One Day Workshop on Gender Issues
Administrative Training Institute – Mysore
Government of Karnataka

Researcher
Dr. Dinesh Kapadia
B.S.A.M., LL.B., M.A., Ph.D
Nodal Officer S.R.C.W (N.M.E.W) Gujarat
Director
Gender Resource Centre
Ahmedabad
Women and Child Development Dept.
Government of Gujarat

Subject:
“A background of conceptualization of gender equity and legal provisions with focus on PWDVA 2005- Scenario in Gujarat”

Venue:
7th June, 2013, Hotel Atria, Palace Road, Bangalore
Key Words
Gender Equity, Domestic Violence, D.I.R (Domestic Incidence Report), Women Empowerment, Alimony, exparte

Abstract
Contrary to a popular belief that “Gender equity” has been conceptualised by the sociologists activities and feminists of the western world in the recent past; the genesis of Gender equity could be traced to our ancient culture and Vedic literature. However many a social evils including discrimination against women permeated in our societal milieu. The international Conventions during the last five decades have beyond all questions given an impetus to concept of gender equity and equality in the mainstream.

Domestic Violence is the worst form of human rights violation. However, incidence of domestic violence remains unreported and innumerable women both in urban and rural households have to endure violence in one or the other form at the hands of their spouse and in-laws. Taking into consideration the strong recommendations by the international forums; and as part of fulfilment of constitutional obligations; a suitable piece of legislation to contain domestic violence against helpless women became absolutely necessary.

In the present study an attempt is made to muse over historical background of conceptualization of gender equity in the Indian context, legal provisions for protection of women and scenario in respect of implementation of provisions of P.W.D.V.A 2005 in Gujarat at zero ground level. All possible efforts have been made by Gujarat State to implement this social act despite bottleneck at ground level.

Research Methodology

Primary Data

- Qualitative – Interview
- Quantitative - Structured Questionnaire

Secondary data

- Government records from office of commissioner women and child development (up to Feb. 2012 )
- Office of the protection officer at District level

Sampling

- Purposive Sampling

Historical background

Women in Ancient Age

India, the second highest populous country of the world, comprises women as almost half of its total population. Women of ancient India, especially during the Vedic and
Indus civilizations, received a great divine honor and were worshipped as Goddesses. As a part of the society, a Woman used to perform her independent role, as she was given more prominence in decision making in the social institutions.

The genesis of “Gender Equity” can be traced to the Vedic literature of the ancient India; contrary to a popular belief that it is conceptualization of the Western Sociologists and “Women Empowerment” gained ground only after deliberations on this issue, in various international forums at the fag-end of the twentieth century. For example, Ubhaya Bharti the wife of a well known ritualistic, Mandan Mishra possessed extra ordinary argumentative skills and it was she who challenged Adi Shankaracharya for another round of debate, after the latter outsmarted her husband (Mandal Mishra) in a debate on the issue, “whether or not, the life of a house holder was superior to that of a monk.” The debate between an empowered woman, Ubhaya Bharti and scholarly saint Adi Shankaracharya is indeed a testimony to freedom of expression enjoyed by women in ancient India. The other prominent scholarly women during the Vedic period were Lopamudra, Maitreyi and Gargi. Misogyny was alien to our social milieu and cultural ethos.

**Medieval India**

However, with the passage of time many social evils including gender discrimination permeated in our social milieu so much so that the status of a woman was reduced to that of a subservient wife supposed to perform domestic chores like kidding urchins, cooking, cleansing utensils, and washing clothes etc. from dawn to dusk.

Later on, gradually her position slipped into the abyssal depths that deprived her of independence; social, economic and political rights and thereby, made her dependent on the male members of her family. All the decisions for her were taken by men only. Since ages she has been deprived of an opportunity to be an independent entity and made to suffer inequalities. She was made to live as a mere chattel and placed at the receiving end, at the mercy of the male chauvinistic society.

A widow had to commit “sati” mandatorily on the pyre of her deceased husband and glorification of this inhuman practice became prevalent in some communities.

A female child became an unwelcome guest in the family and in some communities an unwanted female child used to be drowned in a cauldron of boiling milk. (“Doodhpiti”)

Birth of a male child used to be celebrated with great fun fare whereas; arrival of a female child was treated with dismay and disdain.
The widely accepted practice of child marriage deprived a young girl of even primary education.

In a patriarchal society a woman had to be at mercy of her husband and in-laws and she had no other option but to lead a life full of misery, deprivation and all forms of discriminations.

Many a young newly married young women had to lose their lives at the hands of avaricious and greedy in-laws who brazenly raised a demand for “Kariavar” (Dowry) both in cash and kind from the parents of a bride.

**Women and freedom struggle**

During freedom struggle of India a sizeable number of women actively participated in agitational programmes launched by Mahatma Gandhi and also revolutionist activities undertaken by well known freedom fighters like; Bhagat Singh, Sukhdev, Raj Guru and Ramprasad Bismil etc. Some women freedom fighters suffered, struggled and sacrificed their precious lives to free India from the clutches of the Britishers.

Netaji Subhaschandra Bose had created a special women brigade headed by the late captain Dr. Laxmi Sehgal in his Indian National Army (INA).

With the advent of independence some prominent women like Sarojini Naidu, Smt. Suchitra kriplani, Vijaya Laxmi Pandit and Rajkumari Amrit Kaur etc enjoyed the position of power.

**Women and the Constitution of India**

The Indian constitution which came into force on 26th January 1950 provides the framework for the good governance of the country and it is considered to be a comprehensive document containing the principles of “Justice, liberty, equality and fraternity.”

Keeping in view the different forms of discrimination against women since the time immemorial, the framers of the constitution were conscious enough to incorporate some general and specific provisions for upliftment of status of women and also to set in motion the legal process to bring gender equity in all the spheres.
The scheme and scope of the Constitutional Provisions relating to women could broadly be classified in three chapters.

1) The preamble of the constitution  
2) The Fundamental Rights – part III and  
3) The Directive Principles of the State Policy – part IV

**The Preamble**

The preamble is the “soul” of the constitution and it unambiguously declares the common objective and purpose for which several provisions have been incorporated therein. A careful perusal of the preamble in its letter and spirit would convince one that “we the people of India” is a broad and meaningful assertion aimed at establishing superiority of the people irrespective of caste, creed, religion and sex. It also expresses general wishes of the people to render “Equality of status and of opportunity” to every man and woman. The preamble assures “dignity of Individuals” which beyond all questions includes the dignity of women.

In pursuance of spirit of the preamble several important enactments have been brought into operation pertaining to gender equity in every walk of life – family, succession, guardianship, employment and economic and political empowerment of women and their protection from different forms of violence.

**The Fundamental Rights**

Part III of the Constitution recognizes and confers Fundamental Rights to citizen, applicable in equal measures to men and women and they can be invoked by women for the assertion of their rights. The first of these rights ‘the equality before law’ is based upon the principle of National Justice. Article 14 of the Constitution deals with equality before law and provides that “The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.”

Article 15(2) prohibits the general public and any citizen from discriminating on the grounds of religion, race, caste, sex, and place of birth or any of them. Thus by incorporating Articles 14 and 15 the status of women has been uplifted and a new life of equal rights at par with men has been accorded. These articles do not direct and support any particular or matriarchal institutions, but simply say that women should be given equal rights with their male counterparts. However, the provisions of non discrimination on this account do not prevent the State, to make any special provisions
for women & children. The same has been laid down under Article 15(3), which empowers the State to make special provisions for them. By incorporating Article 15(3), the framers of the constitution favoured women because they have been neglected from centuries and this Article imposes a duty on the State to give special attention by making special statues for the welfare and upliftment of women.

The Directive Principles of the State Policy

The directive principles are incorporated in part IV of the Constitution from Articles 36 to 51A. They are aimed at serving social and economic freedoms by appropriate State action. Their ideals are based on the concept of ‘Welfare State’ and fix certain goals; social and economic; for immediate attainment by the Union and the State Governments while formulating a policy or enacting a law. The directive principles are non-judicial and only prescribe various goals which could be achieved through the means of Fundamental Rights. Certain specific provisions in part IV deals with the directions to the State to improve welfare and protection of women.

According to Article 39(a) the State shall direct its policy towards securing that the citizens, men and women equally, have right to an adequate means of livelihood. Under Article 39(d) – the State shall direct its policy towards securing equal pay for the equal work for both men and women. To give effect to this Article the State has enacted the equal Remuneration Act, 1976. Article 39 (e) is aimed at protecting the health and strength of workers, both men and women.

Keeping in view the constitutional spirit; and ratification of international treaties on women’s rights and protection the various laws have been enacted apart from relevant Sections of Indian penal code and Criminal procedure code to protect women from various forms of crime against them.

1. Relevant Provisions of the Employees State Insurance Act, 1948
2. Relevant Provisions of the Factories Act, 1948
3. The Immoral Traffic (Prevention) Act, 1956
4. The Dowry Prohibition Act, 1961
5. The Maternity Benefit Act, 1961
6. The Medical Termination of Pregnancy Act, 1971
7. The Family Courts Act, 1984
8. The Indecent Representation of Women (Prohibition) Act, 1986
10. The A.P.Devdasi’s (Prohibition of Dedication) Act, 1988
12. The Pre-conception and pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994
14. Protection of Women from Domestic Violence Act, 2005
15. Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013
16. The Criminal Amendment Act 2013

Domestic Violence is a common thing seen in the society. It is serious human rights violence against women. Our Constitution has provided us fundamental rights. Specially Articles 14, 15 and 21 of the Constitution of India protects the women from being victim of domestic violence and prevents the occurrence of domestic violence in the society. Domestic violence is prevalent in society but has remained largely invisible and unreported in the public life.

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

The phenomenon of domestic violence is widely prevalent but has remained largely invisible in the public domain. Presently, where a woman is subjected to cruelty by her husband or his relatives, it is an offence under section “498 A” of the Indian Penal Code. The civil law does not however address his phenomenon in its entirety.

The Salient features of P.W.D.V.2005

- Service of notice within three days
- Protection Order
- Residence Order
- Monetary reliefs
- Custody orders
- Compensation orders
- Power to grant interim and exparte orders
- Disposal of Application within 60 days
Women Empowerment and Gujarat

The Following key Sectors are part of Gender Equity Policy 2006 (Nari Gaurav Niti 2006 –Gujarat)

1. **Economic Environment**
2. **Governance and Decision Making (Political empowerment)**
3. **Health & Quality of Life including proper Sanitation.**
4. **Protection from Violence**
5. **Natural Resource Management**
6. **Education**
7. **Legal Environment**
8. **Advocacy and Capacity Building.**

It is clear from reading “Nari Gaurav Niti” between the lines, that Protection of women is one of the focus areas on gender policy.

**Implementation of P.W.D.V.A.2005 in Gujarat Progress at a glance**

**Posting of Protection Officers**

- Appointment of 26 Independent Dowry Prohibition Officer to work as Protection Officer from 19th July 2010 (GR No. Dowry/102010/520327/A : date 19-7-2010)
- All newly appointed POs are women and having degree of Masters in Social work as per provisions in the Rules.

**Appointment of Service Provider**

As per section 2 and 10 of PWDVA 2005

- 13 Service Providers have been appointed in state of Gujarat from 15th October 2007 (Notification No. GS-(1)-2010- MHY-102009-1784-A, date 29-7-2010)
- 236 District as well as Taluka level MPWWCs (Multi Purpose Women Welfare Centers) as Service Providers have been notified (Notification No. GS-(1)-2011- MHY-102010-1875-A, date 1-3-2011)

**Notification of Shelter Homes & Medical Facilities**

- 59 Medical Facilities (Government facilities, such as All Civil Hospitals and
All Hospitals affiliated to the Medical Collages including Medical Collages run by the Gujarat Medical Education Research Society) have been notified on 12th August 2010 (Notification No. GP-24-MIS-132010-SFS-9-A date 12-8-2010) U/S 7 of PWDVA 2005

Coordination between various agencies for quick relief to the victim

Although no formal structure has been developed by the nodal department, currently Gender Resource Centre plays a role of coordinating agency. Apart from organizing regular dialogue between implementing agencies, the centre also provides technical inputs for regular and effective data collection and monitoring and evaluation methods that can be exercised by the department. The feedback received from various NGOs is being shared with the Government regarding the implementation of the Act. The centre Conducts training on P.W.D.V.A.2005 for various stake holders on regular basis, besides other programmes on gender issues.

A glimpse of training Programme on PWDVA 2005 conducted by Gender Resource Centre period 2008 to 2012

<table>
<thead>
<tr>
<th>No</th>
<th>Training</th>
<th>Objective</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Protection Officer, Shelter Homes, Service Providers, Multipurpose Women Welfare Centres, Police Officer, Mahila Police Station and Mahila Cell's Officers</td>
<td>Orientation on PWDVA To discuss the duties under PWDVA Training and sensitization programmes for various implementing agencies under the Act and Awareness Generation</td>
</tr>
<tr>
<td>2</td>
<td>Dialogue of Victims with Implementing Agencies</td>
<td>Addressing the issues on implementation at ground level.</td>
</tr>
<tr>
<td></td>
<td>Judiciary</td>
<td>Addressing the issues in implementation and better coordination among all agencies</td>
</tr>
<tr>
<td>3</td>
<td>Refresher Training for Protection Office &amp; Service Providers</td>
<td>Orient the participants with the procedure of registering a complaint and filling up of Domestic Incidence Report, share issues</td>
</tr>
</tbody>
</table>
Data regarding Training by GRC on PWDVA 2005 (From 2008 to Feb. 2013)

<table>
<thead>
<tr>
<th>No.</th>
<th>Target group</th>
<th>No. of Participants</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Judiciary</td>
<td>94</td>
</tr>
<tr>
<td>2</td>
<td>Govt. Offices</td>
<td>346</td>
</tr>
<tr>
<td>3</td>
<td>NGOs</td>
<td>603</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>1043</td>
</tr>
</tbody>
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Glimpses of Programme on PWDVA 2005 Conducted by GRC

Information Education & Communication (IEC)

- Translation of PWDVA 2005 in the vernacular language
- Hoardings on salient features of PWDVA 2005 at public places, i.e., ST Bus Stations
- A booklet in Gujarati on PWDVA-2005 developed & disseminated widely to stakeholders

IEC Material for PWDVA by Gender Resource Centre Gujarat
Domestic Incidence Report Detail Gujarat

![Graph showing details of cases under PWDVA 2005]

Gujarat State
Source: Commissionerate of Women & Child development – GOG

Orders under PWDVA 2005 by court (2008 to 2012)

<table>
<thead>
<tr>
<th>No</th>
<th>Particular</th>
<th>Total</th>
</tr>
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<tbody>
<tr>
<td>1</td>
<td>Number of cases U/S 18 Protection order granted by Magistrate</td>
<td>313</td>
</tr>
<tr>
<td>2</td>
<td>Number of cases U/S 19 residence order granted by Magistrate</td>
<td>212</td>
</tr>
<tr>
<td>3</td>
<td>Number of cases U/S 20 monetary relief granted by Magistrate</td>
<td>137</td>
</tr>
<tr>
<td>4</td>
<td>Number of cases U/S 21 custody order granted by Magistrate</td>
<td>31</td>
</tr>
<tr>
<td>5</td>
<td>Number of cases U/S 22 compensation order granted by Magistrate</td>
<td>120</td>
</tr>
<tr>
<td>6</td>
<td>Number of cases U/S 23 exparte order granted by Magistrate</td>
<td>148</td>
</tr>
<tr>
<td>7</td>
<td>Number of cases U/S 23 interim order granted by Magistrate</td>
<td>291</td>
</tr>
<tr>
<td></td>
<td><strong>Total</strong></td>
<td><strong>1252</strong></td>
</tr>
</tbody>
</table>

Source: Commissionerate of Women & Child development GOG
Case Study-1

Name: Mahejabin banu Abbasmahendi Mirza

Age: 34 years

Qualification: Graduate in Arts (F.D.Girls College – Ahadbad)

Family Background: Married to a Stenographer in a district court about 10 years ago and the couple has 2 sons out of the estranged marriage.

The aggrieved woman’s complaint in succinct is that her in laws harass and humiliate her for Dowry and other extraneous reasons.

She filed an application under the relevant sections of PWDVA – 2005, besides filing a complaint under sections 125 and 127 of criminal procedure court. She gets Rs. 10000/- towards maintenance (Alimony) of Rs. 10000/- as per the court’s order from her husband. However she feels that this amount is not adequate to meet her requirement in the era of inflation.
Therefore she filed DIR under PWDVA in the court no -1 Metropolitan Magistrate – Ahmadabad city (Criminal miscellaneous application – 3/2012 on 25/1/2012.) After a lapse of 1 year 7 months and 6 days the court passed the following order on 30/4/2013.

Payment of Rs. 34000 towards house rent, which the aggrieved woman has incurred on her rental house during six months, within 30 days from the date of this order (30-4-2013). In the event of the respondent's failure to do so the amount of Rs. 6000/- per month to be directly deducted from his salary from June 2013 onwards till the total payment of arrear.

**Case Study-II**

Criminal Application No 21/2012
In the Court of sixth Addi.chief Judicial /Magistrate -Ahmedabad
Aggrieved Person: Reenaben Kaushikbhai Datania
Ahmedabad City
v/s Kaushikbhai Dantania (Husband and others )
COURT'S ORDER
Monthly House Rent Rs.500/-
U/S 20 Maintenance Rs.2500/- per Month and Medical expenditure Rs.20,000/-
The exparte order is passed since the respondent failed to remain present before the court despite serving a notice to him

**Case Study-III**

Criminal miscellaneous
Application NO 462/2009
In the Court of sixth Addi. Chief Judicial /Magistrate –Ahmedabad
Aggrieved Person/Applicant: Damor Anilaben PrindraKumar v/s
Respondent: Damor PrindraKumar bhimjibhai and Bhaimjibhai.S.
Application u/s 18, 19, 20 & 22 of PWDVA 2005
Court order at 30/6/12
u/s 18- Protection order passed by court
u/s 19- Residance order passed by the Court
u/s 20: Maintenance order for Rs. 7000 per month from the date of filing application; against applicant's demand of Rs.10,000/- per month
u/s 22 Compensation of Rs.50,000 ordered by the court against applicant's demand for Rs.2 lakhs
The respondent in this case preferred an appeal u/s 29 of PWDVA 2005 before the court of Principal Sessions Judge.
Ahmedabad (Rural) dist judge and prayed for injunction till disposal of this appeal
The appellate court's order dt. 22/10/2012
The appellate court asked the respondent to make 50% payment compensation amount within 15 Days and Rs. 7000 forwards maintenance per month plus Rs.3000 towards the remaining 50% of the arrears of the compensation amount.

Thus the appellate court partially granted the respondent's appeal.
Case Study -IV

In the metropolitan magistrate’s Court No.25- Ahmedabad City

Case No.83/2012

Aggrieved person/Applicant

Deesa Prasantbhai Dave

DIR Dt. 14/9/2012 u/s 18, 20 & 22 of PWDVA 2005

A PRAYER FOR INTERIM ORDER U/S 23 OF PWDVA 2005

The court order dt 28/1/2013

u/s 23 An interim order for maintenance amount of Rs.2000 per month for the applicant herself and Rs.500 per month for the son from the date of the application and payment of arrear within 60 days.

Observations:

Of late, there seems to be a modicum of awareness not Only among educated women but also uneducated women both from urban and rural areas about provisions of P.W.D.V.A 2005 and they have started approaching police stations and protection officers to seek Justice against violence of different forms.

Gujarat state has made sincere efforts to implement provisions of the Act. However, the following bottlenecks have been found to exist at the implementation level

- A backlog of PWDVA related cases in Courts
- There appears an iota of disappointment among the victims of violence because of delay in disposal of their applications.
- Shortage of Staff (Efforts are on to overcome this problem)
- Lack of sensibility in a section of police officers and other role players.

Advocacy:

- Establishment of either special courts or fast track courts to deal with women related laws, especially PWDVA 2005 related matters
- Systematic and scientific Gender Sensitization of police Personnel and other Stakeholders
- A proper training to Concerned officers, NGOs, Victims on procedural aspects of P.W.D.V.A.2005
- Awareness on gender issues with focus on different forms of violence among collegians.
Limitations

- A difficulty in collecting accurate data on regular basis
- Case Studies confined to only Ahmadabad District due to time constraint

Acknowledgement

1. Ms. Shailendrakumari Zala, Gender Resource Officer, Gender Resource Centre- Gujarat
2. Ms. Himali Joshi, Assistant State Coordinator, State Resource Centre (N.M.E.W) - Gujarat
3. Protection Officer Ahmadabad District, Office of Social Defence, Ahmadabad
Dr. Dinesh P Kapadia
Deputy Secretary
Govt. of Gujarat India

**Experience**

22 years in different Depts. Secretariat Gujarat state India

- Ex M.D.-Gujarat Thakor & Koli Vikash Nigam (GT&KVN) Gandhinagar
- EX.-Joint Director State institute of Rural Development- S.I.R.D. (SPIPA) Gujarat
- Presently, **Director, Gender Resource Centre**. Women & Child Development dept. Govt.of Gujarat –INDIA

**Qualification**

B S A M .LL.B. M.A. (Sociology)

Ph.D:- “The Problems of the constabulary in Gujarat Socio economic profile of living and serving conditions”

Paper presentations-

- “Global warming” at National institute of technical teachers training and research Chandigarh India the year 2009
- “Development of model village through panchayati raj institute” the year 2010 at National institute of rural development Hyderabad India.