes, reserved tribes and gender. Women’s status is low. Traditional Indian feudalism combined with patriarchy creates social rules and customs and still influences women’s lives today. In particular, child marriage, early marriage, purdah, sati, foetus/infants killings and dowry death are the chief examples.

(2) Women in 2001 census¹⁰³

According to 2001 census, Rajasthan has in total 56,473,122 populations with 29,381,657 men and 27,091,465 women. Sex rate is 100 (male) to 922 (female) – 890 in cities and 932 in rural areas.

As for sex rate among younger generations (1,000 males to the number of female), urban area 886 and rural area is 914 (909 on average). A total of 21 districts out of 32 have seen a decrease in the female rate among younger generations from 961 in 1991 to 909 in 2001. The north-western part is in a worse condition than the south-eastern part of the state. It is documented that in 13 districts, the rate is lower than 900 to 1000.

The health condition of people in Rajasthan also shows the inequality between men and women. It is observable from various poverty indicators such as women’s shorter life expectancy, high death rate among girls under five years old and under eighteen years old, and unequal share of information and source between men and women. Based on the low status of women in society and little chance to visit outside of their own community, women cannot easily access basic information about control of their own health as well as reproductive health and rights.

- 1) Married girls under the age of eighteen----- 65%
- 2) Infant death rate ----- 80/1,000
- 3) Death rate under the age of five ----- 114.9/1,000
- 4) Maternal death rate ----- 677/100,000
- 5) Total fertility rate ----- 3.78
- 6) Anaemic women ----- 48.5%
- 7) Severely anaemic women -----16.5%

¹⁰²From the lecture of Professor Kanchan Mathur, The Institute of Development Studies in Jaipur.

¹⁰³ The Census of India 2001, Office of the Registrar General & Census Commissioner, India: <http://censusindia.gov.in/>.

8) Rate of birth with medical support -----35.8%¹⁰⁴

If a girl marries and gives birth early, it will create a vicious circle of poverty and unhealthy trends generation after generation. With respect to literacy rate, compared to 76.46% of men, women's literacy is 44.34% which is one of the lowest in the nation. The rate of children entering elementary school is 53.8% for boys and 46.2% for girls. Middle school is 61% for boys and 39% for girls. Compared to elementary school where the number of girls is approaching the boys', there still is a significant gap in middle school. This indicates that it still is difficult for many girls to continue receiving education.

(3) Causes of gender inequality in Rajasthan

Analyzing the situation in Rajasthan, several causes interrelated to each other which force girls and women to be the weakest in society can be found.

First, there are patriarchal values, ideologies and customs. Girls are under great social pressure to represent "good women". They are also undervalued by discriminative customs against women since their youth.

Because of persistent child marriage, young women are expected to reproduce before their physical and mental maturity. For women to access various sources crucial for people's well-being such as education, medical facility and nutrition is much harder than when men try to do so. Women's rights are significantly violated: too often, rights and decision-making are left exclusively for men.

Second, like all other Indian states, in Rajasthan women's labour has been invisible. Raising children, preparing food and water for the family, feeding domestic animals and preparing fuel – all these works are not included in economic calculations. Many illiterate and skill-less women engage in agriculture, do chores without being paid or become workers to do simple tasks. Women are given only limited opportunities and it ties women to the low status. First of all, women are marginalized workers and not fully recognized as work force. The work cannot empower women to control their own lives or change the environment they live in nor obtain access or control material or social information in their family or community. The issues of safety, security and dignity of women at work have never been in the spotlight. Women have been exposed to different types of violence publicly and privately including child marriage, foetus killing, infanticides, witch hunting, human trafficking, DV, sati and mail-order-brides.

Currently, the violence against women is becoming crueller. Education and health of adult and young women are still overlooked. Many women are unpaid or barely-paid workers and living unstable lives. Migration to cities only deteriorates the situation.

2. Women and development in Rajasthan¹⁰⁵

According to a report "Towards Equality" published by a committee working for the improvement of women's status in India in 1974, Rajasthan was labelled as the worst state when it comes to women's issues. It had: the highest percentage of being mistreated because of sex: the high infant mortality rate in rural

¹⁰⁴Women living in *Sedhereyo ki dani*, a village of Jaipur district pointed out that the only source of anxiety is the no assistance of the doctor when they give birth. There are no medical faculties on the village, that the pregnancy have to move by camel for three hours, and this make them worried so much.

¹⁰⁵ Lecture of Professor Kanchan Mathur The Institute of Development Studies in Jaipur, to HRN

areas, low average age of marriage, and low literacy rate both in cities and rural areas.

In the 1980s, Rajasthan began its effort to alter the situation and promote the social development for women. An independent organization called Department of Women and Child Development was created in the state and the state government created a project called Women Development Programme (WDP) aiming to empower women across the country.

WDP aims to empower women through communication of information, education and trainings, making women aware of their current social and economical status and stimulating them to improve the status. The main targets of the program were poor women in rural area. NGOs including “Social Work and Research Centre” (SWRC) and “Seva Mandir” contributed to promote this program. Sati case happened in 1987 in a village in Rajasthan triggered a disputes over women’s identity and dignity as well as an awareness of violence against women across the nation.

WDP has been continuing its effort to empower women through communication of information, education and trainings since 1980s. The involvement of above NGOs was a great help to formulate this program. WDP was successful for giving women in rural areas an opportunity to make their first step into the empowerment process. What was confirmed through this program is that if a place and a support are given, poor women in rural areas can emerge from powerless situations and notice that their lives are dominated.

What plays a key role in this program is *Sathin*. *Sathins* are women with literal capability and passion, experience of professional trainings work as facilitators in this program.

One *sathin* is placed per village with about 5000 population. In total, four to five villages has *sathins* who look after regions they are placed in and promote the projects with rural women from the area.

Sathins play their roles from different angles: creating Self Help Group (SHG) for women in poverty who utilize micro finance, improving literacy and education, dealing with DV and other violent cases, and making effort to solve reproductive health issues and child marriage. They are also responsible for informing women what supporting organizations exist when their rights are violated.¹⁰⁶

In 2000, the state government published State Policy for Women and commenced public project such as operation of Self Help groups

(1) Rajasthan State Commission for Women

1) The State Commission for Women are active in fields listed below:

- A) Investigation, decision making and recommending government to take action in response to claims from women
- B) Research and study important women-related issues
- C) Monitor the implementation of women-related laws
- D) Monitor the human resource of state government to guarantee the equal opportunities for women
- E) Policy recommendation for state government to improve the living condition of women
- F) Demand appropriate authority to prosecute cases of violation of women’s rights

¹⁰⁶*Ibid.*

G) Create plans for women's socio-economic development

H) Launch awareness raising campaigns of women's issues

It also spreads information and makes people aware of the DV Act, monitor the implementation of the Act and communication with various organizations based on DV Act Article 11.

2) Unique activities of Rajasthan State Commission for Women

The Commission has three main functions. They are (A) public hearings, (B) family counselling related activities, and (C) awareness and capacity building camp. They are explained in detail below.

A) Public hearings

The Commission has been hosting public hearings to listen to complaints of women from across Rajasthan and to solve their problems in timely manner. State government grants the Commission an equal status to civil courts during the public hearings. Besides the chair of the Commission, panel of hearing includes governmental official and judges in order to solve problems. The hearing is unique for making speedy judgement on protect women from violence and sanction against perpetrators. It has been operated with help from UNICEF and UNFPA.

The purposes of public hearings are, first of all, to draw on all the complaints about violence and problems women are suffering from and to reveal the reality of inequality between genders and seek immediate relief by governmental decision making. Second of all, hearings aim to improve the awareness about women's rights. Third of all, they try to strengthen the mechanism that stimulates administrative departments to effectively fulfil their responsibility.

Public hearings are operated through the procedure explained below. First, the Commission conducts hearings directly concerning the claims. Second, a hearing on the alleged perpetrators takes place. After deliberation among the panel, the chair of the Commission makes orders to related relevant actors and institutions. Finally the explanations are given to the victim about the means of relief. of the case. When one hearing is not enough to solve the case, the Commission continues the research and follow-up.

According to Dr. Dawan Surana who served as the Chairman of the Commission for four years from 2003, hearings have been held in over thirty regions in Rajasthan and hundreds of women accompanied by the relatives or friends have attended the public hearings and received satisfying results overall.

Dr. Dawan Surana (The former Chairman of Rajasthan State Commission of Women)

Without any preparation, we cannot expect women in rural area to come the pubic hearing spontaneously.

The commission has to prepare for the hearing for about a week with a help of UNICEF. Local NGOs advertise the hearing among women.

The hearing is presided over by the Chairman of the Commission. Other than the chair, various actors such as police officers, local public servants, judges, doctors and counsellors will attend the hearing so that the hearing can provide immediate assistance for victimized women. For instance, a victim of DV who has never been to a hospital might need a doctor immediately. In that case, the chair will order the attending doctor immediately to check her. If a woman needs a wheelchair yet does not have one, it will be ordered

immediately to local government. If a victim herself cannot attend the hearing, she can instead submit written submission or have a representative on behalf of her.

i) Hearing in *Sawai Madhopur*

For instance, a public hearing was held in a town 200 km away from Jaipur called *Sawai Madhpur*. Two hundred women gathered in a city hall to consult with the Commission and gain advices about various issues such as discrimination, DV, harassment at work, dowry related harassments and an alcoholic husband.

There, a group of fifteen or sixteen girls appeared to consult with us. They were eighth graders who wanted to continue their study until they reach tenth grade although they cannot do so: there was no school in the village which accept students above the eighth grades. The Commission immediately decided to provide girls with bikes so that they can go to school in a village nearby. Despite the decision, it did not come true since parents rejected the idea claiming that it was too dangerous. Currently, a campaign to build a school in the village is underway.

ii) Solving DV cases

One day, a woman without arms appeared to a hearing. As a result of bearing four years of cruel DV, she had both her arms cut off. By the time she came to the hearing, the husband has already escaped from the village. The Chairman questioned responsibility of the administrators who did not appropriately deal with this quite problematic case by the time of hearing. Since the escaped husband's house and property were remaining, the Commission confiscated them to secure the victim's life through covering the victim's living and medical expenses.

B) Family Counselling Centre

In 2004, the counselling centre was created within the State Commission for Women.¹⁰⁷ Its purpose and activities are:

- a) Legal aid, counselling and rehabilitation for victims of gender-related violence and DV.
- b) Cooperate with local counselling centres and give those centres a support for an effective function.
- c) Promote NGOs and other organizations to establish their own family counselling centres.
- d) Monitor the course of family counselling centres from local level.

They also create networks between NGOs dealing with violence against women and governmental organizations and conduct training improve capacity of counsellors in practice.

C) Awareness raising and educational activities

As a part of their programs, an all-day workshop is often held for the local population. Participants are staff members who work for regions and blocks, government officials, police officers, NGOs and volunteers. As lecturers, local public officials, police and judges along with the Commission member are chosen.

¹⁰⁷ At the beginning, the center established with Integrated Population Development Project of Medical and Health Department's financial assistance, and now they are administrated by National Rural Health Mission's financial aid.

The purposes of the workshop are: first, to strategize activities of local and grass-roots movements, for women's rights, welfare, and promoting implementation of laws protecting women.; second, to improve awareness in order to prioritize issues of women: third, to promote a continuous effort to deal with women's issues promptly on the local and grass-roots level.

(2) Women's Police Station, Mahila Thana

Women's Police Station is literally a special police station addressing complaint from women including DV, dowry, rape and other violations. Police officers are allowed to arrest the suspects without a writ from authority, in emergency situation. The police station has a counselling centre within the site operated by NGOs specializing in DV. Women who came to the police are able to be introduced the centre and gain advice from the NGO.

The police officers are, however, mostly men and do not receive specific training, thus there is need to improve their ability and gender sensitivity.

(3) Activities to enforce DV Act such as appointing PO

As explained in the former chapter, Rajasthan is criticised for not taking necessary means to enforce DV Act. State Department of Women and Child Development were consulted about the issue.

State Department of Women and Child Development staff member, Dr. Sarita Singh

Implementation of DV Act

Although it is a new law, we think the implementation is well done.

About PO

There are criticisms about the number of POs being insufficient.

We are taking measures. About four or five months ago, we appointed 548 POs. However, all of them have another job beside PO and they could not cover all the tasks. This is what NGOs criticised.

Therefore, we are going to appoint a district PO per district.

They are going to work together with already selected POs and SPs.

Actors other than POs

There are already 79 SPs.

Already existing *sathins* can help victims.

State government has created District Women Assistance Committee prior to the enactment of the Act. This Committee is going to support DV Victims per district.

This Committee is constituted by a collector¹⁰⁸ as a chair and representative from local police, a judge, and two people from NGO, two lawyers and a psychologist.

3. NGOs activities to protection of women's rights in Rajasthan

(1) Overview

In Rajasthan, World Conference on Women in 1975 in Mexico triggered a women's movement. Women

¹⁰⁸ The District Collector is a Central Indian Government appointee who is in charge of the governance of a district in a state.

created organizations and launched various campaigns to tackle the issues of women. The movement has been active since then: they aim to reveal the cruel violence against women which has been overlooked as “tradition”, demonstrate and demand government to take action against it. Such a movement is visible in anti-sati campaign.

Currently, there is Mahila Sangathan (Women’s Group in Rajasthan), a coalition consisted of twelve NGOs aiming to give protection and support to women suffering from various forms of violence.¹⁰⁹ The main activities are to run a family counselling centre and a shelter home as well as to give support to women who need protection.

1) Counselling centre and shelter

Since 1989, family counselling centres run by NGOs are located all across the country. Interestingly, 12 counselling centres for women are located within the area of police stations, notably woman’s police station, in cooperation with police in Rajasthan. Since they are located within the site of the police station, the police provide the infrastructure. Counsellors are, however, sent by NGOs and independent from the police. NGOs are also involved in running shelters to temporary protect women who could not tolerate the physical and psychological violence from their husbands or their families. NGOs are active on these activities not only in cities but rural areas.

2) Monitoring and supporting the implementation of DV Act

While NGOs have demanded the government to enact the DV Act before the enactment, they are now monitoring the state-level implementation of the Act.

As stated above, Rajasthan has no full-time PO, little budget for providing for training to police and allocating for SP., Therefore, protection orders are not granted promptly and the implementation of the act face full range of problems. NGOs point out those problems to the state government and ask for the improvement. At the same time, they provide training to police officers in police station in order for them to fulfil the obligations deriving from DV Act properly. NGOs call for state police to organize training seminars on the DV Act and provide themselves as lecturers.

NGOs also actively conduct awareness campaigns to educate women about DV Act. It is a reasonable thought that such active campaigns are reflected to the big number of application for protection order in Rajasthan.

3) NGOs also go beyond protecting women in shelters or consulting them: they deal with solving the cases. Since poor women are hesitant to hire lawyers to bring the case to the court, NGOs act as a mediator between the women and husbands and find a solution. This is the response to the situation that 95% of women who come to consult NGOs do not bring the case to the court.

¹⁰⁹ Women’s Group in Rajasthan, “Mahila Sangathan” is composed of 12 groups; Women’s Rehabilitation Group, Rajasthan University Women’s Association, Vividha(Women’s resource center), All India Janwadi Mahila Saugthan (Muslim women’s group), National Federation of Indian Women, All India Progression Women’s Association, People’s Union for Child Liberties, Vishakka- Women’s center, Bharat Gyau Vidhyau Sanini, All India Muslim Women Welfare Association, Academy for Socio Legal Studies, Women’s Wing of State Employee’s of Rajasthan.

This report details the activities of two NGOs below:

(2) Rajasthan University Women's Association (RUWA)

1) Overview of the organization

RUWA is a women's organization established in 1975, International Women's Year. The NGO was established by university students to change the situation of women in the state. Five hundred members including female university professors, wives of professors and female students run the organization.

2) RUWA's activities

A) Advocacy

In order to change wide range of gender related problems such as dowry, dowry death, sati and child marriage in Rajasthan, RUWA has conducted various kinds of advocacy campaigns. Successful campaigns RUWA was involved in are:

- Proposed to establish girls' schools (Succeeded) .
- Proposed to provide free lunch in school to promote girls' enrolment to school (Succeeded)
- Campaigned for women's employment
- Contributed to draft a state law on sexual harassment
- Established Women's police station which deals specifically with complaint from women(Succeed)
- Advocated successfully to an establishment of new state policy on women in 2000 and involved in creating Rajasthan State Commission for Women(Succeed)

B) Operation of shelters and counselling centres

a) Shelters

RUWA operates shelters for the female victims of the violence and their children funded by the government and the Bureau of Social Welfare. Victims can stay there for a maximum of two months and receive free counselling. Also, they receive trainings to learn professional skills for a new life in the shelters. This is because when they get divorced they have to support themselves financially. During their stay, expenses including food and medicine are paid by the organization.

b) Counselling centre

RUWA offers a hotline available for 24 hours for women. There are three shifts rotated among three counsellors. Since established the service, they received 500 to 600 phone calls. Medical staff (especially psychologists) and lawyers are involved in the counselling.

(3) Vishakha

1) Overview of the organization

Vishakha is a women's organization established in 1991. Their fields of activities are health, women's rights and education. In the field of women's rights, they aim to eliminate DV and empower women. Vishakha makes efforts to help women in rural area who suffer from violence. There are thirty-two Village Centres which are the centre of Vishakha's activities. There are also *Mahila Suraksha Evam Salah Kendra* (women protection centre) to give advice and protection to women facing violence in nine administrative

districts of Rajasthan and a facility named “Amanda” which aims to rehabilitate victims of violence.¹¹⁰

2) Mahila Suraksha Evam Salah Kendra (Women Protection Centre)

Women Protection Centres are located in police stations in cooperation with police. Each centre has two police officers and two trained social workers. Women who visit the centres have experienced various kinds of abuse and violence. They stay in the centre for four to five days. The centres keep providing follow-up services to the visitors: empowerment to boost women’s self-confidence, provision of legal advices, access to medical facilities, health check and welfare consultation.

In the last three and half years, nine centres had 7000 visits of women in total. On average, one centre has 400 visits per year.¹¹¹

3) Educational workshops for boys and men

From the perspective of gender equality and that men are influenced by patriarchal mind, Vishakha launched programs involving men in local level. From Vishakha’s point of view, the social environment women live in does not change without changing the male mindset. In specific, they conduct workshops and training in villages to make men think about their living situations and women’s situations through discussions and debates.

4) Evaluation of the DV Act

Vishakha’s evaluation of the DV Act is shown below:

The hearing from a staff member of Vishakha

According to the Act, courts are supposed to grant orders within 60 days: however, since there are so many cases, in reality it takes over a year. In addition, since these cases are treated as civil cases rather than criminal, women themselves have to go to courts a number of times. It costs a good amount of money to hire a lawyer. To make the situation worse, these sacrifices and efforts can be wasted because of courts denying granting orders.

In addition, there are often troubles between PO and perpetrators’ family members when they go to the victims’ houses to save women.

However, there also are significant advantages of the Act:

Women can claim their rights lawfully. Until the Act, DV was considered as family problems and police did not intervene in the issues. The Act made DV recognized as public problems.

Victims are now able to receive orders from courts and are being protected.

In order to improve the effectiveness of the Act, feminist organizations need to launch anti-DV campaigns in more visible ways.

4. Activities of international organizations

¹¹⁰ <http://www.vishakhawe.org/programmes.php?testme=1> (visited on 27-Oct,2008)

¹¹¹For example, physical abuse, dowry, husband’s control over wife’s income, husband’s usurper on the child, husband’s rejection of the interview with the child and husband’s alcohol dependency are their major problems.

International organizations UNICEF and UNFPA have regional offices in Rajasthan and conduct grass-roots campaigns in the region.

(1) UNICEF

UNICEF works to solve issues related to child marriage and young girls. In Rajasthan, as it was stated above, they provide funds for Public Hearing which seek immediate relief for the abused .

(2) UNFPA

UNFPA conducts an awareness campaign about abortion of female foetuses across India. They also work on DV and HIV. Below is a hearing in UNFPA Jaipur office focusing on their effort on DV in Rajasthan.

Sunil Thomas Jacob, UNFPA Jaipur office

In Rajasthan, there are in total about 100 counselling centres run by NGOs and governmental organizations. UNFPA operates nine of Family Counselling Centres. In Jaipur, the centre is located on the site of the State Commission for Women and in other eight areas they are located in hospitals. The merit of placing these in hospitals is that doctors who recognize family problem of women through medial checks can introduce the women to the family counselling centres. For instance, when a doctor finds a scar that might have been caused by DV, women are advised to see a counsellor. Counsellors are required to have a background as a social worker: one male and one female counsellor are placed per centre.

Along with the operation of Family Counselling Centres, UNFPA conducts gender training for doctors. This is because when a doctor lacks the gender perspective, he/she cannot find out that the woman is having family problems. Counsellors should be trained as well.

UNFPA focuses on increasing awareness about gender among people who engage in solving problems such as doctors and counsellors and to improve the quality of the trainings to do so.

(Q1) Are these counselling centres accessible for women?

(A1) Yes, it is accessible. In Rajasthan, the outreach for women is sufficient and the information about supporting organizations is shared as well.

In order to administrate all women's development project by DWCD, *sathins* are chosen. One *sathin* is placed per four to five villages with roughly 5000 populations.

They take care of self help groups and issues of violence against women. The *sathin* also informs local women what kinds of support organizations are available.

5. Summary

On the one hand, the situation in Rajasthan shows structural root causes of violence against women which are in common with other states in India. The reason behind the serious violence against women is the strict gender control based on a patriarchal ideology. In addition, women have only limited access to life-related social resources (e.g. birth, development and health). The big gap between literacy and educational level between men and women is a chief example. Under a social structure of unfair division of

resources, women are forced to live unhealthily and as an inferior gender. Naturally, these factors create a condition where the violence against women and violation of women's rights can easily happen. Therefore, in order to ameliorate violence in a sustainable way, it is crucial to focus on both protection of women from day-by day violence and improving women's status through social development and women's empowerment.

On the other hand, NGO activeness in Rajasthan is notable. Their supporting network extensively covers both cities and rural areas: there are about 100 counselling centres across the state and consultation service offered in police stations and medical institutions. All the effort is to firmly take the side of women and demand the state government to take actions for the actualization of women's rights.

In response to these activities, state-run development projects started to go into rural areas distant from the capital. Of all the developmental projects, the role of *sathin* is significant: they are in charge of the projects and acts as a consult for women not only about DV but women related issues in general. The latest project by the Committee is the Public Hearing, a quasi-judicial scheme to provide immediate support for women who are in rural area and not likely to consult a lawyer or police. The current situation in which the administrative branch, development projects; and NGOs are active in rural and tribal areas and available for people at the grassroots level is a great advantage for the new DV Act. Rajasthan has the highest number of applications for protection-order in India. This likely is a two-sided fact: on one hand, the women in Rajasthan are subjected to serious violence. On the other hand, this proves that various actors' efforts to support women and advertise and inform them about the Act are being rewarded.

However, of over 37,000 applications, only six orders were granted (by July 2007). The reasons are as stated in Chapter V: insufficient appointment of POs, the budget, implementation and malfunction of judicial system and police.

Even if victims respond to the NGOs' call for actions through the justice system to regain their rights, if the judicial branch continues not to respond or responds too late to women, the expectations of the Act will turn into disappointment and will fall into familiar phenomenon- a huge gap between reality and law. In order to avoid such situation, the administrative branch, police and judicial branch are required to fill the implementation gap on the DV Act.

VIII Indian government's obligations under international law

Under international law, the Indian government is obliged to prevent women from being subjected to violence or murder because of violence, protect victims and potential victims, and prevent the relapse of the violence in the future through effective relief of victims and appropriate punishment of the defendants.

1. Right to Life

Under international law, the government is obliged to respect citizens' Right to Life. Article 6 of International Covenant on Civil and Political Rights (ICCPR) begins with: Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

As a country concluded the ICCPR, India is obliged to not only respect the rights but also to ensure them. The obligation is internationally established since the judgement of *Velasquez Rodriguez v. Honduras* by Inter-American Court of Human Rights:

“The State has a legal duty to take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation.”
(paragraph 174)

India has an obligation to prevent the violation of right to life and integrity of women by any means in the course of violence against women, such as dowry death, dowry-related suicides, *sati* and witch hunting, and once the violence occurs, conduct a thorough investigation, identify and prosecute the responsible and ensure reparation for the victims.

2. Right to be free from torture

Article 7 of ICCPR states: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation. Committee against Torture(CAT) requires all the judicial, administrative and legislative branches in participating countries to take measures to prevent tortures within the jurisdiction of each country. CAT general comment No. 2 (2007) on the implementation of article 2 states: Since the failure of the State to exercise due diligence to intervene to stop, sanction and provide remedies to victims of torture facilitates and enables non-State actors to commit acts impermissible under the Convention with impunity, the State’s indifference or inaction provides a form of encouragement and/or de facto permission.¹¹²

Manfred Nowak, the United Nations Special Rapporteur on Torture, published a report at UN Human Rights Council in January 2008 underscoring that violence against women constitutes torture. (Human Rights Council, seventh session, A/HRC/7/3 15 January 2008) The report says that “in regard to violence against women, the purpose element is always fulfilled, if the acts can be shown to be gender-specific, since discrimination is one of the elements mentioned in the CAT definition. Moreover, if it can be shown that an act had a specific purpose, the intent can be implied.” Also, in regard to the statement above, when a nation is not involved in due diligence, it implies that the nation is agreeing or conniving the torture (Article 31 and 32).

The report also clearly points out that dowry related violence and *sati* is tortures (Article 44) and studies when DV qualifies as torture. It goes on to say that even if a participating nation has a law against DV, if administrative branch does not enforce it properly and victims cannot receive necessary protection or aids, it qualifies as torture.

¹¹² Committee against Torture general comment No. 2 (2007) on the implementation of article 2 by States parties, para. 18.

3. Right to effective remedy

As a state party of International Covenant on Civil and Political Rights (ICCPR), the Indian government needs to guarantee victims of human rights violations the right to effective remedy. Through Article 2 of The International Covenant on Civil and Political Rights, countries are obligated:

- (1) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
- (2) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
- (3) To ensure that the competent authorities shall enforce such remedies when granted.

4. Right to reside

Article 17 of ICCPR and article 11 of International Covenant on Economic, Social and Cultural Rights (ICESCR) guarantee the right to housing.

Article 17 of ICCPR says:

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.

Article 11 of ICESCR says:

The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.

General comment of ICESCR clarifies that right to housing is not only family right, but human rights for individual and special attention shall be given for most vulnerable, such as women, children, elderly and handicapped.

In this regard, the state has duty to protect women from arbitrary or unlawful attack against her right to home. State has to take all necessary measure to protect women from forced eviction from their matrimonial home from their husband or families in law.

5. Declaration on the Elimination of Violence against Women

Article four of Declaration on the Elimination of Violence against Women adopted in December 1993 demands member states fight against violence against women.

Article 4 underscores that; “States should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination. States should pursue by all appropriate means and without delay a policy of eliminating violence against women” and oblige all member states specific measures. In the context of India, these provisions are notable:

- (c) Exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons;
- (d) Develop penal, civil, labor and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence; women who are subjected to violence should be provided with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm that they have suffered; States should also inform women of their rights in seeking redress through such mechanisms;
- (g) Work to ensure, to the maximum extent feasible in the light of their available resources and, where needed, within the framework of international cooperation, that women subjected to violence and, where appropriate, their children have specialized assistance, such as rehabilitation, assistance in child care and maintenance, treatment, counseling, and health and social services, facilities and programs, as well as support structures, and should take all other appropriate measures to promote their safety and physical and psychological rehabilitation;
- (h) Include in government budgets adequate resources for their activities related to the elimination of violence against women;
- (i) Take measures to ensure that law implementation officers and public officials responsible for implementing policies to prevent, investigate and punish violence against women receive training to sensitize them to the needs of women.¹¹³

6. Convention on the Elimination of All Forms of Discrimination Against Women(CEDAW)

(1) The General recommendation 19 issued by Committee on the Elimination of Discrimination against Women emphasizes that “discrimination under the Convention is not restricted to action by or on behalf of Governments... the Convention calls on States parties to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise. Under general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.” The recommendation identify state obligation as follows,

- (i) Effective legal measures, including penal sanctions, civil remedies and compensatory provisions to protect women against all kinds of violence, including inter alia violence and abuse in the family, sexual assault and sexual harassment in the workplace;
- (ii) Preventive measures, including public information and education programmes to change attitudes concerning the roles and status of men and women;
- (iii) Protective measures, including refuges, counseling, rehabilitation, and support services for women who are the victims of violence or who are at risk of violence;

(2) CEDAW’s Individual Complaint Cases

CEDAW recognized that states violate obligation under the Convention in two VAW cases: Austrian cases

¹¹³This is a typical content of Article 4. This article covers more comprehensive obligation of the member States.

where DV victims were killed by husbands¹¹⁴ because of insufficient intervention by police or judicial system and a Hungarian case where the government did not provide enough support even when the situation was dangerous.¹¹⁵ In two Austrian cases, despite the DV Act they have with protection order system, police and judicial system did not research the case properly and failed to prevent the murders. CEDAW pronounced it a violation of the Convention since the Act has to be followed by the implementation.

(3) CECAW's observation to India

In 2007, CEDAW studied the second and the third report by Indian government on the implementation situation of the Convention.

While the Committee recognized several of India's efforts including the enactment of the Protection of Women from Domestic Violence Act in 2005, the Committee express grave concern on the situation of women, especially ongoing violence against women in India. In particular, the Committee repeatedly pointed the lack of implementation of laws to protect women from violence, and reiterate the national plan for effective implementation. Notable observations are below (See detail in Annex II).

16. Noting that the implementation of legislative and policy initiatives taken by the central Government is often left to the states and union territories, and that states and union territories have jurisdiction over certain areas covered in the Convention, the Committee is concerned that there are inadequate structures, mechanisms and actions being taken to ensure effective coordination and consistent application of the Convention in all states and union territories.

20. The Committee continues to be concerned about the absence of a comprehensive plan to address all forms of violence against women. While appreciating the enactment of the Domestic Violence Act, 2005, the Committee is concerned that the various states and union territories have not put into place mechanisms to effectively enforce this Act.

7. Summary

As a party to the ICCPR, ICESCR and CEDAW, it is clear that India needs take actions to fulfill its obligations. Even though Indian government enacted a progressive DV Act, under the current reality of implementation, it is not followed with actual protection of victims from violence. In other words, the state fails in its legal duty under international law. International law obliges India to prevent, protect, investigate, prosecute and punish DV, and provide effective remedy for victims. Indian government needs to properly enforce and implement the DV Act to actually protect women from injuries and very real threats to their lives. Also Indian government need to protect women from all attack against their right to home, right to reside by taking all appropriate measure to prevent arbitrary or unlawful

¹¹⁴ The Vienna Intervention Centre against Domestic Violence and the Association for Women's Access to Justice on behalf of Hakan Goekce, Handan Goekce, and Guelue Goekce v. Austria, No.5/2003, The Vienna Intervention Centre against Domestic Violence and the Association for Women's Access to Justice on behalf of Banu Akbak, Gulen Khan, and Melissa Ozdemir v. Austria, No.6/2003.

¹¹⁵ Ms. A. T. v. Hungary No.2/2003.

eviction by their families in law.

X. Recommendation

What became clear from this research is that although the DV Act is innovative and progressive, the actual implementation of the Act has numerous problems and cannot save women from killing and violence every days. Despite NGOs' effort to raise awareness about the Act and trainings as well as several good practices within local governments, there are little examples that protection orders were granted. In other words, there is a huge gap between the Act and the reality because of the lack of budget and the lack of political will to implement the Act. The violence and fear prevent sound development and empowerment of women, and cannot improve women's status in the society.

After the research on violence against women focusing on DV, having a recognition that the government of India has primary duty to eliminate all form of violence against women in India, Human Rights Now makes the following recommendations in order to eliminate DV and implement the Act properly:

(To Government of India)

1. Research and Analyze the implementation of DV Act, identify the cause of malfunction and take all necessary measure to solve problems.

1) To conduct a nation-wide survey on the number of application for protection orders, number of the orders granted, the enforcement of the protection order, and the duration by the decisions of orders to be granted, in order to understand the implementation of the Act as the Government.

In particular, specific researches on cities and rural areas/ castes and minority tribes should be conducted.

2) In the course of analysis, following points should be taken into consideration.

A) The cause of difference with respect to the numbers of application and grant per capita shall be analyzed, such as gap of access to justice, access to protection officers, access to free legal aid, or gap of dissemination among general public.

B) To identify the cause, when the number of granted protection order is fewer than 70% of application, or application for relief or when orders are not granted within 60 days, and take necessary measure to improve the situation.

2. Establish a mechanism of coordination between the central government and state governments for the effective implementation of the Act

As CEDAW points out, although India has progressive women-related legislations, implementation of legislative and policy initiatives is often left to the states and union territories as well as its jurisdictions, which cause lack of coordination between the central government and states, results inadequate implementation of the legislations. HRN recommends to establish necessary mechanism of consultation, coordination and partnership between central government and state governments in order to ensure effective implementation of the all legislation related to violence against women.

The central government should send governmental official as necessary to monitor and have consultation with state governments with respect to implementation.

The central government as well as each state government shall establish executing plan of implementation and conduct periodic review of implementation.

National Commission of Women and state commission of women shall also strengthen the coordination and collaboration to effective implementation of women related policy.

(To GOI and state governments)

3. Budget for the DV Act

The central government shall disclose the budget used for DV Act, evaluate and review how the budget was allocated and used and how it contributed effective implementation to the public. Each State government shall have separate independent budget for implementation of the DV Act and disclose the use and evaluation to the public.

4. Dissemination and outreach of the DV Act

Because of lack of knowledge of DV Act as well as means to use the Act, only small percentage of women actually use the DV Act in India. According to the Article 11 of the DV Act, central and state governments are responsible for disseminating the Act. It is necessary to inform the DV Act and its contents to women including in rural areas about DV Act and promote access to justice.

HRN recommends to both central government and states governments to make effort for outreach and legal literacy training.

5. Budget and institutional building for PO's office

In order to improve the accessibility to the Act, it is necessary for POs, the first contact point to the Act from women to be accessible from women, to operate their mandates as the Act expected. However, Po's situation is one of the serious causes of malfunction of the Act.

The HRN research mission heard many complaints from Pos, such as: salaries or travel expenses are not provided, infrastructure is not sufficient for the office, the number of officers is extremely insufficient. In order to implement and enforce the Act properly, appointment of full-time POs and the administrative support for their work are crucial. The central government as well as each local government shall take immediate measure including sufficient budgeting to improve the situation. In particular,

- (1) The full-time PO shall be appointment and accessible for women at every city and village.
- (2) PO is provided with an independent office and budget
- (3) PO shall be provided sufficient professional training in order to prevent inadequate practice and harm. PO shall be provided protective assistance from police at the time of enforcement of orders.
- (4) 6. Budget for SP

According to DV Act, through registers as SP, NGO can support victim of DV as PO does. In reality,

however, the lack of budget for SP keeps the number of the SP extremely low. Sufficient budget shall be provided for SP so that NGO can contribute the implementation of the Act as SP.

6. Increasing the number of counselling centre

The lesson from Rajasthan is that the more place for women to consult, such as counselling centres in rural areas, women's police station as well as counselling centre next to police station, more application of protection order. In this regard, both central and each state government shall expand of places for consultation, such as counselling centres and women's police stations.

7. Establish and strengthen the function of shelters and medical facilities

(1) Establishment of shelter and medical facility

Although the DV Act demands the establishment of shelter and medical facility in every state, only small number of states appointed shelters or medical facilities for victims of DV

Each state shall fulfil its duty and build shelter homes and medical facilities for victims.

(2) Trainings for doctors and counselling centres in hospitals

According to the statistics, only two percent of DV victims consult police.

Since women under severe DV might visit hospital, it is important to train doctors and medical workers for the occasion, because even if victims do not tell doctors about DV, well-trained doctors might be able to recognize and intervene the situation. It is recommended to follow the progressive example, counselling centres locating at hospital.

8. Strengthening and support for helping scheme such as public hearings

ADR scheme such as public hearing operating in Rajasthan would provide effective measure for protection of ordinary women in rural area who are hesitant to access to justice, especially under the situation that protection order still take long time to be granted.

Public hearings are accessible, immediate and effective measure since it take place in respective rural villages where DV victims reside so that women do not have to move, as well as intended to solve the case within the day of hearing. On the other hand, it is necessary to pay attention if the speediness is not giving women unsatisfying results. The follow-up to make sure that the women are not being revenged for taking action before public hearing is also necessary.

9. Provide support to grassroots NGOs

NGOs play crucial roles in the fight against DV: they establish counselling centres and shelter homes in rural areas where state or international organizations do not reach by their hands, provide shelters, consultation services, 24hour helpline, job trainings, legal assistance, and community education. Without NGOs, it is extremely difficult to guarantee the women's rights. Therefore, it is recommended to provide financial support for these grassroots NGOs to implement the DV act.

10. Comprehensive national policy of gender equality and women's empowerment

The vicious circle of India's gender issue is that violence against women derives from their low socioeconomic status and such violence ties women to the low status. Taking it into consideration, it is crucial to mainstream policy of gender equality and women's empowerment along with the fundamental elimination of violence against women within national policy.

HRN recommends to establish concrete action plan on education for women, improvement of literacy, action plan to decrease child marriage, support for women's economical independence, and equal employment at office is crucial. (Justice, police, judicial and administrative related workers)

11. Reform of legal aid system to ensure access to justice for women

Under the Legal Service Authority Act, women in poverty are given right to receive free legal aid in India. The DV Act mandates police to inform victims about the legal service.

However, as CEDAW stated in its report, women in rural areas cannot receive legal services. LC reports says that in order to receive legal service, victims need permission from courts which makes it hard for ordinary women to utilize the service.

HRN recommends drastic reform on legal aid system to increase accessibility for all women suffering from violence to the free legal aid.

12. Strengthen judicial officials' capacity and promote training on DV Act as well as gender sensitivity

The research mission sees the low level understanding of the DV act and other gender related problem among judges, lawyers and law enforcement.

There are cases reported to the mission that judges deal with cases of protection order without a proper knowledge of the DV Act. There are also cases reported that inadequate response of police to DV cases because of lack of awareness and knowledge. In addition, it is pointed out that the bar association is not active in disseminating the Act nor representing victims of DV.

Such situations slow down the immediate protection for women suffering from violence.

HRN recommends

- (1) to conduct systematic and periodic training on the content and implementation of DV Act for all judicial and law enforcement workers dealing with DV act including judges, public officers, lawyers, prosecutors and police officers.
- (2) to conduct systematic and periodic gender sensitive training for judges, lawyers, prosecutors and police officers.

HRN also recommends the bar association to play a leading role to disseminate the DV Act by; providing systematic internal trainings for lawyers about the Act and practical methodology, as well as providing external legal education and dissemination about the Act for general public especially in

order for victims to use the Act.

13. Fundamental improvement of the court procedure on Protection Order

Despite the Act demands that courts to finish the trial within 60 days, in reality the order takes long time to be granted. Court needs to conduct a research to find out why it takes longer and plan a fundamental solution to it.

In case the cause of delay stems from lack of methodological training or knowledge of the DV act, the systematic nationwide training shall be introduced for all judicial personnel in charge.

In case the cause of delay stems from lack of de facto capacity of judiciary, the court budget shall increasingly be allocated to appoint sufficient numbers of magistrate and other staffs in each local courts.

14. Ensure the right to home for women

HRN express its concern on the tendency to deny residence order under DV act after the Supreme Court judgment on *Batra v Batra* case.

In order to exercise state obligation to protect women's right to home from arbitrary or unlawful attack, the judicial interpretation of the scope of *Batra v Batra* shall be strictly limited to what the judgement said.

Also, in case that victimized women are in the scope of *Batra v Batra*, state shall provide alternative measure to ensure their right to reside as well as right to effective remedy for violation of right to home.

15. The criminal justice reform to end impunity

Many DV crimes are unpunished and perpetrators enjoy impunity under low conviction rate. The cause of low conviction rate stems

India has not yet taken appropriate measures to prevent recurrence of violence against women.

During the research, the cause of impunity was pointed out. One is that incapability of police to collect the evidence contributes significant number of acquittal. Other is that excessive number of cases compare to judicial capacity causes enormous delay of court proceeding. It is a unique Indian phenomenon that in order for a criminal case to be convicted, it takes seven to ten years. Without an effort to change the situation, the elimination of violence against women is extremely difficult.

It became clear that the fundamental reform of criminal justice system is necessary to end impunity.

Increasing number of judicial budget, increase the number of judges, gender sensitive education for judges, judicial personnel, prosecutors, lawyers and police is required.

Also, with respect to criminal investigation, capacity building of police and prosecutor is required. Special focus should be given to scientific evidence as well as modernised technique of autopsy.

(Recommendation to Japanese government, international organization, and donors)

16. Strategize its aid policy for elimination of violence against women

Gender equality and women's rights should be prioritized in development aid policies. Since the violence

against women deteriorates human development and security of entire female population in India, policy to address violence against women shall be prioritized in development policy.

Special attention and support should be provided for NGOs working for women suffering from violence in rural area.

ANNEX I :

THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005

NO. 43 OF 2005 [13th September, 2005.]

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. BE it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:-

CHAPTER I PRELIMINARY

1. Short title, extent and commencement.

- (1) This Act may be called the Protection of Women from Domestic Violence Act, 2005. (2) It extends to the whole of India except the State of Jammu and Kashmir.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Definitions.

In this Act, unless the context otherwise requires,-

- (a) "aggrieved person" means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent;
- (b) "child" means any person below the age of eighteen years and includes any adopted, step or foster child;
- (c) "compensation order" means an order granted in terms of section 22;
- (d) "custody order" means an order granted in terms of section 21;
- (e) "domestic incident report" means a report made in the prescribed form on receipt of a complaint of domestic violence from an aggrieved person; (
- f) "domestic relationship" means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family;
- (g) "domestic violence" has the same meaning as assigned to it in section 3;
- (h) "dowry" shall have the same meaning as assigned to it in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961);
- (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 (2 of 1974) 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;
- (j) "medical facility" means such facility as may be notified by the State Government to be a medical facility for the purposes of this Act;
- (k) "monetary relief" means the compensation which the Magistrate may order the respondent to pay to the

aggrieved person, at any stage during the hearing of an application seeking any relief under this Act, to meet the expenses incurred and the losses suffered by the aggrieved person as a result of the domestic violence;

- (l) "notification" means a notification published in the Official Gazette and the expression "notified" shall be construed accordingly;
- (m) "prescribed" means prescribed by rules made under this Act;
- (n) "Protection Officer" means an officer appointed by the State Government under sub-section (1) of section 8;
- (o) "protection order" means an order made in terms of section 18;
- (p) "residence order" means an order granted in terms of sub-section (1) of section 19;
- (q) "respondent" means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act: Provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner;
- (r) "service provider" means an entity registered under sub-section (1) of section 10;
- (s) "shared household" means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household;
- (t) "shelter home" means any shelter home as may be notified by the State Government to be a shelter home for the purposes of this Act.

CHAPTER II DOMESTIC VIOLENCE

3. Definition of domestic violence.

For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it –

- (a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or
- (b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or
- (c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or (d) otherwise injures or causes harm, whether physical or mental, to the

aggrieved person.

Explanation I.-

For the purposes of this section,-

- (i) "physical abuse" means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;
- (ii) "sexual abuse" includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;
- (iii) "verbal and emotional abuse" includes-
 - (a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and
 - (b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested.
- (iv) "economic abuse" includes-
 - (a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;
 - (b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and
 - (c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

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.

CHAPTER III POWERS AND DUTIES OF PROTECTION

OFFICERS, SERVICE PROVIDERS, ETC.

4. Information to Protection Officer and exclusion of liability of informant. –

(1) Any person who has reason to believe that an act of domestic violence has been, or is

being, or is likely to be committed, may give information about it to the concerned Protection Officer.

(2) No liability, civil or criminal, shall be incurred by any person for giving in good faith of information for the purpose of sub-section (1).

5. Duties of police officers, service providers and Magistrate. –

A police officer, Protection Officer, service provider or Magistrate who has received a complaint of domestic violence or is otherwise present at the place of an incident of domestic violence or when the incident of domestic violence is reported to him, shall inform the aggrieved person-

- (a) of her right to make an application for obtaining a relief by way of a protection order, an order for monetary relief, a custody order, a residence order, a compensation order or more than one such order under this Act;
- (b) of the availability of services of service providers;
- (c) of the availability of services of the Protection Officers;
- (d) of her right to free legal services under the Legal Services Authorities Act, 1987 (39 of 1987);
- (e) of her right to file a complaint under section 498A of the Indian Penal Code (45 of 1860), wherever relevant: Provided that nothing in this Act shall be construed in any manner as to relieve a police officer from his duty to proceed in accordance with law upon receipt of information as to the commission of a cognizable offence.

6. Duties of shelter homes.-

If an aggrieved person or on her behalf a Protection Officer or a service provider requests the person in charge of a shelter home to provide shelter to her, such person in charge of the shelter home shall provide shelter to the aggrieved person in the shelter home.

7. Duties of medical facilities.-

If an aggrieved person or, on her behalf a Protection Officer or a service provider requests the person in charge of a medical facility to provide any medical aid to her, such person in charge of the medical facility shall provide medical aid to the aggrieved person in the medical facility.

8. Appointment of Protection Officers. –

- (1) The State Government shall, by notification, appoint such number of Protection Officers in each district as it may consider necessary and shall also notify the area or areas within which a Protection Officer shall exercise the powers and perform the duties conferred on him by or under this Act.
- (2) The Protection Officers shall as far as possible be women and shall possess such qualifications and experience as may be prescribed.
- (3) The terms and conditions of service of the Protection Officer and the other officers subordinate to him shall be such as may be prescribed.

9. Duties and functions of Protection Officers.-

(1) It shall be the duty of the Protection Officer-

- (a) to assist the Magistrate in the discharge of his functions under this Act;
- (b) to make a domestic incident report to the Magistrate, in such form and in such manner as may be prescribed, upon receipt of a complaint of domestic violence and forward copies thereof to the police officer in charge of the police station within the local limits of whose jurisdiction domestic violence is alleged to have been committed and to the service providers in that area;
- (c) to make an application in such form and in such manner as may be prescribed to the Magistrate, if the aggrieved person so desires, claiming relief for issuance of a protection order;
- (d) to ensure that the aggrieved person is provided legal aid under the Legal Services Authorities Act, 1987 (39 of 1987) and make available free of cost the prescribed form in which a complaint is to be made;
- (e) to maintain a list of all service providers providing legal aid or counselling, shelter homes and medical facilities in a local area within the jurisdiction of the Magistrate;
- (f) to make available a safe shelter home, if the aggrieved person so requires and forward a copy of his report of having lodged the aggrieved person in a shelter home to the police station and the Magistrate having jurisdiction in the area where the shelter home is situated;
- (g) to get the aggrieved person medically examined, if she has sustained bodily injuries and forward a copy of the medical report to the police station and the Magistrate having jurisdiction in the area where the domestic violence is alleged to have been taken place;
- (h) to ensure that the order for monetary relief under section 20 is complied with and executed, in accordance with the procedure prescribed under the Code of Criminal Procedure, 1973 (2 of 1974);
- (i) to perform such other duties as may be prescribed. (2) The Protection Officer shall be under the control and supervision of the Magistrate, and shall perform the duties imposed on him by the Magistrate and the Government by, or under, this Act.

10. Service providers.-

- (1) Subject to such rules as may be made in this behalf, any voluntary association registered under the Societies Registration Act, 1860 (21 of 1860) or a company registered under the Companies Act, 1956 (1 of 1956) or any other law for the time being in force with the objective of protecting the rights and interests of women by any lawful means including providing of legal aid, medical, financial or other assistance shall register itself with the State Government as a service provider for the purposes of this Act.
- (2) A service provider registered under sub-section (1) shall have the power to-
- (a) record the domestic incident report in the prescribed form if the aggrieved person so desires and forward a copy thereof to the Magistrate and the Protection Officer having jurisdiction in the area

- where the domestic violence took place;
- (b) get the aggrieved person medically examined and forward a copy of the medical report to the Protection Officer and the police station within the local limits of which the domestic violence took place;
 - (c) ensure that the aggrieved person is provided shelter in a shelter home, if she so requires and forward a report of the lodging of the aggrieved person in the shelter home to the police station within the local limits of which the domestic violence took place.
- (3) No suit, prosecution or other legal proceeding shall lie against any service provider or any member of the service provider who is, or who is deemed to be, acting or purporting to act under this Act, for anything which is in good faith done or intended to be done in the exercise of powers or discharge of functions under this Act towards the prevention of the commission of domestic violence.

11. Duties of Government.-

The Central Government and every State Government, shall take all measures to ensure that-

- (a) the provisions of this Act are given wide publicity through public media including the television, radio and the print media at regular intervals;
- (b) the Central Government and State Government officers including the police officers and the members of the judicial services are given periodic sensitization and awareness training on the issues addressed by this Act;
- (c) effective co-ordination between the services provided by concerned Ministries and Departments dealing with law, home affairs including law and order, health and human resources to address issues of domestic violence is established and periodical review of the same is conducted;
- (d) protocols for the various Ministries concerned with the delivery of services to women under this Act including the courts are prepared and put in place.

CHAPTER IV PROCEDURE FOR OBTAINING ORDERS OF RELIEFS

12. Application to Magistrate.-

- (1) An aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under this Act: Provided that before passing any order on such application, the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer or the service provider.
- (2) The relief sought for under sub-section (1) may include a relief for issuance of an order for payment of compensation or damages without prejudice to the right of such person to institute a suit for compensation or damages for the injuries caused by the acts of domestic violence committed by the respondent: Provided that where a decree for any amount as compensation or damages has been passed by any court in favour of the aggrieved person, the amount, if any, paid or payable in pursuance of the order made by the Magistrate under this Act shall be set off against the amount payable under

such decree and the decree shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or any other law for the time being in force, be executable for the balance amount, if any, left after such set off.

- (3) Every application under sub-section (1) shall be in such form and contain such particulars as may be prescribed or as nearly as possible thereto.
- (4) The Magistrate shall fix the first date of hearing, which shall not ordinarily be beyond three days from the date of receipt of the application by the court.
- (5) The Magistrate shall endeavour to dispose of every application made under sub-section (1) within a period of sixty days from the date of its first hearing.

13. Service of notice.-

- (1) A notice of the date of hearing fixed under section 12 shall be given by the Magistrate to the Protection Officer, who shall get it served by such means as may be prescribed on the respondent, and on any other person, as directed by the Magistrate within a maximum period of two days or such further reasonable time as may be allowed by the Magistrate from the date of its receipt.
- (2) A declaration of service of notice made by the Protection Officer in such form as may be prescribed shall be the proof that such notice was served upon the respondent and on any other person as directed by the Magistrate unless the contrary is proved.

14. Counselling.-

- (1) The Magistrate may, at any stage of the proceedings under this Act, direct the respondent or the aggrieved person, either singly or jointly, to undergo counselling with any member of a service provider who possess such qualifications and experience in counselling as may be prescribed.
- (2) Where the Magistrate has issued any direction under sub-section (1), he shall fix the next date of hearing of the case within a period not exceeding two months.

15. Assistance of welfare expert.-

In any proceeding under this Act, the Magistrate may secure the services of such person, preferably a woman, whether related to the aggrieved person or not, including a person engaged in promoting family welfare as he thinks fit, for the purpose of assisting him in discharging his functions.

16. Proceedings to be held in camera.-

If the Magistrate considers that the circumstances of the case so warrant, and if either party to the proceedings so desires, he may conduct the proceedings under this Act in camera.

17. Right to reside in a shared household.-

- (1) Notwithstanding anything contained in any other law for the time being in force, every woman in a

domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same.

- (2) The aggrieved person shall not be evicted or excluded from the shared household or any part of it by the respondent save in accordance with the procedure established by law.

18. Protection orders.-

The Magistrate may, after giving the aggrieved person and the respondent an opportunity of being heard and on being prima facie satisfied that domestic violence has taken place or is likely to take place, pass a protection order in favour of the aggrieved person and prohibit the respondent from-

- (a) committing any act of domestic violence;
- (b) aiding or abetting in the commission of acts of domestic violence;
- (c) entering the place of employment of the aggrieved person or, if the person aggrieved is a child, its school or any other place frequented by the aggrieved person;
- (d) attempting to communicate in any form, whatsoever, with the aggrieved person, including personal, oral or written or electronic or telephonic contact;
- (e) alienating any assets, operating bank lockers or bank accounts used or held or enjoyed by both the parties, jointly by the aggrieved person and the respondent or singly by the respondent, including her stridhan or any other property held either jointly by the parties or separately by them without the leave of the Magistrate;
- (f) causing violence to the dependants, other relatives or any person who give the aggrieved person assistance from domestic violence;
- (g) committing any other act as specified in the protection order.

19 Residence orders.-

- (1) While disposing of an application under sub-section (1) of section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order –

- (a) restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household;
- (b) directing the respondent to remove himself from the shared household;
- (c) restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides;
- (d) restraining the respondent from alienating or disposing off the shared household or encumbering the same;
- (e) restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate; or

- (f) directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require:
Provided that no order under clause (b) shall be passed against any person who is a woman.
- (2) The Magistrate may impose any additional conditions or pass any other direction which he may deem reasonably necessary to protect or to provide for the safety of the aggrieved person or any child of such aggrieved person.
- (3) The Magistrate may require from the respondent to execute a bond, with or without sureties, for preventing the commission of domestic violence.
- (4) An order under sub-section (3) shall be deemed to be an order under Chapter VIII of the Code of Criminal Procedure, 1973 (2 of 1974) and shall be dealt with accordingly.
- (5) While passing an order under sub-section (1), sub-section (2) or sub-section (3), the court may also pass an order directing the officer in charge of the nearest police station to give protection to the aggrieved person or to assist her or the person making an application on her behalf in the implementation of the order.
- (6) While making an order under sub-section (1), the Magistrate may impose on the respondent obligations relating to the discharge of rent and other payments, having regard to the financial needs and resources of the parties.
- (7) The Magistrate may direct the officer in-charge of the police station in whose jurisdiction the Magistrate has been approached to assist in the implementation of the protection order.
- (8) The Magistrate may direct the respondent to return to the possession of the aggrieved person her stridhan or any other property or valuable security to which she is entitled to.

20. Monetary reliefs.-

- (1) While disposing of an application under sub-section (1) of section 12, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may include, but not limited to,-
- (a) the loss of earnings;
- (b) the medical expenses;
- (c) the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person; and
- (d) the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force.
- (2) The monetary relief granted under this section shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed.
- (3) The Magistrate shall have the power to order an appropriate lump sum payment or monthly payments of

maintenance, as the nature and circumstances of the case may require.

- (4) The Magistrate shall send a copy of the order for monetary relief made under sub-section (1) to the parties to the application and to the in charge of the police station within the local limits of whose jurisdiction the respondent resides.
- (5) The respondent shall pay the monetary relief granted to the aggrieved person within the period specified in the order under sub-section (1).
- (6) Upon the failure on the part of the respondent to make payment in terms of the order under sub-section (1), the Magistrate may direct the employer or a debtor of the respondent, to directly pay to the aggrieved person or to deposit with the court a portion of the wages or salaries or debt due to or accrued to the credit of the respondent, which amount may be adjusted towards the monetary relief payable by the respondent.

21. Custody orders.-

Notwithstanding anything contained in any other law for the time being in force, the Magistrate may, at any stage of hearing of the application for protection order or for any other relief under this Act grant temporary custody of any child or children to the aggrieved person or the person making an application on her behalf and specify, if necessary, the arrangements for visit of such child or children by the respondent: Provided that if the Magistrate is of the opinion that any visit of the respondent may be harmful to the interests of the child or children, the Magistrate shall refuse to allow such visit.

22. Compensation orders.-

In addition to other reliefs as may be granted under this Act, the Magistrate may on an application being made by the aggrieved person, pass an order directing the respondent to pay compensation and damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence committed by that respondent.

23. Power to grant interim and ex parte orders.-

- (1) In any proceeding before him under this Act, the Magistrate may pass such interim order as he deems just and proper.
- (2) If the Magistrate is satisfied that an application prima facie discloses that the respondent is committing, or has committed an act of domestic violence or that there is a likelihood that the respondent may commit an act of domestic violence, he may grant an ex parte order on the basis of the affidavit in such form, as may be prescribed, of the aggrieved person under section 18, section 19, section 20, section 21 or, as the case may be, section 22 against the respondent.

24. Court to give copies of order free of cost.-

The Magistrate shall, in all cases where he has passed any order under this Act, order that a copy

of such order, shall be given free of cost, to the parties to the application, the police officer in-charge of the police station in the jurisdiction of which the Magistrate has been approached, and any service provider located within the local limits of the jurisdiction of the court and if any service provider has registered a domestic incident report, to that service provider.

25. Duration and alteration of orders.-

- (1) A protection order made under section 18 shall be in force till the aggrieved person applies for discharge.
- (2) If the Magistrate, on receipt of an application from the aggrieved person or the respondent, is satisfied that there is a change in the circumstances requiring alteration, modification or revocation of any order made under this Act, he may, for reasons to be recorded in writing pass such order, as he may deem appropriate.

26. Relief in other suits and legal proceedings.-

- (1) Any relief available under sections 18, 19, 20, 21 and 22 may also be sought in any legal proceeding, before a civil court, family court or a criminal court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this Act.
- (2) Any relief referred to in sub-section (1) may be sought for in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal court.
- (3) In case any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under this Act, she shall be bound to inform the Magistrate of the grant of such relief.

27. Jurisdiction.-

- (1) The court of Judicial Magistrate of the first class or the Metropolitan Magistrate, as the case may be, within the local limits of which-
 - (a) the person aggrieved permanently or temporarily resides or carries on business or is employed; or
 - (b) the respondent resides or carries on business or is employed; or
 - (c) the cause of action has arisen, shall be the competent court to grant a protection order and other orders under this Act and to try offences under this Act.
- (2) Any order made under this Act shall be enforceable throughout India.

28. Procedure.-

- (1) Save as otherwise provided in this Act, all proceedings under sections 12, 18, 19, 20, 21, 22 and 23 and offences under section 31 shall be governed by the provisions of the Code of Criminal Procedure, 1973 (2 of 1974).
- (2) Nothing in sub-section (1) shall prevent the court from laying down its own procedure for disposal of an application under section 12 or under sub-section (2) of section 23.

29. Appeal.-

There shall lie an appeal to the Court of Session within thirty days from the date on which the order made by the Magistrate is served on the aggrieved person or the respondent, as the case may be, whichever is later.

CHAPTER V MISCELLANEOUS

30. Protection Officers and members of service providers to be public servants.-

The Protection Officers and members of service providers, while acting or purporting to act in pursuance of any of the provisions of this Act or any rules or orders made thereunder shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

31. Penalty for breach of protection order by respondent.-

- (1) A breach of protection order, or of an interim protection order, by the respondent shall be an offence under this Act and shall be punishable with imprisonment of either description for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both.
- (2) The offence under sub-section (1) shall as far as practicable be tried by the Magistrate who had passed the order, the breach of which has been alleged to have been caused by the accused.
- (3) While framing charges under sub-section (1), the Magistrate may also frame charges under section 498A of the Indian Penal Code (45 of 1860) or any other provision of that Code or the Dowry Prohibition Act, 1961 (28 of 1961), as the case may be, if the facts disclose the commission of an offence under those provisions.

32. Cognizance and proof.-

- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the offence under sub-section (1) of section 31 shall be cognizable and non-bailable.
- (2) Upon the sole testimony of the aggrieved person, the court may conclude that an offence under sub-section (1) of section 31 has been committed by the accused.

33. Penalty for not discharging duty by Protection Officer. –

If any Protection Officer fails or refuses to discharge his duties as directed by the Magistrate in the protection order without any sufficient cause, he shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both.

34. Cognizance of offence committed by Protection Officer.-

No prosecution or other legal proceeding shall lie against the Protection Officer unless a

complaint is filed with the previous sanction of the State Government or an officer authorised by it in this behalf.

35. Protection of action taken in good faith.-

No suit, prosecution or other legal proceeding shall lie against the Protection Officer for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Act or any rule or order made thereunder.

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.

37. Power of Central Government to make rules.-

- (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.
- (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-
 - (a) the qualifications and experience which a Protection Officer shall possess under sub-section (2) of section 8;
 - (b) the terms and conditions of service of the Protection Officers and the other officers subordinate to him, under sub-section (3) of section 8;
 - (c) the form and manner in which a domestic incident report may be made under clause (b) of sub-section (1) of section 9;
 - (d) the form and the manner in which an application for protection order may be made to the Magistrate under clause (c) of sub-section (1) of section 9;
 - (e) the form in which a complaint is to be filed under clause (d) of sub-section (1) of section 9;
 - (f) the other duties to be performed by the Protection Officer under clause (i) of sub-section (1) of section 9;
 - (g) the rules regulating registration of service providers under sub-section (1) of section 10;
 - (h) the form in which an application under sub-section (1) of section 12 seeking reliefs under this Act may be made and the particulars which such application shall contain under sub-section (3) of that section;
 - (i) the means of serving notices under sub-section (1) of section 13;
 - (j) the form of declaration of service of notice to be made by the Protection Officer under sub-section (2) of section 13;
 - (k) the qualifications and experience in counselling which a member of the service provider shall possess under sub-section (1) of section 14;
 - (l) the form in which an affidavit may be filed by the aggrieved person under sub-section (2) of section

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(m) any other matter which has to be, or may be, prescribed. (3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

---- **BRAHMAVTAR AGRAWAL, Addl. Secretary to the Govt. of India.**

ANNEX II

Concluding comments by CEDAW

In 2007, Committee on the Elimination of Discrimination against Women (CEDAW) studied the second and the third report by Indian government on the implementation situation of the Convention.

Committee recognized several India's efforts including the implementation of the Protection of Women from Domestic Violence Act in 2005 and the government's goal to mandate the registration of all the marriage by 2010. On the other hand, the Committee showed a deep concern about the condition of Indian women's human rights and the situation of the elimination of discrimination process and demanded improvements. They emphasized that Indian government should focus on actually enforcing the implemented Act and follow-ups. Below are the excerpts of the Committee's comments.

1) General concerns

8 The Committee is concerned that the State party has not taken adequate steps to implement the recommendations in regard to some concerns raised in the Committee's previous concluding comments adopted in 2000.¹ In particular, the Committee finds that its recommendations in paragraphs 67 (to introduce a sex discrimination act in order to make the standards of the Convention applicable to non-State action and inaction), 70 (to develop a national plan of action to address the issue of gender-based violence in a holistic manner), 75 (to enforce laws preventing discrimination against Dalit women) and 81 (to take affirmative action to increase women's participation in the judiciary) have been insufficiently addressed. The Committee is also concerned that it has not been provided with any information on the report of the committee established to review the Armed Forces Special Powers Act in response to its previous concluding comments.

11. The Committee urges the State party to review its reservations to articles 5 (a) and 16 (1) with a view to withdrawing them, to proactively initiate and encourage debate within the relevant communities on gender equality and the human rights of women and, in particular, work with and support women's groups as members of these communities so as to (a) modify social and cultural patterns of conduct to achieve elimination of prejudices and practices based on stereotyped roles for men and women and (b) review and reform personal laws of different ethnic and religious groups to ensure de jure gender equality and compliance with the Convention.

12. The Committee is concerned that while de jure equality for women has been realized in many spheres, there remain many impediments to the realization of de facto equality.

13. The Committee recommends that the State party establish viable strategies to overcome the impediments to the practical realization of women's rights. It calls upon the State party to not only carry out gender-sensitivity training and capacity-building for various stakeholders, but to also take proactive steps to remove structural barriers to women's equality.

15. The Committee requests the State party to set benchmarks and to include adequate, appropriate and comparative statistical data and analysis, disaggregated by sex, caste, minority status and ethnicity, in its next

report so as to provide a full picture of the implementation of all the provisions of the Convention and trends over time in the practical realization of equality between women and men. In particular, it calls upon the State party to review and monitor the fulfillment of the provisions of the Convention in respect of scheduled caste, scheduled tribe, backward class and minority women in all sectors. It also recommends that the State party regularly conduct impact assessments of its legislative reforms, policies and programs to ensure that measures taken lead to the desired goals and that it inform the Committee about the results of these assessments in its next periodic report.

2) Women-related laws

16. Noting that the implementation of legislative and policy initiatives taken by the central Government is often left to the states and union territories, and that states and union territories have jurisdiction over certain areas covered in the Convention, the Committee is concerned that there are inadequate structures, mechanisms and actions being taken to ensure effective coordination and consistent application of the Convention in all states and union territories.

17. The Committee recommends that the State party promote and guarantee the consistent implementation of the Convention throughout the country, including through increased attention in consultative forums and other mechanisms of control and partnership between the central Government and state and union territory governments. In this respect, the Committee recommends that the State party create formal links between the National Commission for Women and the various State Commissions for Women. It calls upon the State party to consider using the powers under article 253 of the Constitution to establish without delay standards and coordination and monitoring mechanisms to ensure the effective harmonization and implementation of gender equality programs and policies, as well as implementation of legislation on women's rights, at the central, state and union territory levels.

3) Women in poverty

18. While noting that poor women are entitled to receive free legal aid under the Legal Services Authority Act and that the National Legal Service Authority aims to enhance legal literacy for women and provide access to justice, the Committee is concerned about the quality and scope of the free legal services provided and the access of women in rural and tribal areas to such services.

19. The Committee urges the State party to provide free legal services to poor and marginalized women in rural and tribal areas in addition to urban areas and to monitor the quality and impact of such services in regard to ensuring women's access to justice. It requests the State party to provide information about access of women, including scheduled caste, scheduled tribe, backward class and minority women, to free legal services and the scope and effectiveness of such services in its next periodic report. ¹¹⁶

4) DV Act implemented in 2005

20. The Committee continues to be concerned about the absence of a comprehensive plan to address all forms of violence against women. While appreciating the enactment of the Domestic Violence Act, 2005, the Committee is concerned that the various states and union territories have not put into place mechanisms to effectively enforce this Act.

21. The Committee calls upon the State party to develop, in consultation with women's groups, a coordinated and comprehensive plan to combat all forms of violence against women taking a life cycle approach. It urges the State party to take steps in partnership with states and union territories to fully and consistently implement and enforce the Domestic Violence Act and to ensure that all women victims of domestic violence, including scheduled caste, scheduled tribe, backward class and minority women, are able to benefit from the legislative framework and support systems in place and that perpetrators are effectively prosecuted under the Penal Code and adequately punished. It recommends that public officials, especially law implementation officials, the judiciary, health-care providers and social workers, are fully sensitized to all forms of violence against women, including domestic violence. It requests that adequate statistics on all forms of violence against women be collected in a consistent manner. In particular, it requests the State party to provide information, disaggregated by caste, minority status and ethnicity, in its next periodic report, on the number of cases of domestic violence reported to the police and other relevant authorities, the number of protection and other orders granted under the Domestic Violence Act and the number of convictions of perpetrators of domestic violence under the Penal Code.

5. Comment on rape

22. While noting that consultations are under way to amend relevant legislation relating to rape, the Committee is concerned about the narrow definition of rape in the current Penal Code and its failure to criminalize marital rape and other forms of sexual assault, including child sexual abuse.

23. The Committee urges the State party to widen the definition of rape in its Penal Code to reflect the realities of sexual abuse experienced by women and to remove the exception for marital rape from the definition of rape. It also calls upon the State party to criminalize all other forms of sexual abuse, including child sexual abuse. It recommends that the State party consult widely with women's groups in its process of reform of laws and procedures relating to rape and sexual abuse.

6. Violence such as witch-hunting

26. In addition to previously expressed concerns about customary practices, such as dowry, sati and the devadasi system,³ the Committee is concerned about the practice of witch-hunting which constitutes an extreme form of violence against women.

27. The Committee recommends that the State party adopt appropriate measures to eliminate the practice of witch-hunting, prosecute and punish those involved, and provide for rehabilitation of, and compensation to, victimized women. It recommends that such measures be based on an analysis of its causes, including control over land. The Committee calls upon the State party to create public awareness of forms of violence against

women rooted in custom as an infringement of women's human rights.

7. Gender education at school

34. While welcoming the State party's efforts to eliminate gender-based stereotypes through the review and revision of textbooks at the national level, the Committee is concerned that such review and revision has not taken place at the state level in most states. The Committee is also concerned that teachers in schools are not gender-sensitized, to the detriment of female students.

35. The Committee calls upon the State party to initiate and monitor the reform of textbooks at the state level to eliminate all gender-based stereotypes and to strengthen its efforts, at the national, state and union territory levels, to combat the widespread acceptance of stereotypical roles of men and women. It recommends that gender issues and sensitivity training be made an integral and substantive component of all teachers training.

8. Human rights of pregnant women and girls

39. The Committee calls upon the State party to ensure that adequate mechanisms and procedures for effective implementation and monitoring of the Pre-conception and Prenatal Diagnostic Technique (Prohibition of Sex Selection) Act be established, including safeguards to prevent criminalization of women who are pressurized into seeking sex-selective abortions.

40. The Committee continues to be concerned about the status of women's health, including the maternal mortality rate in rural areas, which is among the highest in the world; the high prevalence of infectious diseases, especially food and water-borne diseases; malnutrition; anemia; unsafe abortions; HIV infections; and inadequacy of services relating to obstetrics and family planning. While noting the programs outlined in the report to improve women's access to health care and to decrease maternal mortality, the Committee is concerned that it has not been provided information about the impact of such programs and measures. It is also concerned that the State party lacks reliable data on women's health status, including on pregnancy and non-pregnancy-related morbidity and mortality and HIV infections, owing to which it is unable to establish benchmarks and monitor progress. In addition, the Committee is concerned that the privatization of health services has an adverse impact on women's capacity to access such services.

41. The Committee urges the State party to pay increased attention to female health throughout the life cycle, including in key areas of pregnancy and non-pregnancy-related morbidity and mortality, in light of general recommendations 24 and 25. It calls upon the State party to strengthen food security, primary health care and adequate sanitation, especially in rural areas; establish mechanisms to monitor women's access to health care and health-delivery systems; and increase the allocation of resources to health care. The Committee urges the State party to prioritize decreasing maternal mortality rates by establishing adequate obstetric delivery services and ensuring women access to health services, including safe abortion and gender-sensitive comprehensive contraceptive services. It recommends that the State party provide detailed information in its next periodic report about the impact, and trends over time, of programs to improve women's access to health care and decrease maternal mortality. It calls upon the State party to balance the roles of public and private

health providers in order to maximize resources and the reach of health services. It calls upon the State party to monitor the privatization of health care and its impact on the health of poor women and provide such information in its next periodic report.

9) Women's human rights at marriage

54. The Committee is concerned that the civil Special Marriage Act fails to ensure equality for women in marriage and its dissolution by not giving women equal rights to property accumulated during marriage.

55. The Committee recommends that the State party amend the Special Marriage Act, in the light of article 16 of the Convention and the Committee's general recommendation 21 on equality in marriage and family relations, to give women equal rights to property accumulated during the marriage.

56. The Committee is concerned about the State party's assertion that the social acceptability of early marriages has negated the implementation of the Child Marriage Restraint Act. In addition, it is concerned that this Act penalizes the offender but does not render the marriage void, purportedly to avoid illegitimacy of any offspring of such union, which stands in contradiction to the purpose of the Act and is a violation of the rights of the married child.

57. The Committee urges the State party to take proactive measures to effectively implement the Child Marriage Restraint Act with a view to eradicating child marriages. It recommends that the State party take comprehensive, effective and stringent measures aimed at deterrence of those engaged in child marriages, the elimination of such practices and the protection of the human rights of the girl child.

58. While appreciating that some states have enacted laws to make the registration of marriages compulsory and that the National Commission of Women is in the process of drafting national legislation to this effect, the Committee is concerned that the State party has not established a timeline for enactment of such legislation.

59. The Committee recommends that the State party take proactive measures to speedily enact legislation to require compulsory registration of all marriages, work with states and union territories to effectively implement such legislation and to consider withdrawing its reservation to article 16 (2).

Human Rights Now

info@ngo-hrn.org
Marukou Bldg. 3F, 1-20-6, Higashi-Ueno
Taitou-ku, Tokyo 110-0015 Japan
Phone: +81-3-3835-2110 Fax: +81-3-3834-2406