

Well Intentioned but Over Ambitious

A Review of the New Domestic Violence Act

○ Madhu Purnima Kishwar

The new Domestic Violence Act (DVA) has made some significant improvements over the existing laws but it is not as if prior to this Act civil laws did not exist to protect women's rights in the family. Astute and determined lawyers have successfully pleaded and got adequate relief for their female clients under the existing matrimonial, civil and criminal laws as the article by Flavia Agnes demonstrates. But, the tardiness of court procedures and judicial bias often resulted in miscarriage of justice.

The biggest shortcoming of this Act is its overweening ambition and lack of sense of proportion. Ordinarily, when handling such deep rooted problems sincere regimes start their interventions with more focused and manageable victimised groups; they set themselves modest goals for dealing with blatant and clear cut cases of abuse and bring those worst offenders to swift justice. For example, they target their laws and welfare measures at those women who have suffered severe physical injuries in their homes and are commonly recognised in their communities as abused wives.

But what the framers of this Act have done is to anticipate *all* possible ways that the law could protect *all* aggrieved females from *any and all sorts* of harm and humiliation. At the same time they have put all their faith in *all women being essentially good and honest* victims while they view the government and the NGO

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networks as being capable of righting *all* kinds of wrongs, and in using *all* the claims of *all* women to get them justice, without worrying about proof of claims, or the current state of the society and of the government machinery. It is as if the framers of this law live in a Dreamland where wishful thinking is all that is needed to protect women from all kinds of real and imagined harm. In the process we are likely to see this law make a mockery of itself.

The Positive Aspects

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than keeping it forcibly tied to the *pallu* of anti dowry laws. The previous law carried an absurd assumption that domestic violence was invariably linked to dowry demands and hence a new and exotic variety of crime called "dowry death" was added to the statute book. Consequently, lawyers, police, and even some women's organizations encouraged women to register violence cases under the Anti Dowry Act even when there was no basis to the allegations of dowry demands because they felt stringent provisions of the anti dowry law made it easier for them to press charges and get a sympathetic hearing. Thus our courts came to be filled with cases with exaggerated or patently false charges of dowry demand related cruelty, while other dimensions of cruelty got pushed under the carpet. This new law frees women from the need to make bogus dowry related charges in order for their abuse to be taken seriously. This may enable us to know the real face of domestic violence in India and dispel the simplistic notion that dowry is the sole or main cause of violence against women.

The DVA provides for comprehensive and speedy relief within a set time frame. (See box on page 17) So far the remedies available to a victim of domestic violence in the civil courts and criminal courts vide **Section 498A** of the Indian Penal Code (IPC) were limited. They could file for divorce under civil law and or get the abusive spouse arrested and

tried for cruelty under **Section 498A** of the Indian Penal Code.

Thus the earlier laws hinged mainly on threatening the use of penal provisions to get the accused arrested and jailed on registration of a complaint in order to negotiate relief with an allegedly abusive spouse. Many women learnt to use the law to arm-twist their husbands to agree to financial settlements before divorce. The new Act moves in the direction of providing positive protection of women's civil and matrimonial rights, without using the threat of imprisonment under criminal laws *as the first step* towards seeking redress, as was the case with **Section 498A**. Under this law, imprisonment comes as a *second stage remedy*.

Earlier, victimised women found it hard to get emergency relief unless a very determined lawyer was willing to walk the extra mile and use the skillful techniques described by Flavia Agnes in her article in this issue. But even in those cases they had to combine legal means with extra-legal ones. Since court proceedings are invariably protracted, the victim had to often live at the mercy of the abuser or walk out of the house.

A major shortcoming of earlier laws against domestic violence was that they assumed women are abused only in their roles as wives and daughters-in-law. The new Act takes a more balanced and nuanced view of domestic abuse by including daughters, sisters, mothers, mothers-in-law, sisters-in-law and even grandmothers in its purview. As the story of Pratima Singh in this issue, illustrates, a woman can also be brutally victimised by her own father. Many women are also victimised by their sons and daughters-in-law, especially if widowed.

This new Act provides for swift, time bound and comprehensive civil remedies for maintenance, right to the matrimonial home, protection against

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violence as well as custody of children. It would have marked a significant improvement over the earlier civil remedies available to abused women had the framers of this law been more focused, realistic and

balanced in their approach. However, it has done very little to allay the fears of all those who have witnessed widespread abuse and misuse of the existing laws against domestic violence. If anything, it has added more reasons for concern and alarm.

Beneficiaries of this Law

Section 2(a) of the Act enables a woman to seek protection against any adult male family member who has been in a domestic relationship with her. This includes her own father, brother, her husband or male partner as well as his male and female relatives. Thus, a father-in-law, mother-in-law, or even

Provisions for Speedy Relief

“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.

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.

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, or 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.

A declaration of service 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.

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.

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*.”

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These measures are indeed commendable because women who are facing grievous threats to their life require emergency measures. However, given the state of our courts, given that even cases involving heinous terrorist crimes, including those handed over to special courts appointed for the purpose, languish for decades in our courts, it seems highly unlikely that this *sultani farman* (imperial edict) will achieve its goal. But it sure provides a handle to lawyers who want to pursue the case with vigour.

siblings of the husband and other relatives can be proceeded against even if they are not living under the same roof.

It also covers sisters, widows, mothers, daughters, women in relationships of cohabitation, single women, adopted children, etc. The types of offenses that would make fathers or brothers subject to the Act have been expanded in ways that make it much easier for the women to enter a case under DVA. While this marks an improvement, it has the potential to create very conflicting situations. For example, what if a mother-in-law alleges abuse by her daughter-in-law who in turn seeks an injunction against her mother-in-law? Given that battles between women in the family tend to be no less ferocious than those between spouses, this is not an unlikely scenario.

Under this law children can also file a case against a parent or parents who are tormenting or torturing them physically, mentally, or economically. In case the child is not in a position to approach the court on his/her own, "any other person" can file a complaint on behalf of the child. The law does not specify that a person has to be closely related or well known to the child in order to qualify for filing a complaint on the child's behalf.

However, men are not entitled to seek relief under this Act, which is based on the assumption that only women and children suffer domestic abuse. Thus an old father-in law who may suffer abuse, taunts and even violence at the hands of his son or daughter-in-law cannot get relief under this law while a mother-in law supposedly can.

Definition of Abuse

Section 3 of the law defines "domestic violence" as any act/conduct/omission/commission that harms or injures or has the potential to harm or injure a woman or child. This law considers physical, sexual,

What is a "Shared household"?

According to **Section 2(s)**, a household where the woman alleging violence lives or *at any stage or any point of time* in a domestic relationship, either singly or along with the respondent, is defined as a "shared household". The period of cohabitation has not been specified before a house can be considered a "shared household". This provision is a clear example of overkill and leaves a lot of scope for misuse.

This applies whether the household is owned or tenanted, either jointly by the person aggrieved and the respondent, or by either of them, where either the person aggrieved or the respondent or both jointly or singly have any right, title, interest or equity. This allows even those women with whom a live-in relationship was terminated months or years ago to claim maintenance, compensation and right of residence from the male partner, thus opening the gates wide open for bizarre claims by women who at some point may have spent few weeks living with a man before his marriage.

emotional, verbal, psychological, and economic abuse or threats of violence and abuse as equally serious offences. The law lists out in detail different forms of violence faced by women so that interpretation of what constitutes violence is not left solely to the discretion of the judges. Even a single act of commission or omission may constitute domestic violence. This has been done with the intention that women should not be required to suffer a prolonged period of abuse before the law takes them seriously.

The court may conclude that an offence has been committed by the accused upon *the sole testimony of the woman alleging abuse*. Given that lying in court has never been

taken seriously enough to invoke punishment, laws which presume guilt even before the trial has begun are prone to great misuse.

Physical Abuse is defined as any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health, or an act that impairs the health or development of the person aggrieved, or that includes assault, criminal intimidation and criminal force.

Sexual Abuse is any "conduct of a sexual nature that abuses, humiliates, degrades, or otherwise violates the dignity of woman." The law also covers instances where a woman is forced to have sexual intercourse with her husband against her will.

While it is important to respect a women's right to say 'No' to sex even in a marriage, it is not easy to assess whether a particular sexual act is against a woman's will or was with her consent, in case of married couples especially if there are no signs of struggle or resistance on the woman's body.

Verbal and Emotional Abuse have been defined as "insults, ridicule, humiliation, name-calling, especially with regard to not having a child or a male child and; repeated threats to

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cause physical pain to any person in whom the aggrieved person is interested.” So, for example, if the abuser were to threaten the children, or relatives of the woman, this will also be considered an offence under this law.

However, putting verbal taunts or abuse at par with physical violence amounts to very shoddy thinking. For example, calling someone a “moron” cannot be treated at par with beating up a woman.

Economic Abuse: Even under existing laws, a woman is entitled to seek maintenance for herself and her children from her husband. However, under the new law, economic deprivation or denial of financial resources to which the aggrieved woman or child is entitled under law or custom, or which the person aggrieved requires out of necessity, now falls under the category of economic abuse. A husband would be held guilty of economic abuse if he were to sell or use her *stridhan* (dowry), her jewelry and/or any other property jointly or separately held by the wife. But the law does not specify what happens if a certain asset has been alienated with the written consent of the wife but later she makes a case that it was done against her will.

Most important of all, under this provision a man cannot dispose of household assets, nor can he alienate her assets, nor for that matter any other property, in which the aggrieved person has an interest or entitlement by virtue of the domestic relationship. Even a recent live-in partner can prevent a man from selling his own property for his business requirements. This clause too is likely to cause havoc, unless used judiciously.

Live-In Relationships

The most important new element in this law is that it recognises live-in relationships and offers the same

degree of protection to a woman who is living with a man without marriage. According to **section 2(g)**, any relationship between two persons who live, or have *at any point of time* lived together in a shared household when they are related by marriage, consanguinity, or through a relationship similar to marriage, or are family members living in a joint family, is considered a “domestic relationship”. It also protects women in fraudulent or bigamous marriages, or in marriages considered invalid by law. However, the law does not make explicit whether it also applies to same sex marriages or gay relationships.

The wide ranging definition of “domestic relationship” may bring the needed relief for those women whose



husbands dupe them into cohabitation without going through proper ceremonies and then dump them at will on the grounds that theirs was not a valid marriage. But it has cast its net so wide that it leaves enormous scope for flimsy claims with a view to harassment and blackmail.

The Act does not specify how long a couple has to have lived in the shared household in order for a woman to claim benefit under the Act. Thus, as per the letter of this law, a woman who may have lived with a man for two or three months without being married to him can *at any point* seek relief under this law at par with a legally wedded wife. This amounts to making a mockery of laws against bigamy. The habitation rights of live-

in partners in the same house in case of already married men cannot be protected in this way without serious damage to the rights of legally married wives and their children. It is perfectly legitimate to protect a woman from violence and punish a man for inflicting it on her, whether or not she is married to the man. However, to give her the right to claim maintenance and get injunctions barring her male partners’ entry into his own house is going a bit too far, especially if he already has a wife and children living in that house.

No Eviction or Harassment

An important addition to the law ensures that an aggrieved wife or partner who takes recourse to the law, and gets a “protection order” or an injunction barring the entry of the husband into the house, cannot be harassed for doing so. Thus, if a man is accused of any of the above forms of violence, he cannot, during the pending disposal of the case prohibit/restrict the wife’s or partner’s continued access to resources or facilities to which she is entitled by virtue of the domestic relationship, including access to the shared household. If he does so he invites a fine of Rs 20,000 and/or a jail term of up to one year.

Section 17 of the law, which gives all married women or female partners in a domestic relationship the right to reside in a home that is known in legal terms as the ‘shared household’, applies whether or not she has any legal right, title or beneficial interest in the same.

Sections 18-23 provide a large number of avenues for an abused woman to get relief. Courts are obliged to give her Protection Orders, Residence Orders, Monetary Relief, custody of her children, Compensation Order and Interim/ *ex parte* Orders.

The law provides that if an abused woman so desires, she has to be

Injunctions for Residence Order and Protection Order

The Magistrate may, on being satisfied that domestic violence has taken place, pass a **Residence Order** —

- 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;
- Directing the respondent to remove himself from the shared household;
- Restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides;
- Restraining the respondent from alienating or disposing off the shared household or encumbering the same;
- Restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate; or
- Directing the respondent to secure same level of alternative 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:
[N.B. However, no order can be passed directing a woman to remove herself from the shared household, even if she may be the main perpetrator of violence.]
- 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.
- The Magistrate may require from the respondent to execute a bond, with or without sureties, for preventing the commission of domestic violence.
- **Time Bound Monetary Relief:** The respondent shall pay the monetary relief granted to the aggrieved person within the period specified in the order.
- Upon the failure on the part of the respondent to make payment in terms of the order, 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.
- **Right to Police Help:** While passing an order, 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.

While making an order, 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.

- **Right over Stridhan:** The Magistrate may direct the respondent to return to the possessions of the aggrieved person, her *stridhan* or any other property or valuable security to which she is entitled.
- **Monetary Relief, Compensation for Losses and Expenses:** While passing an order in favour of the woman, 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) 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 or any other law for the time being in force.

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.

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.

Punishment for Breach: A breach of Protection Order, or even 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, with fine which may extend to Rs. 20,000 or both. **Charges under Section 498A can be additionally framed by the magistrate, in addition to the charges under this Act.**

provided alternative accommodation comparable to the standard of living she is used to and in such situations. The cost of the accommodation and her maintenance has to be paid for by her husband or partner. Thus there is provision for rapid temporary rights for the woman pending disposal of the case. This makes perfect sense as far as wives are concerned. But to put the same weapons in the hands of a temporary live-inpartner amounts to letting our notion of gender justice run haywire. In effect it means that a man has no right to break off a love affair without paying through his nose.

A woman who is the victim of domestic violence will have the right to the services of the police, shelter homes and medical establishments. She also has the right to simultaneously file her own complaint under the existing laws against domestic violence, such as Section 498A of the Indian Penal Code. Thus, an accused person will be liable to have charges framed against him under both the old law and the new one. Further, the offences are cognisable and non-bailable.

No Safeguards against Abuse of Law

It is unfortunate that despite widespread complaints of misuse of earlier laws the new Act pays scant attention to building safeguards against malafide use of 498A and the anti-dowry laws. All it has done is to pile on more provisions with similar potential for abuses.

Section 498A of IPC enacted in 1983 defined “cruelty by husband or relatives of husband” as a new cognisable offence. As in the new DVA, under Section 498A too, cruelty was given a very wide ranging definition to include violence that leads to bodily harm, or danger to life, limb or physical health, but also includes endangerment of mental health, harassment and emotional torture through verbal abuse.

In addition, **Section 498A** made it obligatory for the police to take prompt action and arrest all those named by a woman alleging cruelty by her husband and in laws. The bail in such cases could be opposed and delayed. Thus in many cases those accused of “cruelty” to wives or daughters-in-law got punished even before the trial actually began.

Given the corrupt and lawless ways of police, this provision came to be misused and abused widely by the police to extract bribes as well as by unscrupulous women and their lawyers to blackmail the groom’s family even on trumped up charges. MANUSHI has dealt with numerous



cases whereby innocent men and their families have been devastated unscrupulous wives and daughters-in-law.

It is not just men but even a lot of women, who have suffered the consequences of irresponsible use of Section 498A, believe that it is extremely one sided and an instrument of blackmail rather than of securing justice. On the other hand many genuine victims of violence hesitate to seek legal redress under 498A because it would mean getting their husbands and in laws sent behind bars. While many kids may support their abused mother in seeking divorce, most do not support their mothers in getting their fathers sent to jail even if they have personally been victims of abuse because having a father convicted and sent to jail mars

and stigmatises the life of children as well. (See my article: “Underused and Abused: Laws against Domestic Violence” in issue No. 120. Also available on www.manushi-india.org)

So deep is the reaction against this easy-to-manipulate-law that in recent years senior police officers, including women officers in-charge of Crime Against Women Cells (CAWCs), have let it be known to those handling such cases to go slow on booking cases under **498A**. This means even genuine cases of abuse end up being viewed with mistrust.

Implementation Machinery

Section 8 of the law provides for the creation, and stipulates the responsibilities of Protection Officers (POs). These officers, to be appointed by state governments, will be under the jurisdiction and control of the court, and will be responsible to the court for monitoring the cases of domestic abuse.

The PO has to assist the court in making a Domestic Incident Report (DIR) or an application for a Protection Order on behalf of the aggrieved woman and/or child. POs will ensure that aggrieved people are provided legal aid, medical services, safe shelter and other required assistance.

POs are supposed to ensure that necessary information regarding Service Providers is made available to the woman or child alleging violence and that orders for monetary relief are complied with. Most important of all, the PO can be penalised for failing/refusing to discharge his/her duty, provided that prior sanction of the state government is obtained for this purpose. They invite a penalty of Rs 20,000 and/or a prison term of up to one year for failing to do their job.

Service Providers

POs have been given the power to register Service Providers who are defined by the law as private organisations, which are recognised

under the Companies Act or Societies Registration Act.

They will have to register with the state government in order to qualify as Service Providers. An organisation can be registered as a SP if it has provided services to women in distress for at least two years prior to seeking registration under Section 10 (1) of the DVA. In addition, Magistrates who are to hear cases under DVA are empowered to appoint counselors under **Section 14 (1)** of the Act who are to assist the petitioner and report to the Magistrate's Court.

The new law, thus, recognises the role of voluntary organisations in

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addressing the issue of domestic violence and enables NGOs working for women's rights to register as Service Providers under the Act. A Service Provider is protected for all actions done in good faith, in the exercise of the powers under this Act, towards the prevention of commission of domestic violence.

The Service Providers will, among other things, have to record the Domestic Incident Report, arrange for medical examination of the complainant, ensure that she is provided accommodation in a shelter home, if she so requires.

Unrealistic Expectations

How many NGOs even in metropolises, leave alone small towns and villages, have the resources and capacity to provide such comprehensive services? Genuine shelter homes do not exist in most

cities leave alone in rural areas. The few government run shelter homes that exist are often dens of corruption. Also there is no provision for reimbursing the NGOs for providing these services. Thus the responsibility for making this law work has been put on a non-existent machinery. The speed with which bogus and corrupt NGOs have come up in India, it is not unreasonable to fear that a whole range of goons and anti social elements will manage to register themselves as Service Providers much faster than genuine NGOs.

No budgetary allocation has so far been provided by the Centre to assist states in paying for the expenses involved in providing such comprehensive assistance to women. To insert a state level government official, a PO, into the machinery without considering the financial burden put on the states is likely to lead to grief. Chances are that in most states, this function is likely to be added to the existing job responsibilities of government officials already on the ground without figuring out if they can handle the burden of their new job along with their other tasks. Alternatively, state governments who are usually cash starved would find good reason to delay forever the setting up of this machinery. Some state governments have already

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refused to operationlise the Act on the ground that Protection Officers have not been appointed yet.

If such comprehensive services were indeed available to the DV victim as a consequence of her complaint, and these same services are difficult to obtain otherwise because of their scarcity, what would prevent poor women from filing false charges simply to avail shelter, medical help and financial support?

Giving Exaggerated Hopes?

This Act raises several new problems, repeats some of the mistakes of the old laws and raises many unresolved questions.

□ The "Rules" that define the institutional framework for the new Act came into force with effect from October 26, 2006 — a full year after the DVA was added to the statute book. This delay is itself instructive and points out that the new law may remain a paper tiger or used haphazardly since the elaborate countrywide machinery mandated under the DVA is nowhere in sight.

The enactment of the new DVA is an open admission that the existing provisions of law against violence are a failure. If such a strong law as Section 498A proved ineffective or came to be misused widely, why should we expect that the new law will act as a magic wand to be used honestly against genuine offenders?

□ As a supportive measure for 498A, provisions were made for the creation of Crimes Against Women Cells in every police district. They are in principle supposed to do what POs have been assigned to do in the new Act. The performance of the



CAWCs depends largely on the level of commitment and sensitivity of the person heading a particular Cell. Given that their personnel are drawn from the normal police cadre CAWCs functioned as well or as badly as their parent body. In many places they have not afforded protection to women even against the most blatant and devastating forms of domestic violence. Why should we expect that the new officials would be correctly chosen, well trained, and made to do an honest job for victims of domestic violence? What is to be the role of CAWCs after the creation of new machinery as envisaged by the new Act? Will they be folded up or will they exist as a parallel system? The state governments have been given a year to work out these problems; little is known of their preparations for implementation of the Act.

□ The Family Courts Act of 1984 was enacted with the purpose of providing civil remedies for domestic disputes and a more conducive atmosphere for the settlement of marital conflicts. They had the following provisions :

- The jurisdiction for claiming maintenance was shifted from the Magistrate's court to de-link matrimonial matters from those which deal with ordinary criminal



cases like thefts, kidnapping and pickpocketing.

- Counselling of couples as a first step to see if their differences could be settled through negotiation and neutral but woman-friendly mediation rather than take them straight for legal remedies which have adversarial processes inbuilt into them.

- Reduce the role of lawyers who tend to complicate matters by dragging out cases for their personal benefit, and cut down litigation costs by allowing petitioners to argue their case in person.

- Club together divorce and maintenance proceedings and bring them under one roof so that women need not have to fight parallel battles in different courts for different types of relief.

Family Courts have failed to deliver because the Government did not allow them the space and resources to function well. It is noteworthy that during the more than two decades since the law was passed, 18 states and union territories (including Delhi) have still failed to set up Family Courts. Lawyers in many states have succeeded in stalling these institutions because matrimonial disputes have become a very lucrative business. They lose business if litigants can manage without them, as envisaged by the Family Courts Act.

Where Family Courts exist they function poorly because the

government has not provided enough resources for the required infrastructure. Nor have the costs of litigation come down. The system of counselling has also remained at best a mere formality and at worst turned into a system that forces women to accept unfavourable settlements because no serious effort has been made to train and orient the required number of social workers to support women claimants. If skilled and professional family counsellors in adequate numbers were not appointed to assist Family Courts, why do we assume that the Government will somehow manage to get Protection Officers of the required calibre and commitment with the passing of DVA?

DVA in a way amounts to a step backwards because the cases will be tried in a Magistrate's Court along with petty criminal cases whereas Family Courts are presided over by District and Sessions judges who are higher in status than Magistrates. Will the Family Courts exist as a parallel and competing institution after the coming into force of the DVA? Or will they be allowed to languish even further now that the government is required to set up a whole new machinery? Can the new DVA be operationalised if state governments fail or refuse to set up

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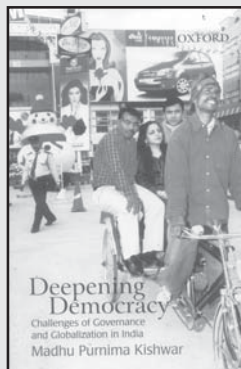
the required machinery, as happened with the Family Courts?

Guns without Trained Soldiers

Though a product of good intentions, this Act is likely to open the floodgates of messy litigation even further because it is too pompous and ambitious. Furthermore, it has not provided any deterrents for litigants, lawyers and police found misusing the law with bogus allegations. Nor does it provide compensation for families who are falsely implicated and suffer the ignominy of arrests and jail terms under Section 498A without deserving to do so.

Laws are akin to weapons. Just as the best of guns cannot help win a war if the soldiers in whose hands they are placed are ill trained, irresponsible, cowardly and prone to mindless violence. Similarly, without an honest, efficient and accountable law enforcement machinery, even the best of laws become useless. In India we have not yet learnt to craft our laws judiciously because we have no experience of their honest implementation. And yet, every time a law shows signs of dismal failure, the Government responds by passing yet another new law or amending the existing law to make it more stringent and/or more wide-ranging, and then pretending it has handed over a new magic wand for the empowerment of women.

In the process, the government makes a mockery of its own intentions as well as its ability to deliver justice. Unless the task of introducing far reaching police and judicial reforms is undertaken with urgency, attempts at new legislation are not likely to yield much good. □



Deepening Democracy **Challenges of Governance and** **Globalization in India** **(Oxford University Press)**

Madhu Purnima Kishwar

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