THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005: CASE STUDY IN UTTAR DINAJPUR DISTRICT, WEST BENGAL

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ABSTRACT

The article tried to understand the nature of abuse and its effects on victims, through a study among 100 domestic violence affected cases in Uttar Dinajpur District, West Bengal, India. All these cases are registered under the “Protection of Women from Domestic Violence Act, 2005” which is a separate law on domestic violence, implemented on 2006 in India after a long struggle by the different women organizations and NGOs. The present article also seeks to assess the effectiveness of this new legislation through these different case studies and questionnaire based interviews. The article also attempts to find out whether the act is helping women to combat or finding a solution of their present situation.

Keywords: Domestic Violence; Protection of Women from Domestic Violence Act, 2005; Helping Women; Emotional Violence; Physical Violence.
INTRODUCTION

It is unfortunate that in every society for ages women have been ill-treated and India is not the exception. It is a great irony that women are worshipped as Shakti, as the Goddess, but they are the most dominated and deprived creature in the society. Women are looked down as slave in the community. They are considered as an object to satisfy male sexual urge and as a reproductive machine. Women are dominated in two ways literary and economically. They are purposefully deprived from education which resulted economic dependency on men. The patriarchal system makes women to live under the mercy of men so that they can exercise dominance, power and oppression on women. Patriarchy is not only control over women’s bodies through men, it also resulted violence against women. Domestic violence is sadly a reality of Indian society.

In this 21st century, India is progressing in every field; even today Indian women are expressing their talent in every sphere. From universe to land they are showing their excellence but till now they are not secure within their four walls. Every day we are witnessing the barbaric incidences on women; the incidences really shaking the existence of humanity. Till now women are set in fire due to dowry demand; they are physically, mentally and economically tortured by their near and dear one’s to establish the power of oppression. Domestic violence is a process of temporary and continuous abuse with permanent effects. Domestic Violence leaves a wider and deeper impact in life of the victims and sometimes its effects reveals much later. In this article the researcher tried to find out the nature of abuse and its effects through some case studies and also tried to know how the victims are coping with the abuse.

The phenomenon of Domestic Violence has been widely prevalent but remains largely ignored in the legal domain.1There was no specific legislation to deal with domestic violence in India. The most difficult part was to prove the existence of the words “Domestic Violence” to the law makers and policy makers. They did not know that something like domestic violence needed to be dealt with by law. Many women’s organizations, NGOs created a pressure on the Indian Government to pass legislation which to reduce the violence within the four walls. The Parliament of India appointed two Select Committees in 1980 and in 1984 to amend Dowry Prohibition Act. In 1983.

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and in 1886, Indian Penal Code was also amended for providing punishment for cruelty (under section 498A) or death (under section 304B) caused for dowry by in-laws of women.²

In December 2001, Government of India, under pressure from women’s groups, put a Bill before the Parliament and named it as “the Prevention from Domestic Violence Bill, 2001”. Later on when it was passed by the Parliament in 2005, the word protection was brought in place of prevention. The said Act was named as “The Protection of Women from Domestic Violence Act, 2005”. The Rules under this Act were framed and passes subsequently in 2006. The Act is result of a decade-long campaign by women’s groups, social and legal bodies and NGOs for a civil law against domestic violence. The struggle goes back more than 16 years. This article will tried to find out whether the new Domestic Violence Act is helping the victims to combat with domestic violence and to find out solution to resists the violence.

OBJECTIVES OF THE STUDY

The article will try to highlight:

- What are the nature of abuse and its effects on the victims of Domestic Violence?
- How the new PWDV Act, 2005 helping women to combat domestic violence and find a solution.

UNIVERSE OF THE STUDY

Uttar Dinajpur District of West Bengal has been taken as the study area for this article. The geographical location, high rate of population, socio, economic, cultural, religion and gender differences make the district a unique sample to study. Uttar Dinajpur is placed among the least developed districts in West Bengal as well as in India. The area spans of Uttar Dinajpur district is 3140 sq.km and had an aggregate population of 3,007,134 of which male were 1,551,066 and

female were 1,456,068 as per 2011 census. It thus ranked 16th among nineteen West Bengal districts in terms of overall size with 3.5 percent of the total land area of the state, and 17th in terms of overall population with 3 percent of the aggregate state population. The district lies between latitude 25°11' N to 26°49' N and longitude 87°49' E to 90°00' E. It is enclosed by Panchagarh, Thakurgaon and Dinajpur Districts of Bangladesh on the east, Kishanganj, Purnia and Katihar districts of Bihar on the west, Darjeeling district and Jalpaiguri district on the north and Malda district and Dakshin Dinajpur district on the south. Uttar Dinajpur is well connected with the rest of the state through National Highways, State Highways and Railways. National Highway 31 and 34 pass through the heart of the district. The regional topography is generally flat with a gentle southerly slope towards which the main rivers like Kulik, Nagar, Mahananada etc flow. Raiganj is the district's headquarter and it is situated on the bank of the River Kulik, where the "Raiganj Wildlife Sanctuary", the largest bird sanctuary in Asia, is situated.

In 2001, Uttar Dinajpur emerged as the least literate district in West Bengal in terms of the percentage of total literates, while Dakshin Dinajpur ranked eighth in the state. Uttar Dinajpur was also the only district in West Bengal where the absolute number of illiterates exceeded the number of literates. In terms of male literacy rates too, Uttar Dinajpur occupied the lowest rank among the districts of West Bengal and was just one step ahead of lowest-ranked Purulia in terms of female literacy. However, urban literacy in Uttar Dinajpur at 80.5 percent was almost at par with average urban literacy rate of 81.3 percent for the state, revealing that low levels of literacy in Uttar Dinajpur were mainly the result of low rural literacy rates. Thus in 2001, urban and rural literacy rates in Uttar Dinajpur differed by over 37 percentage-points, this literacy differential was the highest among all West Bengal districts. Educational backwardness was therefore firmly entrenched in rural Uttar Dinajpur, with the largest proportion of illiterates being rural women. With the urban population constituting less than 13 percent of the district population, educational backwardness was primarily a characteristic of rural Uttar Dinajpur. Disparities in gender literacy

3 Available at https://www.census2011.co.in/census/district/4-uttar-dinajpur.html, Last Visited on 19.02.2018 at 12.00 pm.
4 Available at www.wikipedia.com, From Wikipedia, the free encyclopedia, visited on 19.02.2018 at 11.03 am.
constrain the social and economic empowerment of women. This is also the major cause of non-implementation of all development schemes. In every spare the position of women in Uttar Dinajpur is remarkably low than the position of male and this is the main reasons behind the different types of domestic violence.

**SAMPLING**

The data for the present research was collected throughout the Uttar Dinajpur District. For primary data cases have selected during the period from 2009 to 2014. During the mentioned period total 304 cases has filed under “The Protection of Women from Domestic Violence Act, 2005” in this district. Among 304 cases, depending on the availability of the victims, total 100 victims have been selected for this research. All the 100 victims have registered their
cases under “The Protection of Women from Domestic Violence Act, 2005”. All Sample units has personally contacted and interviewed.

COLLECTION OF DATA

Closed and open ended Interview Schedule was used as a tool for collecting primary data. Data has collected by personal interviews of the victims. The researcher also interviewed The Protection Officer and Service Providers under PWDV Act, 2005 for Uttar Dinajpur District, Hon’ble Advocates of Raiganj District Court and Islampur Sub Division Court, Police Officers of different Police Stations, Different NGOs, Social Workers, and Women activists working on Domestic Violence for collecting primary data. The secondary data gathered from sources such as books, journals, magazines, newspapers, Law reports, reports of National and State commissions for women and internet access through different websites.

In this section the researcher will discuss the types of violence which the victims have experienced under the PWDVA. As per the data the nature of violence has categorised in 5 different types. Those are Physical abuse, Verbal and Emotional abuse, Economic abuse, Sexual abuse and Dowry Demand.

Analysis of the Table and Figure:

Table : Distribution of Cases by Types of Abuse on Victims

<table>
<thead>
<tr>
<th>No. of Cases</th>
<th>Types of Abuse</th>
</tr>
</thead>
<tbody>
<tr>
<td>96</td>
<td>Physical Abuse</td>
</tr>
<tr>
<td>100</td>
<td>Verbal and Emotional abuse</td>
</tr>
<tr>
<td>99</td>
<td>Economic abuse</td>
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<tr>
<td>27</td>
<td>Sexual abuse</td>
</tr>
<tr>
<td>80</td>
<td>Dowry demand</td>
</tr>
<tr>
<td>100</td>
<td>Total no. of cases</td>
</tr>
</tbody>
</table>
Distinction between Physical Abuse and Verbal and Emotional abuse as per PWDVA, 2005:

<table>
<thead>
<tr>
<th>Provisions</th>
<th>Physical abuse</th>
<th>Emotional abuse</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 3 Explanation I PWDV Act, 2005</td>
<td>(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;</td>
<td>(iii) “verbal and emotional abuse” includes— (a) insults, ridicule, humiliation, name calling and insults or ridicule especially with regard to not having a child or a male child; and (b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested;</td>
</tr>
<tr>
<td>Form IV Rule 8(1) (ii) PWDV Rules, 2006</td>
<td>Point 2(1) For Example (i) Beating, (ii) Slapping, (iii) Hitting, (iv) Biting,</td>
<td>Point 2(3) For Example (i) Insults (ii) Name Calling (iii) Accusations on your character or conduct etc</td>
</tr>
<tr>
<td>(v) Kicking,</td>
<td>(iv) Insults for not having a male child</td>
<td></td>
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<tr>
<td>(vi) Punching,</td>
<td>(v) Insults for not bringing dowry etc</td>
<td></td>
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<tr>
<td>(vii) Pushing,</td>
<td>(vi) Preventing you or a child in your</td>
<td></td>
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<tr>
<td>(viii) Shoving or</td>
<td>custody from attending school,</td>
<td></td>
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<tr>
<td>(ix) Causing bodily pain or</td>
<td>college or any other education</td>
<td></td>
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<tr>
<td>injury in any other manner.</td>
<td>institutions.</td>
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<td></td>
<td>(vii) Preventing you from taking up a</td>
<td></td>
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<td></td>
<td>job</td>
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<td></td>
<td>(viii) Forcing you to leave your job</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(ix) Preventing you or a child in your</td>
<td></td>
</tr>
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<td></td>
<td>custody from leaving the house.</td>
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<td></td>
<td>(x) Preventing you from meeting any</td>
<td></td>
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<td></td>
<td>person in the normal course of event.</td>
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<td></td>
<td>(xi) Forcing you to get married when</td>
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<td></td>
<td>you do not want to marry.</td>
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<tr>
<td></td>
<td>(xii) Preventing her to marry a person</td>
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<td></td>
<td>of their own choice.</td>
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<tr>
<td></td>
<td>(xiii) Forcing you to marry a particular</td>
<td></td>
</tr>
<tr>
<td></td>
<td>person of his / their own choice</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(xiv) Threat to commit suicide.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(xv) Any other verbal or emotional</td>
<td></td>
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<tr>
<td></td>
<td>abuse.</td>
<td></td>
</tr>
</tbody>
</table>

**PHYSICAL ABUSE**

The above table (pg. 04) shows that among 100 victims 96 victims faced physical abuse. The result is really alarming. Out of 100 cases total 96 victims were physically tortured by their intimate partners. The victims who had interviewed admit that they faced slapping, kicking, beating, stabbing, burning and choking all these forms of physical violence from their domestic partners.
Most of them denied medical treatment by their sons, husbands and in-laws. Not only the victims sometimes their children (out of 63 children 15 children has faced physical abuse) also faced physical abuse. Some victims reported that the perpetrators tried to kill them by pouring kerosene (05 victims), poisoning (02 victims) and attacked them by sharp weapon (10 victims). It is very interesting that only 06 cases it was noticed that the perpetrator is single and the rest 94 cases the perpetrators were plural in number. Majority of the victims were abused by the groups of respondents. It is well known that the most abusive form of family violence that causes harm to both the body and the minds is of course physical assault.6

Domestic violence against women leads to far-reaching physical and psychological, some with fatal outcomes.7 Wife battering that is almost considered a husband’s right over his wife is the most common form of family violence.8 Physical violence causes many health consequences. Physical battering leaves injuries (from lacerations to fractures and internal organ injury), bruises, cuts, burns and scalds, broken bones. Sometimes assaults result fractures to chronic disabilities such as partial or total loss of hearing or vision, and burns may lead to disfigurement. Other health outcomes are unwanted pregnancy, gynecological problems, pelvic inflammatory disease, chronic pelvic pain, headaches and asthma etc.9 Women who live in violent relationship have poor health condition that women live in normal relationship. Violent relationship also increases the risk of hypertension, diabetic and heart diseases. The reproductive health of woman is badly affected. It results in increased number of miscarriages, high STD rates, unplanned pregnancies etc.

EMOTIONAL AND VERBAL ABUSE

On the other hand the data of the above table shows that among 100 victims all faced emotional and verbal violence. The data shows that all the victims were emotionally and verbally tortured by the inmates of the family. Emotional and Verbal abuse includes abusive behavior involving the use of language. Emotional and Verbal abuse is also very common form of violence. Most of the

victims confessed that Emotional and Verbal abuse was most common and regularly they used to face it. They faced threatening, insult, accusation or aspersion on their character, demeaning, humiliating, ridicule, name calling etc. All these activity has undermined victim’s self-esteem. All the victims expressed that they were emotionally and verbally abused by their husbands and in-laws on regular basis. The researcher tried to find out the emotional distress of the victims through several queries and counselling process. The perpetrators used to humiliate the victims privately or publicly, they deliberately controlled the victims’ movement, even isolated them from friends and family. On the other hand it also includes the activities like blackmailing the victim by harming others or denying the victim access to money or other basic resources and necessities. It is also reported that among the 100 victims 20 were debarred from using the kitchen, even entering the kitchen and 10 victims were debarred to use toilets. Victims reported that sometimes Emotional and Verbal abuse becomes more unbearable than physical brutality.

In addition to their physical injuries, women who are victims of domestic violence are also at a greater risk of mental health problems such as depression and psychotic symptoms.\textsuperscript{10} The impact of violence on women’s mental health leads to severe and fatal consequences. Battered women have a high incidence of stress and stress-related illness such as post-traumatic stress syndrome, oppressive compulsive disorder (OCD), panic stacks, depression, sleeping and eating disturbances, elevated blood pressure, alcoholism, drug abuse, and low self-esteem. For some women, fatally depressed and demeaned by their abuser, there seems to be no escape from a violent relationship except suicide.\textsuperscript{11} Some women become so depressed that their thought process paralyzed and their brain stops thinking. For the reason the normal activity stops and they lose their self-confidence. Emotional and verbal abuse is such an abuse which is very difficult to find out. Most of the women do not talk about their problem out of fear to become target of more violence and remain silent for becoming a stigma in their social life. Women prefer to suffer alone and it increases their misery.

\textsuperscript{10}Isabelle, Ouellet-Morin, Helen, L. Fisher, Marianna, York-Smith, Stephanie, Fincham-Campbell, Terrie E. Moffitt, Louise Arsenault. INTIMATE PARTNER VIOLENCE AND NEW-ONSET DEPRESSION: A LONGITUDINAL STUDY OF WOMEN'S CHILDHOOD AND ADULT HISTORIES OF ABUSE. Depression and Anxiety, 2015; DOI:10.1002/da.22347
\textsuperscript{11}UNICEF, Domestic Violence Against Women and Girls, Innocent Digest, No.6 June 2000, Pp. 9.
### Distinction between Sexual Abuse and Economic abuse as per PWDVA, 2005:

<table>
<thead>
<tr>
<th>Provisions</th>
<th>Sexual abuse</th>
<th>Economic abuse</th>
</tr>
</thead>
</table>
| Section 3 Explanation I PWDVAct, 2005 | (ii) “sexual abuse” includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman. | (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 house hold 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 |
| Form IV Rule 8(1) (ii) PWDV Rules, 2006 | Point 2(2) For Example  
(i) Forced sexual intercourse,  
(ii) Forces her to look at pornography or any other obscene pictures or material,  
(iii)Any act of sexual nature to abuse, humiliate or degrade a woman or which is otherwise violate her dignity or any other unwelcome conduct of sexual nature,  
(iv)Child sexual abuse. | Point 2(4) For Example  
(i) Not providing you money for maintaining you or your children.  
(ii) Not providing food, clothes, medicines etc. for you or your children.  
(iii) Stopping you from carrying on your employment.  
(iv) Disturbing you in carrying on your employment.  
(v) Not allowing you to take up an employment or  
(vi) Taking away your income from your salary, wages etc. or  
(vii) Not allowing you to use your salary, wages etc  
(viii) Forcing you out of the house you live in. |

(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.
SEXUAL ABUSE

The table reveals that out of 100 victims only 27 faced sexual violence. On the other hand out of 100 victims 96 faced physical violence, 100 faced emotional violence and 99 faced economic violence, whereas only 27 faced sexual violence. Sexual violence is such a crime which is under-recorded and under-reported. Out of shame, fear, lack of information of legal right, lack of confidence make the women reluctant to report about sexual violence. Sexual abuse includes any situation in which, force or threat is used to obtain participation in unwanted sexual activity.\(^\text{12}\)

Among the 27 victims 05 victims confessed that they had faced forced sexual intercourse several times, 02 victims said that their husband forced to watch pornography, and 02 victims reported that their husbands and in-laws forced them to entertain others. A victim reported that her father in law tried to rape her. Sexual abuse and rape by an intimate partner is not considered a crime in most countries, and women in many societies do not consider forced sex as rape if they are married to, or cohabiting with, the perpetrator. The assumption is that once a woman enters into a contract of marriage, the husband has the right to unlimited sexual access to his wife.\(^\text{13}\) Because of the age long mind set, it remains difficult to find out the actual figure of sexual violence cases.


\(^{13}\)UNICEF, Domestic Violence Against Women and Girls, Innocent Digest, No.6 June 2000, Pp. 4.
It is observed that sexual violence is more among married women than among the unmarried.\textsuperscript{14} Sexual violence and rape can lead to unwanted pregnancies, and it leads to a dangerous complication that is illegal abortions. Gynecological problems, sexually transmitted diseases including HIV/AIDS, post-traumatic stress disorder (PTSD), depression, eating disorder and sleeping disorder are the consequences of sexual abuse. In most of the cases sexual abuse remains under reported.

**ECONOMIC ABUSE**

The table shows that 99 victims out of 100 had been economically abused and according to the data it is proved that economic violence very much prevalent in family. Among the 100 victims 99 victims claimed that they are depriving any kind of monetary relief from their husband or son and they also claimed that their husbands or son are not providing the basic needs like food, clothes and medicines for them and their children. Among 99 victims 16 said that their husbands and in-laws did not allow them to carry any employment. 78 victims out of 99 expressed that they are at present living in their father’s house, because they were compelled to leave their matrimonial house with their children. Economic abuse is a form of abuse when one intimate partner has control over other partner’s access to economic resources. The victims faced all the forms of economic abuse which are discussed above. Economic abuse is a process and through this process the perpetrators tried to increase the dependency of victims financially on them and also prevented some victims from obtaining education, finding employment, maintaining or advancing their careers.

Economic abuse also includes i) Women’s economic dependence on men, ii) Limited access to cash and credit, iii) Discriminatory laws regarding inheritance, property rights, use of communal lands, and maintenance after divorce or widowhood, iv) Limited access to employment in formal and informal sectors, v) Limited access to education and training for women.\textsuperscript{15}

\textsuperscript{15}UNICEF, Domestic Violence Against Women and Girls, Innocent Digest, No.6 June 2000, Pp. 7.
Domestic violence leads to huge economic loss. It increases women’s risk of unemployment, affects job performance, and reduces earnings. It decreases female labour participation and reduces productivity and earnings. It has been seen that the abused women lost their jobs more than non-abusive women and they also earn less than non-abusive women. Economic abuse prohibits women to be engaged in gainful employment. Domestic violence leads women towards disempowerment, rather than empowering them. Economic empowerment gives women independence and this independence may inhibit them to escape from abusive relationship, this fear compels the perpetrators to retain the women into the four walls. Continuous violence makes them physically and mentally weak and it leads to decreasing inefficiency in work place. As a result they compel to leave their job. Some women remain in the relationship because they do not have any place to go. On the other hand some able to acquire courage to leave the abusive home after few attacks and they have to face hardship to earn their livelihood. Women, who compel to live alone in this patriarchal society, have to face difficulties to survive alone.

**DOWRY DEMAND**

The table indicates that out of 100 victims, 80 victims faced dowry related torture in Uttar Dinajpur district. The result is really astonishing. After age long advancement in different fields, still our country is lagging behind because of this deep rooted tradition and culture of the society. As per section 2 of the “The Dowry Provision Act, 1961” ”dowry” means any property or valuable security given or agreed to be given either directly or indirectly-

(a) By one party to a marriage to the other party to the marriage; or

(b) By the parents of either party to a marriage or by a other person, to either party to the marriage or to any other person;

As per section 3 and 4 of “The Dowry Provision Act, 1961” the punishment of giving and taking dowry, has been clearly mentioned.

**Section 3. Penalty for giving or taking dowry:** If any person, after the commencement of this Act, gives or takes or abets the giving or taking of dowry, he shall be punishable with imprisonment which may extend to six months, or with fine which may extend to five thousand rupees, or with both.
Section 4. Penalty for demanding dowry: If any person, after the commencement of this Act, demands, directly or indirectly, from the parents or guardian of a bride or bridegroom, as the case may be, any dowry, he shall be punishable with imprisonment which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

Law is there and the provisions are also there but dowry has become as a social cancer, a cruel custom and an insult to the dignity of women. The dowry problem which aroused as one of the biggest problem to the women community is expanding from the Indian historical tradition context to the today’s technological context.\(^{16}\)

In 1986 a new offence known as dowry death was inserted in the Indian Penal Code i.e. Section 304B. The provisions Under Section 304B of Indian Penal Code are more stringent than provided under Section 498A of Indian Penal code. The offence under Section 304B is cognizable, non-boilable, non-compoundable and triable by Court of Session. As per Section 304B Dowry Death may be considered by the followings features: (i) Death of woman should be caused by burns or bodily injury or otherwise than under normal circumstances, (ii) Death should have occurred within Seven years of her marriage, (iii) The woman must have been subjected to cruelty or harassment by her husband or relatives of her husband, (iv) Such Cruelty or harassment should be for or in connection with the demand for dowry, (v) Such cruelty or harassment should have been subjected soon before her death. Under Section 304-B (2) of Indian Penal Code whoever commits dowry death shall be punished with imprisonment for not less than seven years or it may be extended to life imprisonment. As per NCRB 2016 report in dowry death Uttar Pradesh took 1\(^{st}\) position (2.4), Haryana 2\(^{nd}\) position (2.1), Bihar 3\(^{rd}\) position (2.0), Orissa 4\(^{th}\) position (1.9), Jarkhand and Madya Pradesh mutually 5\(^{th}\) position (1.7), Talangana 6\(^{th}\) position (1.4), Rajasthan 7\(^{th}\) position (1.3) and West Bengal 8\(^{th}\) position (1.2) in India.

Social scientists consider dowry as a major reason for increasing domestic violence against women. Victims expressed that dissatisfaction regarding dowry enhanced the level of torture on women. 

them. Physical torture, Sexual abuse, Emotional abuse, Economic abuse, unwanted pregnancy, female foeticide and infanticide, alcoholism, domination and control within family are the forms of domestic violence which caused due to dowry. Some victims opined that being dissatisfied with the dowry, their in-laws throw them out of the house. Generally throughout the country, in nooks and corners, we can observe dowry related violence. Some cases are happening behind the screen are not reported. Some cases are reported, we can see in the newspapers and television. But accurate picture is difficult to obtain, as statistics are varied and contradictory.17

THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005: AN ANALYSIS

To improve the position of women within the four walls Domestic Violence Act, 2005, hereinafter referred at Protection for Women against Domestic Violence (PWDVA), has been passed. The Protection of Women from Domestic Violence Act, 2005 (PWDVA) came into force on 26.10.2006. With a lot of new progressive provision and expectation the new Domestic Violence Act has been enacted and implemented in India.

The new act contains five chapters and 37 sections. Main Features of the Act are as follows:

- The definition of an 'aggrieved person' is wide. It covers not just the wife but a woman who is the sexual partner of the male whether she is his legal wife or not. The person some way related to the respondent and residing in the share household like daughter, mother, sister, child (male or female), widowed relative is also covered by the Act.18
- This act includes the abuse or the threat of abuse as Physical, Sexual, Emotional and verbal, Economic. The unlawful demand of dowry or any harassment related to dowry to the women or her relatives is covered in this act.19
- Another progressive and remarkable feature of the Act is creation of a new post i.e. Protection Officer, who’s first and foremost duty, is to assist the victim in several ways as

18Section 2(a) of “The Protection of Women from Domestic Violence Act, 2005”.
19Section 3(a),(b),(c),(d), Explanation 1 (i),(ii),(iii),(iv) of “The Protection of Women from Domestic Violence Act, 2005”.
required. This act also involves the social sector like NGOs to reach the victim and help them in several ways.  

- The other important feature of the act is the power of the court to pass the protection order. This order secures the victim from any act of domestic violence as mentioned in the Act, by the respondents.

- One of the most important and remarkable feature of the act is right to residence or shelter to the woman. Right to residence to the victim at the share household or matrimonial home has been secured by the residence order.

- Sec.22 allows the magistrate to make the respondent pay compensation and damages for injuries including mental torture and emotional distress caused by acts of domestic violence.

- The Act also provides punishment for breach of Protection Order or interim Protection Order by the respondent/respondents. This offence cognizable and non-bailable punishable with the imprisonment for a term which may extend to one year or fine which may extend to Rs. 20,000/- or both.

- The Magistrate can pass interim order as he deems just and proper and the Magistrate being satisfied with the occurrence or the probability of occurrence of domestic violence can grant an ex parte order under section 18, 19, 20, 21 and 22 against the respondent.

- This Act ensures speedy justice as it provides that the Magistrate shall start the proceedings and have the first hearing within 3 days of the complaint being filed in the court and every case must be disposed of within a period of 60 days from the date of first hearing.

It is the first time in India that any Act recognizes sexual violence in marriage relation. In addition to physical, Emotional and Verbal, Economic and dowry related abuse, the Act covers sexual abuse like forced intercourse, forcing his wife or mate to look at pornography or any other obscene pictures or material and child sexual abuse. The new law has been create keeping in mind the

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20Chapter III, section 8, 9, 10 of “The Protection of Women from Domestic Violence Act, 2005”.
21Chapter IV, section 18 of “The Protection of Women from Domestic Violence Act, 2005”.
22Chapter IV, section 19 of “The Protection of Women from Domestic Violence Act, 2005”.
23Chapter IV, section 22 of “The Protection of Women from Domestic Violence Act, 2005”.
24Chapter V, section 31 of “The Protection of Women from Domestic Violence Act, 2005”.
25Chapter IV, section 23 of “The Protection of Women from Domestic Violence Act, 2005”.
26Chapter IV, section 12 (4), (5) of “The Protection of Women from Domestic Violence Act, 2005”.
present social structure in mind and it also addresses sexual abuse of children and also recognizes women’s consent regarding their marriage.\textsuperscript{27}

\section*{SOME LOOPHOLES OF THE ACT}

“The Protection of women from Domestic violence Act, 2005” was implemented for effective protection of the victims who are affected by Domestic Violence. Another aim was to grant various reliefs to the victims so that they can return back their lost dignity and can live their life peacefully. But due to some loopholes the Act cannot able to cope up with the society. The major loopholes are discussed herewith:

- According to the Act Protection Officer plays a very important role for implementing the Act. In most of the state Protection officers has been recruited as contractual basis or additional charge has been given to any full time officer. In those states where Protection officers are working in contractual basis, the condition of them is very pathetic. They are very low paid, they have not been provided well infrastructure for disbursing their duties and even they are not well trained.

- Another important part of the Act is Service Provider. They have been entrusted some very important duties in the Act. They have given the power to record Domestic Incidence Report, arrange for medical examination of the complaint and ensure that the aggrieved person is provided shelter home, if so required. But the problem is the NGOs have no resource to provide services even in metropolitans. Moreover there is no provision for reimbursing the expenses.\textsuperscript{28} So the very few NGOs have registered themselves under the Act. It is also found that most of the service providers are not well trained.

- Another problem is the lack of training of police officers and magistrates regarding the requirements, sensitivity and the purpose of the Act. This lack of training has led to the victim suffer more. The police unable to judge the situation sometimes send the victim to the abuser which enhances the situation worse. On the other hand the magistrates being

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unaware about the seriousness of the domestic violence cases, prolonging the court process and forcing victims to come to court to face their trauma time and again.  

- The new remarkable, effective and progressive provision of the Act is Section 14, the assistance of counselling services to the victims and the respondents. But due to unavailability of counselling centre, counsellor and inefficient mechanism the victims fail to avail the services.
- Advocates and protection officers have noted some inadequacies of the Act. There are no criminal penalties or strict punishment for abuser.
- Judiciary system takes maximum duration for the appellate hearings which delays women’s grant of relief and there is a long delay in the service process summons which makes the whole system delay.
- Another loop hole of the Act is residency order. Residency order gives the victims only the order to reside in the share household. Until and unless the women are not given substantive property rights to the shared household, they have to face repeated violence.
- Another major problem regarding this Act is lack of follow up in every sphere as mentioned in the Act, from the end of all active machinery with in the Act.

The followings are the main features and loop holes of the Protection of Women from Domestic Violence Act, 2005. Female who plays various roles in the society as daughter, mother and wife deserves respectable position. Enactment of law is the duty of the Government and only enactments cannot do anything until the mindset of the society changes. For this most important role can be played by women herself, by raising their voice against inhumanity inflicted on her. Judiciary, Police, NGOs and other women organizations and government authorities can act as an active support to her for making the society better place to live in.  

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REVIEW OF LITERATURE

To understand the present position of women and the root of domestic violence, it is very important to study root of women oppression in society. The root of gender inequality is a long discriminatory tradition and culture embedded in society. Masculinity and femininity are not aspects of biology or psychology. Even they are not created by the God. They are the part of system which is constructed by human beings over centuries. To know the ground reality of this gender inequality and to find out answers of the questions of how, why and when men and women come to be viewed as essentially different; we have to look back into the historical explanations (Geetha, 2009).31

Engles in his book “The Origin of the Family, Private Property and State”-(1884) explains historical and materialistic oppression of women very clearly. Engles believed that women’s subordination began with the development of private property and this, according to him, is “the world historical defeat of the female sex”. Men established their control over surplus production and women became economically dependent on men: According to Engles, modern civilization was based on restraining women to the sphere of home in order to produce heirs to inherit property and wife became the head servant (Engles, 1894).32

Heidi Hartmann in her popular essay, “The Unhappy Marriages of Marxism and Feminism” explained about the material basis of patriarchy which control women’s labour power by sexuality. In the public sphere women perform jobs for lower wages and in the private sphere they work without wages. In this way women by their work merely producing use value, not exchange value. Hartmann explained patriarchy and capitalism by “family wage”. Men are paid enough so that women can stay at home and perform all the duties of domestic labour like cooking, cleaning, child-rearing etc without any wage and this degrades women in the eyes of men, providing a rational for male dominance (Hartmann, 1997).33

As the “other” in society, women lack her existence. She remains inessential in the society. Golden age of women is only a myth. The woman was the “other” that means there was no existence of

any reciprocal relation between two sexes. Women are regarded as Earth, Mother, Goddess; but she is no “fellow creature” in man’s eyes. Society has always been men; political power was always in the hand of men, social authority always belongs to men (Beauvoir, 1989).

Mary Wollstonecraft in her book “A Vindication of the Rights of Women” argued that women are denied access to reason. Because men placed them in the middle, they are only allowed to see the reason through a gross medium and to take things on trust. Women do reason differently or incorrectly due to lack of training. Lack of education and training prevents them from perceiving the general principles and this keeps them away to analyzing their own situation critically (Wollstonecraft, 2004).

Women’s oppression is universal and it cannot be included with other oppressions like class or race oppressions. Women are considered as a class that cuts racial and other class barriers. Women oppression begins from the control of their sexualities, reproduction, compulsory mother hood and heterosexuality. All these issues are the result of strong patriarchal mindset which creates gender oppression (Mazumder, 2010).

In concrete terms women are facing a great denial; the denial of food, leisure time, health or sexual desire. From childhood women learn to perform the tasks to be a good wife, sister, daughter and mother. In many cases women are forced to kill their desire and wish or more precisely they are forced to subsume their needs in needs of their husbands. Domestic Violence plays a huge role in keeping the women submissive (Geetha, 2009).

Domestic violence is unacceptable and it arises from certain special circumstances. Most of the Indian Women are economically dependent. Economic dependency is one of the major causes of Domestic Violence on Women. So-called religious personal laws deny formal legal equality in

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personal relations and it is the fact that domestic violence is a real problem for many women (Parashar, 2012).

Some women’s groups struggled for the legal redress for it and the Domestic Violence Act is a tool to end the gender-specific harms suffered by women. Domestic violence act is a civil law and the remedies under this act are less than encouraging. This act ensures the “right” of the woman complainant to stay in the matrimonial home. The woman subject to domestic violence can make a legal complaint and the court is empowered to allow her to stay at her matrimonial home. In absence of this law, her only option would be to walk out from the home or the situation would compel her to go out from the home. Only the residence right without any a legal share in the property, cannot solve the real problem. Women cannot live there indefinite period. Therefore only the residence right is an empty achievement (Parashar, 2012)\(^{38}\)

Psychological violence was expected to be dealt with much more than physical violence. Women seemed to be able to deal with physical violence, but continued to fight for their self-respect, dignity, and need to be valued. Though stopping violence may be their first requirement, women hoped to get help to mend violent relationships. Women did not want to enter into the marriages where they had to face violence. At the same time they did not agree to leave the marriages where they had face violence. They were not happy being labeled as demanding, or aggressive family and marriage breakers. The situation was gradually demanding a law which will help the women to regain their rights and respond towards the needs of the domestic violence victims (Dave, 2013).\(^{39}\)

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\(^{39}\) Dave, Anjali (2013), Strategic Alliance, a Way Forward for Violence Against Women: A Case for the Special Cells, India, Sage Publications, 19(10) 1203 –1223, DOI: 10.1177/1077801213506284, The online version of this article can be found at: vaw.sagepub.com, Downloaded on May 27, 2016.
CASE STUDIES

Case No. 01:

The petition under section 12 of the P W DV Act, 2005 filed by the petitioner against her husband, father-in-law, mother-in-law and brother-in-law praying for relief under section 18, 19, 20 and 22 of the Act at the court. The complainant is a 31 years old married woman. She studied up to class 12 and is a housewife. The complainant got married on 11.12.05 as per Hindu rituals and customs. After her marriage she started to lead a normal conjugal life with her husband. The problem started after few months of her marriage. Her husband, father and mother-in-laws started creating pressure on her to bring Hero Honda motor cycle, colour T.V and 15,000 rupees from her father. Her father was very poor and was unable to meet up their demands. Being failed to fulfil the same demands the respondents started to torture on her. They started physical, mental, verbal and sexual violence on her and that created the situation worse. Every night she had to face forced brutal sexual violence by her husband and the agony till shakes her in sleep. In the mean time she became pregnant and a girl child was born out of their wed lock.

The child was born in her parents house near about five months none of her in-laws including her husband came to see the baby once and kept no relation with her as the new born baby is a girl child, not a boy. No money for maintenance was sent to her by her husband; not even for the baby also. After five month they took back the complainant and her child to the matrimonial house and started torturing again. A new issue of girl child added with the former issues. Day by day the amount of torture increased. On 17.04.2009 all the respondents brutally beat her and threw her out of the share household with her child. She lodged a F.I.R at local Police Station of Bihar and came back to her parent’s house.

After that she met the Protection Officer and lodged a case on 23/09/09 at Raiganj court under PWDVA 2005 claiming Protection order, Residence order, Maintenance order and Compensation Order. After filing the case, first hearing was held after three months and the order was passed by the Hon’ble Court near about after 4 years of filing the case. The Hon’ble Court passed the orders u/s 18, u/s 19 and partly in respect of Section 22 of the Act. The Hon’ble Court has also directed the respondent no.1 to pay the sum of Rs. 1800/- per month by seventh day of each succeeding English calendar year. The Hon’ble Court further directed the I/C of local Police Station to see
that the orders of the Court implemented properly as per the provisions of section 19 (7) and 20 (4) of the PWDV Act, 2005.

Case no. 02

The petitioner is a Sub-Assistant Civil Engineer and her legally married husband (Respondent No 1) is also a Sub Assistant Engineer at Agri–Irrigation department. Their marriage was solemnized on 22 November, 2000. Just after few days of the said marriage respondent no. 2 (Father-in-law) & 3 (Mother-in-law) started verbal and emotional violence against the petitioner. The respondent no.2 & 3 used to create pressure for bringing more dowries and expressed their dissatisfaction on the items of dowry, which the petitioner compelled to bring from her parental house at the time of marriage. The respondent no.1 several times physically, verbally and emotionally abused the petitioner on instigation of the respondent no. 2 & 3.

On regular occasions, the respondent no. 1 physically abused the petitioner and was maintaining illegal relationship with other women. When the petitioner used to protest about these illegal activities and brutal behavior, the respondent no. 1 threatened her by saying that he would commit suicide.

On 03/04/10, respondent no.1 brutally beat the petitioner with a badminton racket and went out from share household.. After few days he came back and started living peacefully with his wife and minor daughter. After few days, he again physically, verbally and emotionally abused the petitioner in front of her minor female child. Due to this unhealthy and unstable atmosphere the child was in trauma.

Respondent no. 1 was not keeping any contact with his daughter and his wife. He was not providing any money towards maintenance and welfare of his minor child. He was continuously depriving the petitioner and her daughter from all rights of life which they are legally entitled.

The complainant lodged a case under “The PWDV Act, 2005” and prayed for granting relief u/s 18, 19, 20, 22 of this act. The complainant also prayed for an order for returning back her stridhan. At the time of interview status of the case was pending. The complainant expressed her dissatisfaction about the delayed process of justice and exclaimed that three years has passed but
she was unable to get any order from the Hon’ble Court. She claimed that the situation made her depressed and she lost her confidence on the judicial system.

**Case Study- 03**

The petitioner is a 26 years old illiterate woman and earns her livelihood by working as a maid servant. She has a daughter. She got married in the year 2005. Her husband works in a silver factory and also runs a small business. After one month of her marriage the problem started. Her husband and in-laws started torturing her on demand of more dowries. Physical, Mental, Verbal and Economic abuse has been increased when her husband’s extra marital affair disclosed to her. Her husband and in-laws forced her to make physical relation with other males; on denial of this unethical shameful proposal of the respondents, Physical and Mental torture was increased on her tremendously. Her husband regularly used to torture her physically and sexually after consuming alcohol. After 7 months of her marriage when she became pregnant her husband and in-laws forced her to do prenatal diagnosis. They tried to kill her fetus when they came to know about the female child.

To save her daughter, she ran away from her in-laws and started to live in her parent’s house. Her husband and in-laws stopped communication with her and they did not pay single money after and during her pregnancy. After birth of her daughter she returned back to her in-laws. Her husband and in-laws tried to kill her and her daughter by poisoning. They threw her and her daughter out of the house after brutal physical torture. At present her husband and in laws are not keeping any contact with her and her daughter. The husband is also not providing any money towards maintenance and welfare of the minor child. He is continuously depriving the petitioner and her daughter from all rights of life which they are legally entitled.

An application under the PWDV Act, 2005 was submitted by the complainant on 21.09.2011 before the Protection Officer. First hearing was done on 23.09.2011. She got the lawyer from Legal Aid Services Authority. She claimed reliefs such as Protection Order, Maintenance Order and Residence Order from the honorable court. Almost after one year from the date of first hearing, a judgment was passed by granting a maintenance order of Rs 1,700/- per month. Researcher had
interviewed the complainant in the year 2014 and it was unfortunate that till then the victim did not get any maintenance for her and her daughter from her husband.

Case Study- 04

The complainant was married since 17 years with the respondent no. 1. Physical, verbal and mental violence started after 2 years of marriage by her husband, father-in-law and mother-in-law. They had no child and this was the main cause of violence on her. Several times they used to keep her under lock and key without food and used to get her out from matrimonial house. Verbal and emotional violence was regular incident. Torture started after 2 years of marriage and continued till 17 years. The mother-in-law of the victim was tried to drive her out from the house and wanted to arrange second marriage of her son. But the complainant always opposed on that issue which created total situation worse. On 25/07/2009 the respondents started beating her brutally with iron rod and her father-in-law and husband attacked her with a sharp weapon (katari). Few hours later she was found unconscious out side her matrimonial house with a 4-5 inches deep wound on her head, several injuries all over her body and multiple fracture on her left hand fingers. Her neighbours admitted her in the local hospital. After getting well she lodged a case under 498 (A) at Kaliaganj P.S. in Uttar Dinajpur. She had no where to go. Her father was died and poor mother was leading her livelihood in her son’s family. Her elder sister took her in her family.

After wards she met the Protection Officer and lodged a case under the PWDVAct, 2005 at the court on 21/08/09. She claimed Protection order, Residence order, Maintenance order, Compensation Order and recovery of Stridhan for the court. She applied for shelter home and the PO shifted her at local shelter home. She applied to the District Legal Services Authority for an advocate for proceding her case and she got advocate from the DLSA. After few years she left the shelter home and started to live with her sister. After 4 years of filling the case she got Protection Order, Residence Order and Maintenance Order from the Hon’ble Court. She got maintenance of Rs. 1000/- per month from the Hon’ble Court but at the time of interview she confessed that her husband was not giving any maintenance to her.

She did not filed any execution case and expressed her dis-satisfaction against the delayed judicial system. After a long economic and psychological struggle of 4 years she abled to get the order from the court but the orders are useless. She had not received any maintenance till date. She
was unable to maintain her livelihood. Leaving all hope on the Judicial system, with the help of her sister she started a small business. At present she is earning her livelihood by selling imitation jewellery, utensils etc. door to door in villages surrounding her sister’s house. She left her sister’s house and hired a house adjacent to her sister’s house. She is now an independent woman, living her livelihood with her own income. But still she is carrying the signs of brutal torture on her body as well as on her mind.

CONCLUSION
Female who plays various roles in the society as daughter, mother and wife deserves respectable position. Enactment of law is the duty of the Government and only enactments cannot do anything until the mindset of the society changes. For this most important role can be played by women herself, by raising their voice against inhumanity inflicted on her. Judiciary, Police, NGOs and other women organizations and government authorities can act as an active support to her for making the society better place to live in.40