

# MARITAL VIOLENCE IN THE STATE OF WEST BENGAL: PERSPECTIVES OF JUDICIARY & INVESTIGATING OFFICERS-A DIRE NEED FOR SENSITIZATION

Jayita Moulick, Kalinga Institute of Industrial Technology University

Sarbani Bhowmik, Adamas University

Pradip Kumar Sarkar, Kalinga Institute of Industrial Technology University

Nilanjan Chakraborty, Amity University

## ABSTRACT

*Domestic violence, however, is not a very unique area of research but is always a emerging concern for a researcher. The traditional reason says that women always tend to subjugate themselves to the authority of the men and thereby in most of the cases the abuses go unreported. Again, few say that women fall prey of the abuses more when they report of being a victim of any marital abuse. The probable reasons are poverty, lack of education, lack of support, emotional attachment for the partner, motherhood, tender age of the victim and her children, financial distress at paternal house of the victim, reputation of the family which restricts victims to seek help against the marital abuse. Furthermore, they are even more victimized when they try to seek help or share their experiences. Thus, they remain continuous victims of physical, emotional, sexual social and financial abuses. In this paper the author seeks to focus on sensitization of the Judicial and investigation agencies and authorities toward the crimes like domestic abuse and rape.*

**Keywords:** Domestic Violence, Investigation, Agencies, Delegation and Sensitization.

## INTRODUCTION

Marital abuse merely does not mean abusive behaviour of the partner when he becomes agitated but it includes the choice of the partner to establish or maintain control or power over his wife. In marriage, physical abuse generally starts with mild assaults and women keep on compromising with such behaviour and with time such abuse becomes more intensified. Emotional abuse on other hand is used as tools to scare the victims and break them psychologically to that extent wherein the women start considering themselves as either worthless or responsible for the violence (Laxminath & Sarada, 2011). Another form of abuse is sexual abuse. There is a stereotypical thought in the society that after marriage the husband has the full control over his wife's body, thus, sexual abuses are least recognized in marriage. However, it is the most dominant form of abuse in marriage (Singh, 2019). It took decades for women to unfold this truth about sexual violence, the reason being nobody dared to discuss about this issue due to embarrassment and family honour (Kaur & Garg, 2008). Another form of abuse is social abuse wherein the perpetrator tries to isolate the women from socializing with the

community. Victims of such abuse are compelled to spend time with their husbands only and not with any other person be it her family members or friends. They are not even allowed to move out of their home and are forced to confine themselves within household chores even in spite of being capable of earning their own living. Besides these, the husbands often try to establish their control over the victims by making them financially weak and consequently dependent upon them. They can establish such control either by not permitting the women to work and earn or seize their income or assets or their access to assets and thereby making them financially vulnerable. In most of the Indian families the men take all the financial decisions which includes the decision whether to allow a woman to work outside or not (Mackintosh & Swann, 2020).

It is noteworthy to mention that in most of the cases the women, despite of knowing their rights chooses to endure such abuses not only for the sake of above stated reasons but also for the fear that they will have to suffer humiliation after reporting the abuse in the form of disgraceful interrogation by the police, unpleasant medical examination and distressing or embarrassing court proceedings. And in almost all the cases we find that either the victims are obligated to withdraw themselves from fighting for their rights due to the repeated humiliations or they eventually end their life by committing suicide (Martinez & Schrottle, 2006). In the cases wherein some women manage to win and establish their rights, they are abandoned most often by their families and are left exposed to such a society who prey on all women and brand a woman without a husband to be of unchaste character.

Thus, it is extremely necessary that proper assurance of comprehensive response and support are provided to the victims so that they get the courage to raise their voice against the injustice caused to them (Klugman, 2022). Secondly, the awareness of their rights against the types of martial abuse must be imparted to them through all possible forms of social media. It must be ensured that they get easy access to claim their rights. However, the victims can only be benefitted if they can break the shackles of their fear and fight for their rights which can only happen if the police and judicial magistrates are imparted with proper gender sensitization trainings wherein, they would be better equipped to deal with cases of marital abuse in a manner best suited for the victim (Mahserjian, 2015).

### **Existing Legal Framework to Combat Marital Abuse: Background of the Protection of Women from Domestic Violence Act, 2005**

Over the last decade, the attention of feminist academics, activists and legal institution on the issue of domestic violence against women has increased and it was found that behind domestic abuse of women, dowry plays a strong role (Suneetha & Nagaraj, 2006), which led to the criminalization of domestic violence through the enactment of Sec. 498 A in 1983 and Sec. 304B in 1986 which complemented each other as the former section sought to address the wide-scale dowry related violence and the latter section addressed the particular offence of dowry deaths (Jaising, 2009). But when it comes to domestic violence, justice in most of the cases is still but a word as in most cases of 498A it was very difficult to convince the judges, having a patriarchal mindset, to punish the offender, instead, the policy of forgive and forget was encouraged by them (Kothari, 2005). In cases where the victim identified dowry being the reason for the marital abuse, it has been found that often the accused were acquitted for either lack of evidence showing violence or inconsistencies in the statements of witnesses or inconsistencies in the dying declaration (Ray, 2006). When the Lawyers Collective was given the task to draft a bill

on domestic violence in 1993, the initial thought was to have a law which had the best of civil and criminal provisions in it to provide optimal protection to women, in a sense to restrain the abuser and provide for other needs of the victim like shelter, medical assistance, monetary relief and also punitive measures to punish in the event of breach. The next step was to expand the definition of domestic relationship to help bring under the protective umbrella all women be they sisters, widows, old parents, wives, and live-in partners and also to broaden the concept of violence to incorporate all types of behaviour that reeks of male gender power and to condemn it (Majumdar, 2004).

### **Unique Features of the Protection of Women from Domestic Violence Act, 2005**

Section 2 (f) of the Act, 2005, defines a “*domestic relationship*”: As a relationship between two persons who have lived together for any length of time in a shared household and are related by consanguinity, marriage or were in a relationship similar to marriage, adoption or are members of joint family living together. Thus this definition not only puts the wife but has broadened the scope by including within its ambit live-in relationships as well (Acharya, 2018).

Section 3 of the Act defines “*domestic violence*”: By stating that any conduct, commission or omission of the respondent will amount to domestic violence if such action/omission harms or endangers the health, which shall include both mental and physical of the aggrieved which shall include the acts of physical, sexual, verbal, emotional and economical abuse. Such conduct shall also include harassment or endangering the aggrieved with the aim of forcing her or any person related to her to fulfil any demand for dowry (Dhingra, 2006).

Appointment of Protection Officers: Under Sec. 8 of the Act, Protection Officers are to be appointed to render assistance to the Magistrate exercising his functions as provided by the Act and also to provide all necessary assistance to the aggrieved person as provided by the Act (Acharya, 2021).

Service Providers: Under Section 10 of the Act, any voluntary association already registered under the Societies Registration Act, 1860 or the Companies Act, 1956, operating with the goal of protecting women’s rights and equipped in providing legal, medical and financial assistance shall be competent to register as Service Provider under the Act (Dwivedi & Dwivedi, 2019).

Speedy Justice: Under Section 12 of the Act, on receiving an application either from the aggrieved person or from anyone in place of the aggrieved person or the Protection Officer, the Magistrate shall within three days fix the date for the first hearing. The section also provides that the Magistrate shall strive to dispose every application within sixty days from the date of the first hearing (Acharya, 2021).

Counselling: Under Section 14 the Magistrate has power to direct the respondent and/or aggrieved to attend counselling, either together or separately. The Counsellor shall try to reach an amicable settlement between the parties through measures which shall help in redressing the grievances of the aggrieved person and shall submit a report of such settlement before the court (Dwivedi & Dwivedi, 2019).

## Importance of Gender Sensitization Training

In India, there is a significant and palpable deficit in gender sensitization among the judicial magistrate and police even after we have provision outlining the duties of both the Central and State Government to conduct sensitization and awareness training periodically under Section 11(b) of The Protection of Women from Domestic Violence Act, 2005 for the judicial magistrates and the police officials (Ghosh & Choudhuri, 2011). Thereby, the women of India are subjected to double jeopardy, on one hand they are the victims of the physical, mental and economic abuse prevailing in the society and on the other hand they again get victimize on their encounter with the judicial magistrate and the police due to the prevailing masculinity subculture. Records show that the strength of women police force is still below 10% whereas the policy seeks up to 33% of reservation of seats for the women police force (NCRB, 2018).

The judicial magistrates as well as the police is responsible for the enforcement of law but the indifference in their attitude further increases the fear amongst the women victims in the process of accessing justice. As a consequence, there is a dire need to conduct periodical awareness training or programmes of gender sensitization amongst the police and judicial magistrates so that they can act and behave sensitively while handling women victims as part of their discharge of legal duties (Acharya, 2021; UNIFEM. 2009).

In the Indian society, the instances of discrimination of women are many and such discrimination becomes further blatant in cases of offences against women; taking the instance of cases of rape, during filing of complaint the victims are repeatedly asked either about the time they were out alone or their attire so as to indicate that either their dress must have provoked the men to commit rape upon them, or due to being out late alone, the victims have brought the offence of the rape upon themselves. Such line of questioning only indicates that women are to stay at home; they do not have any right to free movement all by her and must in all circumstances cover up (Dhingra, 2006). The standard responses of the police show an attitude of disbelieving the victim woman at the time of initial complaint and they themselves becomes judgemental deciding the merits of the case and whether or not to file the case (Acharya, 2018; Sachdev, 2022).

In light of the Constitutional provisions, the legislature has from time-to-time enacted various welfare legislations for the empowerment of the women (Jain, 2018). However, it is noteworthy to mention that even after such novel vision in the Constitution and objectives of the welfare legislations dedicated to women, the NCRB data shows the alarming rate of increase of violence against the women which clearly indicates that our women still do not enjoy a rightful place in the Indian society. It is undoubted that there is a calamitous need for the better enforcement of women empowerment. This has to start from the ground level by making better efforts to sensitize the judges and especially the police on varied gender issues to better their interactions with women victims and to help raise an assurance level of the latter's safety (Weldon & Htun, 2010).

## Recommendations for Better Implementation of Gender Sensitization

1. Gender sensitization must come within the concerns of fundamental policy of the State which would increase the chances of implementation of such training programmes.

2. A dedicated Human Resource Development intervention is required for the conduct of continuous gender sensitization programmes amongst the police and judicial magistrates which would help them to better their attitudes and perspectives towards offences against women.
3. A training manual must be drafted on gender sensitization and must be handed over to every judicial magistrate and police units so that they can at least get enlightened on the concept and significance of gender sensitization. The modules must not be very general. The manual must be specific and distinct for judicial magistrates and police officials, as they need to deal with such offences against women and the victim women at different stages of the proceedings.
4. For training purposes, special task force or trainers must be employed for ensuring proper and adequate training to the judicial magistrates and police officials.
5. At the time of recruitment, along with other trainings, gender sensitization trainings can be made a part so that it can be imparted and infused amongst the officers from inception.
6. Women must be encouraged for increase in enrolments in the work force of the country by providing them both the skills and incentives for the same.
7. Universities can be approached for offering courses on gender sensitization and the Government may make it a mandate, for all police officers and judicial magistrates handling such gender-based cases, to obtain a certificate for completing such courses.
8. In addition to this, online Courses can be organized to boost awareness on gender sensitivity among all, throughout the country.
9. Moreover, NGOs must work with the government to rescue victims whenever needed and also help in conducting periodical workshops on gender sensitization to government officials.
10. Grants must be allotted or budget must be approved to the police stations itself to organize gender sensitization programmes and training so that they get an autonomous opportunity to train themselves instead of depending upon the government for the conduct of the same.

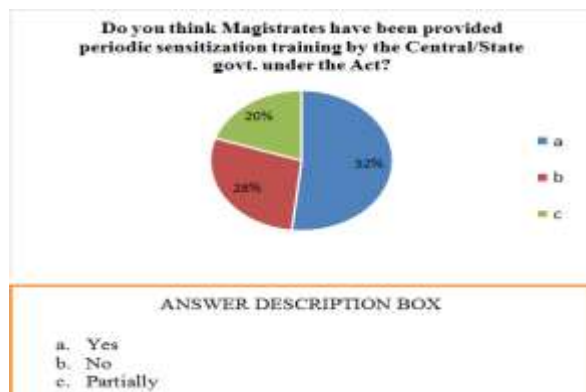
Gender sensitization aims to reform the attitudes and procedural deficit in the police sub-culture. It is very important that there is a paradigm change so as to build up faith in the organizational and in the leadership of police for the effective implementation of gender specific laws (Gupta et al., 2021).

### **Data Analysis on Sensitization of Officials under the Protection of Women from Domestic Violence Act, 2005**

Data analysis of responses of Judicial Magistrates: Magistrates under the PWDVA, 2005, means Judicial Magistrate 1<sup>st</sup> class or Metropolitan Magistrate exercising jurisdiction under the Code of Criminal Procedure, 1972, in the area where either the aggrieved person or the respondent resides or where the domestic violence is alleged to have taken place. The POs shall work under the control and supervision of the concerned Magistrates and are to assist the latter in the discharge of their functions under the Act. The POs are to provide the report of the incident of domestic violence to the Magistrate, make applications on behalf of the aggrieved seeking the relief of protection order to the Magistrate and to pass on all information relating to the details of service providers, lodging of aggrieved persons in any shelter homes or the medical examination of any aggrieved person.

From Figure 1, it is clear that around 50% and more JMs agreed that they had received some sensitization training under the Act; the other half is divided into some who stated that they have not received any training or have received partial training. Imparting no training or a partial one narrows down to the same thing, i.e., the training which is mandatory under Sec. 11 of the Act has not being complied with. It is imperative to state that to have an involvement with such a progressive piece of legislation, periodic sensitization and awareness trainings on the issues of

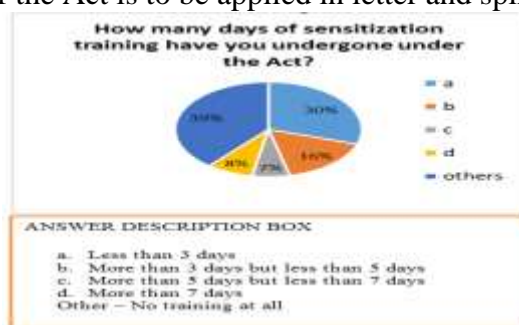
domestic violence are vital, in the absence of which the judicial officers may not be able to fully understand and use this dynamic Act.



**FIGURE 1**  
**RESPONSE OF MAGISTRATES ON PERIODIC SENSITIZATION TRAINING GIVEN TO THEM**

There also emerged, although small in percentage, of those judicial officers who choose not to answer this question. The reason for such a reaction could be either their ignorance of such a duty on the government to conduct sensitization trainings as required by the Act or it could also be associated with the nature of the question which involved the duty of the government to provide such training, and in the event of the government failing to comply, few officers chose not to get involved in it by not responding.

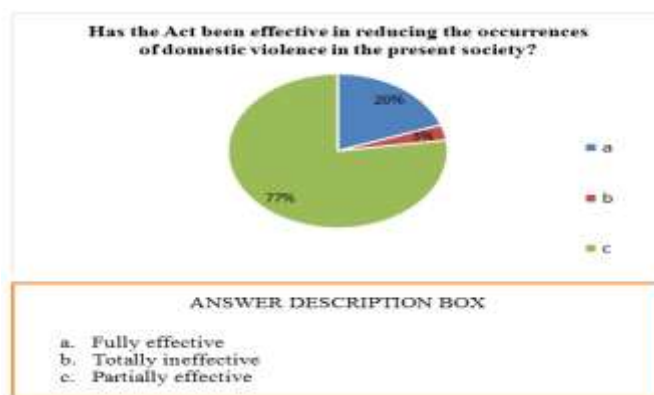
To fight the phenomenon of domestic violence not only needs strong mindsets but also needs reformed mindsets, mindsets which could have had some shades of patriarchal privileges but on undergoing such sensitization training, have evolved and have realized the repercussions of it on the female population and its effects on the society as a whole; mindsets which could be changed as not everyone is born and raised in an uniform belief system, and the Magistrates executing their duties under the Act, are but a part of this society, having diverse backgrounds and opinions. Hence, the importance of sensitization training periodically held for judicial officers cannot be ignored if the Act is to be applied in letter and spirit.



**FIGURE 2**  
**RESPONSE OF THE MAGISTRATES ON THE NUMBER OF DAYS OF SENSITIZATION TRAINING THEY HAVE UNDERGONE**

From the Figure 2, it is alarming to find that a majority of judicial officers have not received any sensitization and awareness training provided by either the Central or the State government. The importance of such training cannot be stressed enough, and when majority of such officers fail to receive such training, it is a cause for concern.

The drafting of the PWDVA has been one with utmost scrutiny, each provision incorporated has a wide impact and the same scrutiny applies to the provision relating to imparting periodic sensitization training which was added on the recommendation of the various NGOs whose consultancy was sought by the government during such drafting. It cannot be denied that the Indian society is a patriarchal one and the judges are a part of this very society, raised in the same values our society believes in; the Act on the other hand acts as a counter to this patriarchal mindset and to understand the spirit of the Act and to act for the best interest of the victims of domestic abuse, it is vital that the judicial officers working as the arms of the Act, believe in the cause against which the Act stands for. To achieve this, not only sensitization trainings but recurring trainings of such nature should be organised by the government and although the Act doesn't provide for the duration of such trainings, the government should be borne in mind that the period should not be such that the training leaves no impact on the recipients having no scope for learning, becoming aware and getting sensitized.



**FIGURE 3**

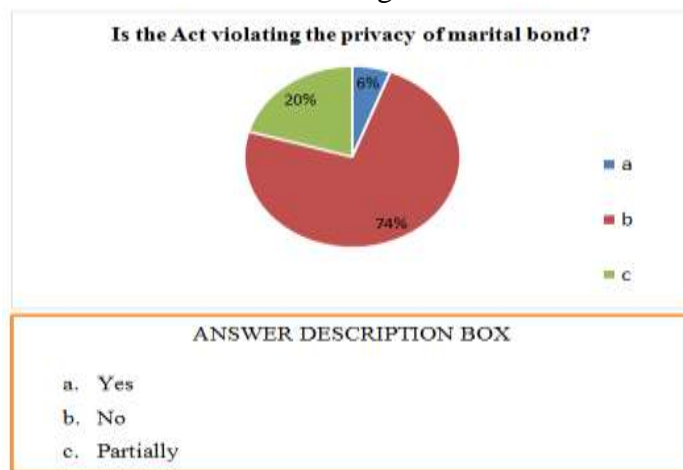
### **RESPONSE OF THE MAGISTRATES ON THE EFFECTIVENESS OF THE PWDVA ACT IN REDUCING THE OCCURRENCES OF DOMESTIC VIOLENCE**

The analysis of Figure 3 is quite alarming as it reveals that a large majority of judges think that the Act has been only partially capable of addressing the problem of domestic violence in our society. Although the response might seem to be disturbing but it seems to be a natural consequence of the various loopholes in implementation of the Act. On discussion with the judges regarding this question, the researcher found that the judges are of the opinion that most cases under this Act are filed relating to matrimonial abuse, and the relief that is mostly claimed is financial; yet both Sec. 498A IPC as well as Sec.125 Cr. P. C adequately deal with both matrimonial cruelty and maintenance and both being penal laws, the perpetrator will get jailed for committing the offence of cruelty to wife under sec. 498A IPC as well as on failing to comply with the maintenance order under Sec.125 Cr. P. C, the same can be satisfied with the application of Sec. 128 Cr. P. C which imposes imprisonment for such default, and due to such fear, defaulters comply. So, relating to matrimonial violence, there is no need for the PWDVA. It

is only relating to those females who are not given protection against violence from family members for example sisters, unmarried adult daughters, live in female partners, who are benefitted by the Act. Although there are several personal laws applicable to such females which cater to the succession or maintenance related issues, yet as none of these laws provide any kind of protection from domestic violence, this Act, is apt for such cases.

The PWDVA through Sec. 28 provided that all proceedings relating to the application to Magistrates and relief orders are to be dealt under the Code of Criminal Procedure, 1973, so any breach of orders relating to financial reliefs will be adjusted through the provision of Sec. 431 and Sec. 421 of the Cr. P. C i.e. in the event of failure of the respondent to pay, all orders relating to monetary reliefs or compensation are to be treated as fines under Sec. 431 Cr. P. C and realised by issuing distress warrants for attachment and sale of movable property of the respondent or through the District Collector realise the amount as arrears of land revenue from the property of the respondent or lastly in default of such payment, the respondent can be imprisoned. Although the process for execution of such orders have been laid by law, but it is very difficult to execute them in reality as more often than not the respondent either hides or disposes off his property before such attachment and sale or in the event such property belongs to his parents and not to him, then such sale cannot take place. In all these procedures, it is the victim who suffers as the aim of the Act for providing speedy remedial justice remains unfulfilled.

The judges were also of the opinion to establish a separate court to try cases under both Sec.498A IPC and of the PWDVA. As both the cases are tried by Magistrates, who are also responsible to look after various other trials resulting in them being highly overburdened and they feel that inadvertently they are unable to comply with disposing of these applications under the Act, within sixty days, as required by Sec.12 of the Act, which poses further hardships for the victims. Regarding the faulty implementation of the Act relating to the either the infrastructural problems of the Protection Officers or the non-availability of the service providers, all has a cumulative effect on the success of the Act in curbing domestic abuse.

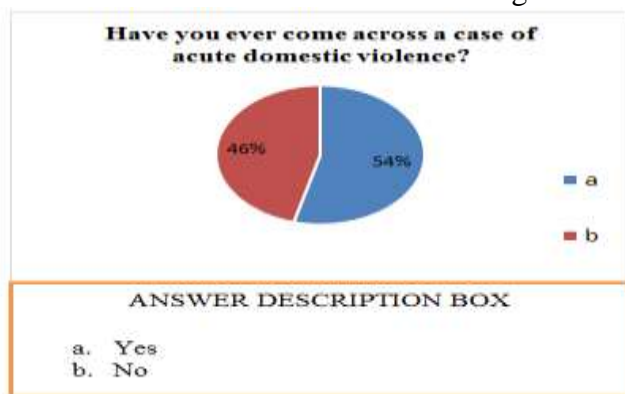


**FIGURE 4**  
**RESPONSE OF THE MAGISTRATES REGARDING THE PWDVA INFRINGING THE**  
**PRIVACY OF MARRIAGE**



It is reassuring to find from Figure 4, that a large percentage of judges do not subscribe to the patriarchal notion that the PWDVA is an invasion into the marital life of people. Yet again, when around 19% of them partially believe that the Act violates the bond of marriage, the question which arises is whether these judges support violence inside marriage as normal and acceptable?

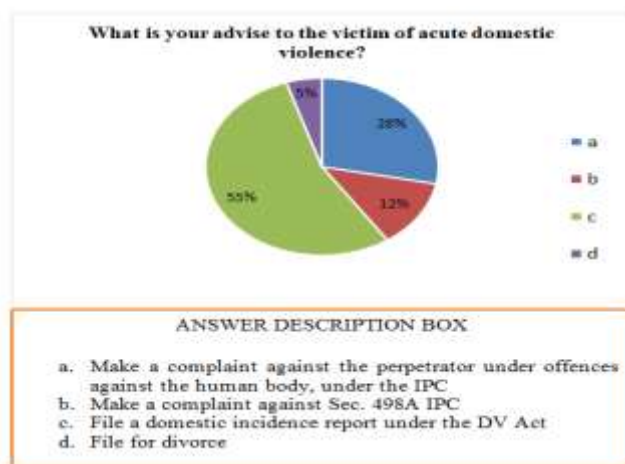
As already discussed, the Indian society is a patriarchal one and it has treated marriage as a private institution where any kind of State interference has been seen as an invasion. Women in the family have always occupied a pedestal much lower to the men and a strict adherence to this hierarchy has been followed. It is imperative that under such a power charged atmosphere, the home has often turned violent for the women folk. In spite of stiff resistance, the State has continued to enact progressive laws to safeguard the interest of women and so when there was a rise in domestic violence and bride burning cases in the country, the State came out with Sec. 498A IPC and Sec. 113A & 113B of the Indian Evidence Act in 1983 and 1986 respectively. But as the scope of Sec.498A was limited to married women only and the nature of cruelty under the section required either driving the women to commit suicide or endanger her life or cause grave injury to her, such cruelty can be related to dowry demands, it was felt that the scope of protection for women facing violence from their family members must be broadened, having a broad definition of acts falling under domestic violence and hence in 2005, the PWDVA was passed. Yet, laws, however good they may be, if people react negatively to it due to their preconceived notion, becomes very difficult to implement and when implementers of such laws view it with suspicion then it becomes more difficult to bring a change. Under such circumstances, only sensitization and awareness trainings for such judges can help them grapple the nature of this phenomenon of family violence and its far-reaching detrimental effects not only on the direct victims of such violence but also on our next generation and the society a well.



**FIGURE 5**  
**RESPONSES OF THE MAGISTRATES ON ENCOUNTERING CASES OF ACUTE DOMESTIC VIOLENCE**

From Figure 5, it is clear that only around half of the interviewed Magistrates in their career as Magistrate 1<sup>st</sup> Class, have encountered a case of acute domestic violence and the other half have not. Such encounters about the ugly face of marital abuse, the various ways of harassment adopted by the perpetrators helps raise consciousness and sensitivity among all who witness it, be they the victims themselves or the judges who sit to give justice and the public who

should come to know of the same through media reporting. Such encounters help in bursting the myth prevalent nowadays that women are not harassed, in fact women harass, by taking advantage of gender centric beneficial laws be it the PWDVA or Sec. 498A. when around 50% of Magistrates state that they have come across acute cases of abuse, it is automatically revealed that severe cases of violence do still occur in our society and also it makes one think as to whether all cases of acute violence at all getting reported or is it the tip of the iceberg, and the voices of majority of such cases are getting lost under the sea of our Indian traditional patriarchal society.

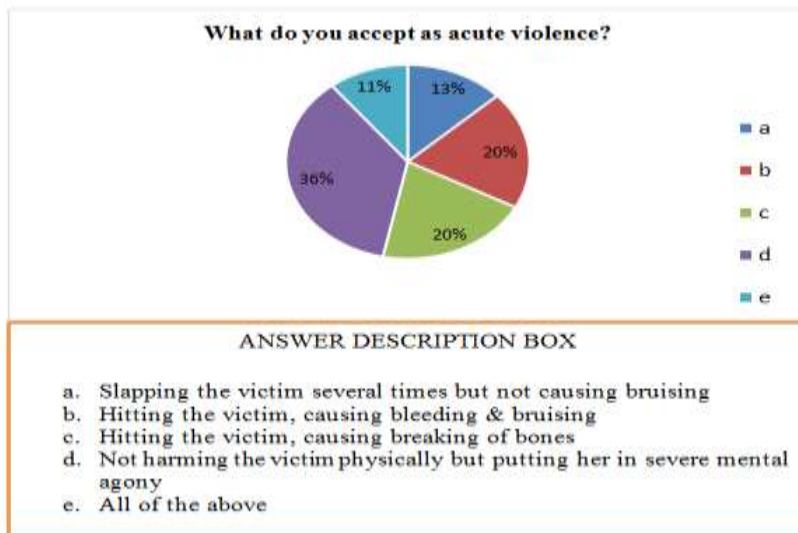


**FIGURE 6**  
**RESPONSES OF MAGISTRATES REGARDING THEIR ADVICE TO VICTIMS OF ACUTE DOMESTIC VIOLENCE**

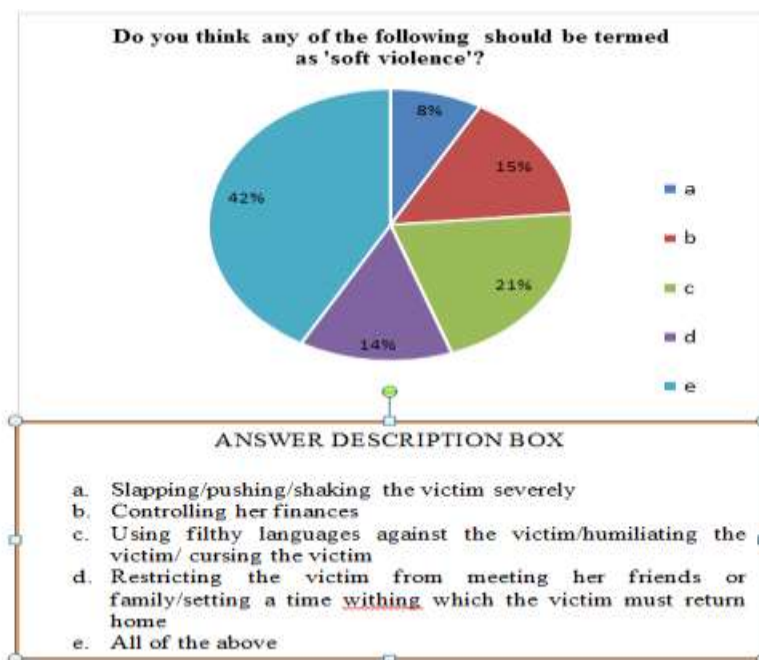
From Figure 6, we can see that Magistrates, on encountering cases of acute domestic violence, mainly advise the victims to file a domestic incident report through the PO. The percentage of Magistrates advising the aggrieved to lodge a case under appropriate sections of the Indian Penal Code regarding offence to the human body or filing a case of matrimonial cruelty under Sec.498A of IPC is almost the same. Lastly, it has been stated by them, that in very severe cases, where it becomes apparent to the Magistrates that it is not conducive for the victim of such acute violence to continue the marriage, they advise her to opt for a divorce. But as parties to the proceedings seldom act through their lawyers, who are better suited to give appropriate advice, the Magistrates seldom get a change to guide the parties or especially the victims of such acute violence.

From Figure 7, it appears that a small majority of the Magistrates believe that causing severe mental distress to the victim should amount as acute violence and interestingly around 11% of the Magistrates believe that physical and mental harm, irrespective of their intensity, should be counted as acute violence. Although, for a long time physical injuries had been accepted as violence while at the same time ignoring the tremendous negative impact that is caused by mental harassment on the victim, it seems to be a promising change that at least today, judicial officers of the law are coming to not only accept that mental harassment is violence but that such should fall under acute violence and it is also heartening to see some of these judicial officers are also ready to accept that even slapping, once considered to be normal

part of a husband-wife relationship, should also fall under acute violence, thus sending a clear message that violence is violence, and such should not be judged according to its severity.



**FIGURE 7**  
**RESPONSES OF MAGISTRATES ON ACTS THAT THEY IDENTIFY AS ACUTE VIOLENCE**

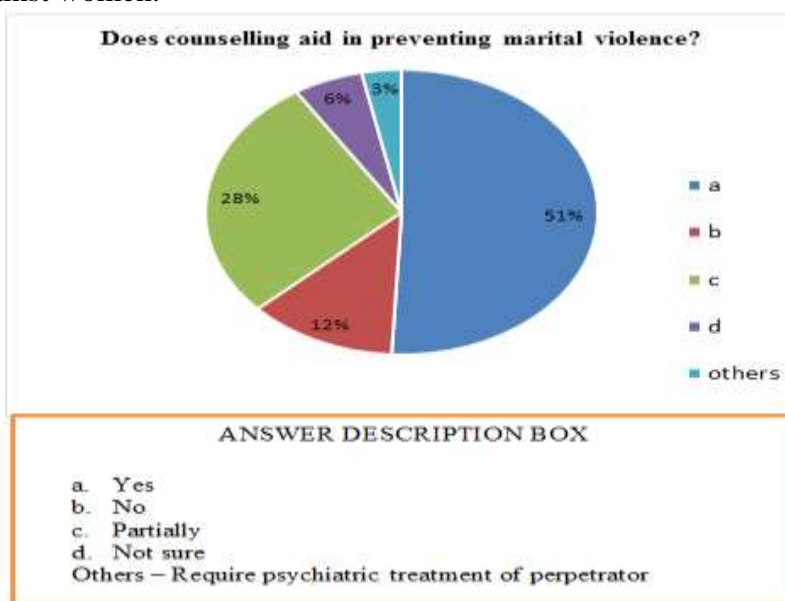


**FIGURE 8**  
**RESPONSES OF MAGISTRATES ON ACTS THAT THEY IDENTIFY AS NOT SEVERE VIOLENCE**

Figure 8, consists of various types of violence from which the Magistrates were to choose which among them they see as soft violence. Around 42% of Magistrates opine that from

slapping to pushing, from controlling finances of the victim to using foul language to belittle to restricting her movement should fall under soft violence; around 15% stated that controlling finance of the aggrieved woman can be termed as soft violence while around 21% stated that using filthy language is not so severe a violence and can be termed as soft and around 14% stated that restricting the aggrieved from meeting with her family or friends is not so severe a violence and around 8% accept that the acts of slapping, pushing or shoving the victim also falls under soft violence meaning that around 90% of the judicial officers accept that such acts should fall under acute violence.

The purpose for keeping this question in the questionnaire was to assess the temperament with which the Magistrates perceived violence against women. The words 'soft violence' has not been defined anywhere and the researcher has used it as a type of violence which although does not cause much physical injury to the victim yet the acts of controlling her life and movement or using derogatory language against her, a fact which happens to almost every women in the Indian society, a fact that does not seem wrong to anyone and in fact is often justified, a fact that has become so common to our lives that it appears as normal to us all, a fact that in spite of its wide occurrence has no victims and perpetrators as its acceptance has prevented us from realising our victimhood. Under such a situation, the researcher intended to understand the acceptability of such elusive and undetected violence in the Magistrates who have been empowered to fight this very injustice against women.

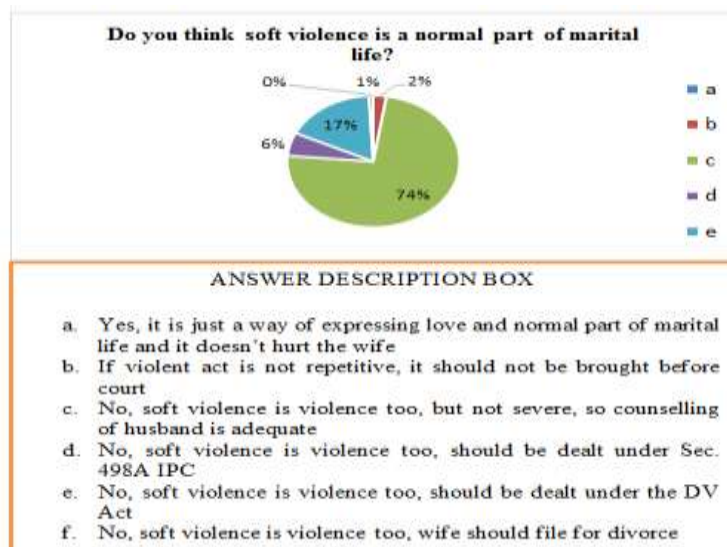


**FIGURE 9**  
**RESPONSES OF MAGISTRATES ON EFFECTIVENESS OF COUNSELLING**

From Figure 9, it appears that although half of the judges interviewed believed that counselling can help curb domestic abuse and mend relationships, yet the other half was either a non-believer of counselling or was not sure about its efficacy in curbing marital abuse. There was a also a small number of Magistrates who also believed that only counselling will not be able to rehabilitate the perpetrator from his habit of committing violence as in extreme cases of

marital abuse, the perpetrator should be subjected to psychiatric treatment which might cure or subdue such violence streaks in these types of offenders.

Under the PWDVA, counselling has been institutionalized. But it is to be checked whether the counsellors are acting in the best interest of women or are resorting to pressure tactics to manipulate victim women to return to their violent partners as it is true that more often the officers of the law help in supporting patriarchy and as a consequence the circle of violence continues. Although pre-litigation counselling procedure has been provided by the PWDV Rule 14, 2006, it is not mandatory; it remains under the discretion of the Magistrate under Sec. 14 of the Act, who if felt the requirement, may order the parties to attend counselling, under any member of a service provider qualified to conduct such counselling. So, it is imperative that to order for counselling, the Magistrates must understand the effectiveness of it and as a correlate to Fig. 2, this all-round understanding of the effectiveness of various provisions of the Act, can be imparted only through a periodic sensitization and awareness training programs. The purpose of such training is more than appreciating this Act, an evaluation of it should also be a part of the training curriculum.



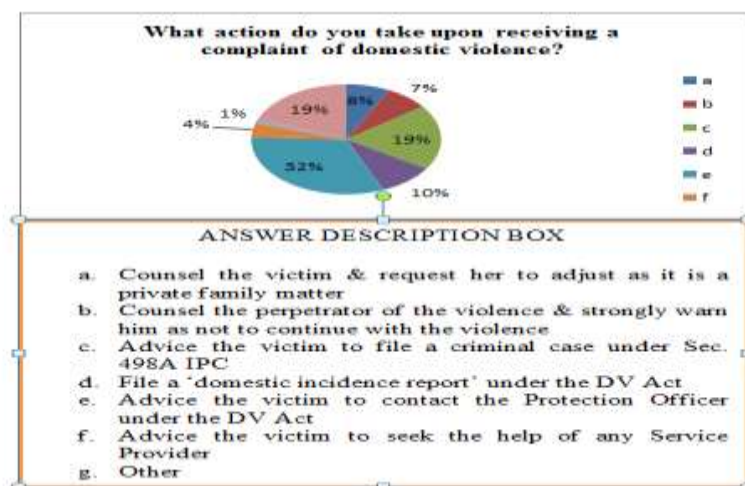
**FIGURE 10**  
**RESPONSES ON THE MAGISTRATES REGARDING SOFT VIOLENCE BEING A PART OF MARITAL LIFE**

From Figure 10, it is clear that majority of Magistrates believe although identify soft violence to be a type of violence but not severe of a severe nature, which can be corrected with the counselling of the husband. Around 17% agreed that such violence should be dealt under the PWDVA, which can be correlated with the previous percentage group as the Act provides for counselling under the order of the Magistrate in appropriate cases and in such situations the provision relating to counselling may help in mending the situation. Interestingly there were no Magistrates interviewed who accepted that soft violence is a normal part of marital life that is the reason option a secured 0%, again around 2% of Magistrates who chose the option b i.e., stating that soft violence, if not repetitive, should not be brought to court, should be counselled by the elders in the family to bring about an amicable solution. This view is interesting in the sense that



on one hand it recognised that such soft violence, if becomes repetitive and turns severe enough should be brought before the court, but if that doesn't happen, i.e. if such act has been perpetrated on the victim one time, then it would be recommended that such case not be brought to court as the experience of the Magistrates shows that once a case is brought to court, specially relating to matrimonial dispute, chances of reconciliation is almost nil, and so if the issue is trivial and is not of repeated by the husband, then to save the family from breaking up, the elder must intervene. This approach of the Magistrates appears to be quite reasonable as we all can agree that not all disputes need to be brought to court, some amount of family intervention may at times proves to give better remedy, than does the court. Similarly, only 1% of these judicial officers opined that due to the commission of soft violence by the perpetrator, the victim wife should opt for divorce, clearly reiterating the reality that such violence behaviour can be at least tried to be rectified by means other than divorce and most of them have chosen counselling as a viable means to achieve such. The Act was enacted to provide women with a violence-free home atmosphere and avoid the breakage of the bond as far as possible keeping the best interest of the victim in mind, but divorce bring a permanent end to a marriage so it appears practice and not regressive, for these Magistrates to have chosen other means to curb the violence other than the means of divorce.

### Data Analysis of Responses of Police Officers



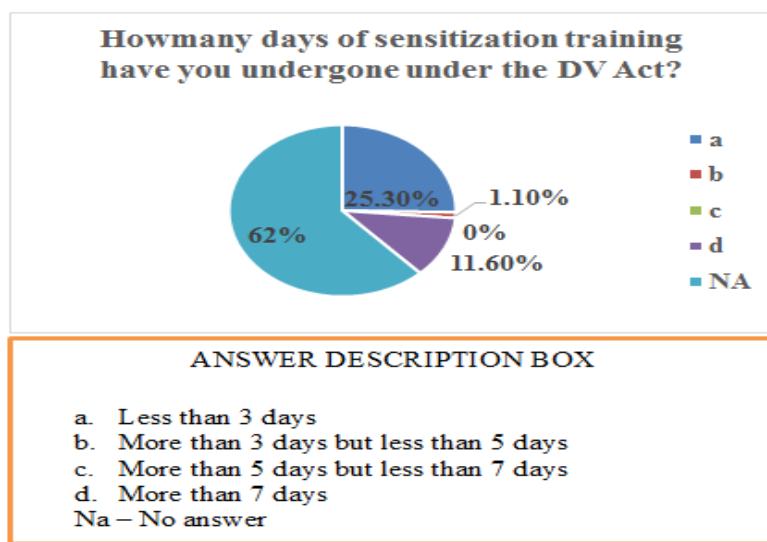
**FIGURE 11**  
**RESPONSE OF THE POLICE OFFICERS REGARDING THEIR REACTION ON RECEIVING A COMPLAINT ON DOMESTIC VIOLENCE**

From the above Figure 11, it appears that majority of the police personnel guide the victim to seek assistance of the PO under the Act. Some officers also advise the victim to file a case under Sec. 498A IPC depending upon the facts of the case, while few officers also advise the victim to file a DIR under the Act.

It also appears from Fig. 11, that some officers chose to counsel either the victims or the perpetrators, which might appear to be damaging in the former's case often the victim

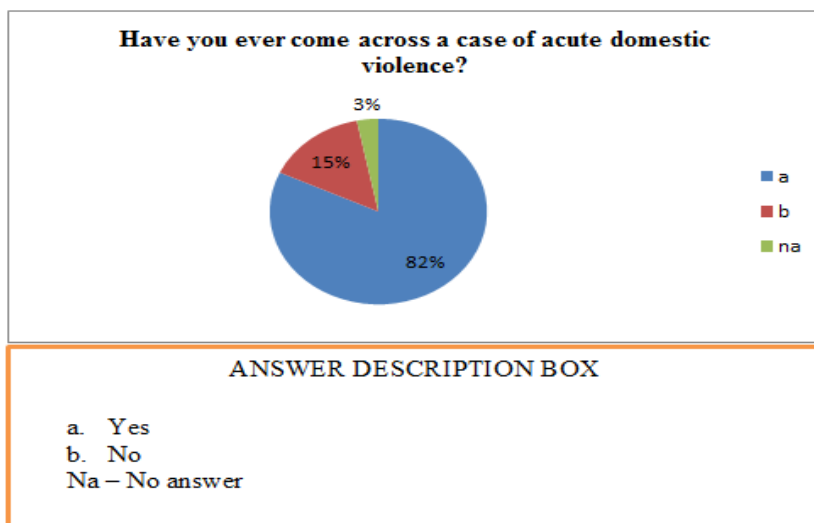
approaches the police with a lot of hope for protection and assistance and if in return she is told to adjust to such violence and not to seek the help of the law as it is a family matter, it can cause a lot of damage to her self-worth and sense of security. Sometimes the victims approach the police not to file any formal case but with the expectation of their intervention in counselling the perpetrator to mend his ways and under such situations the police often counsel the abuser to refrain from the violence; this act of the police is quite natural as not all victims want to file a case in the first instance but may instead seek the authorities informal intervention to help end the violence and the action of the police to counsel the perpetrator is acceptable as the police is a part of the society and their authority is seen with quite the reverence and such counselling might help restore normalcy in the marital relation.

From the below Figure 12 it is quite disappointing to find out that most of the police personnel have not received any sensitization training under the Act although the Act had provided through Sec. 11 the duty of the Central and every State government to organise periodic sensitization and awareness training on the issue of domestic violence. Similarly correlating with Figure 12, we have seen that only around 50% of the JMs had received ‘some kind’ of training under the PWDVA but the rest of the JMs stated that they had not received any such training. It is apparent that both the Central and the State government, i.e., the State of West Bengal have acted in a lackadaisical manner when it comes to provide sensitization training to the various agencies whose training is required by the Act.

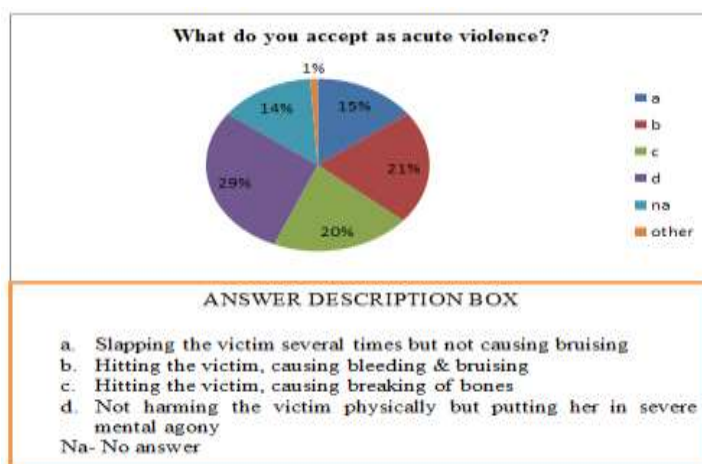


**FIGURE 12  
 RESPONSES OF POLICE OFFICERS REGARDING THE NUMBER OF  
 SENSITIZATIONS TRAINING THEY HAD UNDERGONE**

From Figure 13, it is clear that a vast majority of police officers have encountered severe cases of domestic violence thus once again indicating that acute marital violence still occurs in our society, even after having several laws criminalising and penalising such behaviour.



**FIGURE 13**  
**RESPONSES OF POLICE OFFICERS ON ENCOUNTERING CASES OF ACUTE DOMESTIC VIOLENCE**



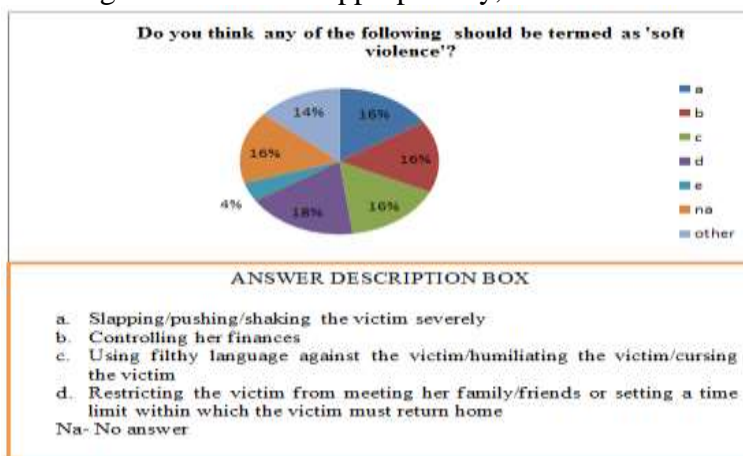
**FIGURE 14**  
**RESPONSES OF POLICE OFFICES AS TO WHAT THEY IDENTIFY AS ACUTE VIOLENCE**

From Figure 14, it can be observed that most of the officers agreed that causing mental agony should be treated as acute violence, sometimes more acute than physical violence. Other officers with varying percentages agree that from slapping to bruising to controlling her finances or her movement should fall under acute violence. There was a negligible percentage of officers who opined that all of the acts mentioned in the option box i.e., from slapping to bruising to breaking bones to causing mental trauma to the victim, should be considered to be acute violence. It is disheartening to see that most of the officers do not subscribe to this view thus indicating towards the need for sensitization training for police personnel so that they understand

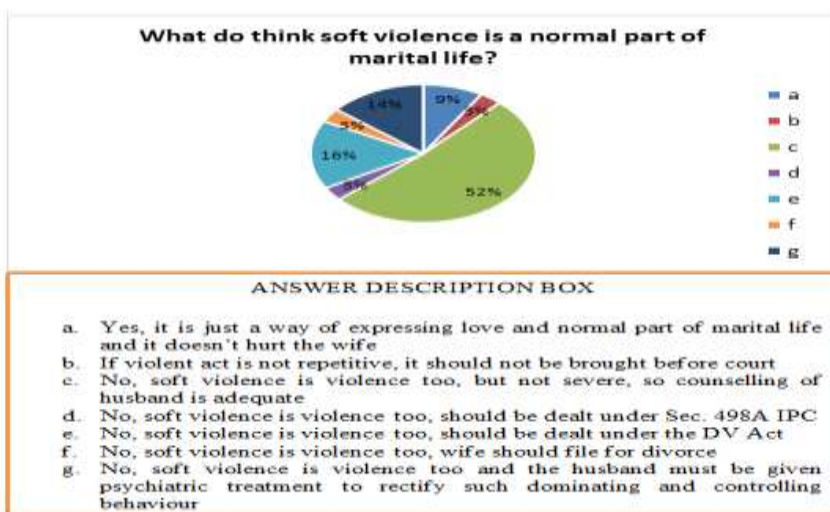


the concept of the problem of marital abuse and also understand the need to counter the same, for the sake of the victims, for the sake of the society.

From the below Figure 15, doesn't show any clear consensus among the police officers regarding their understanding and acceptance of the acts which may or may not be termed as soft violence.' While 16% say that slapping or pushing the victim should be considered as soft violence, other 16% also say that controlling the finances of the victim should fall under soft violence. Again, 16% of the officers accept humiliating the victim to be soft violence, 18% consider controlling the movement of the victim to be soft violence and about 14% states that all of these behaviours should be accepted as soft violence. As already stated, thorough sensitization training must be offered to police officers for them to better understand the phenomenon of domestic abuse and thus be eligible to handle it appropriately, for the best interest of the victim.



**FIGURE 15**  
**RESPONSES OF POLICE OFFICERS AS TO WHAT ACTS THEY IDENTIFY AS NOT SEVERE VIOLENCE**

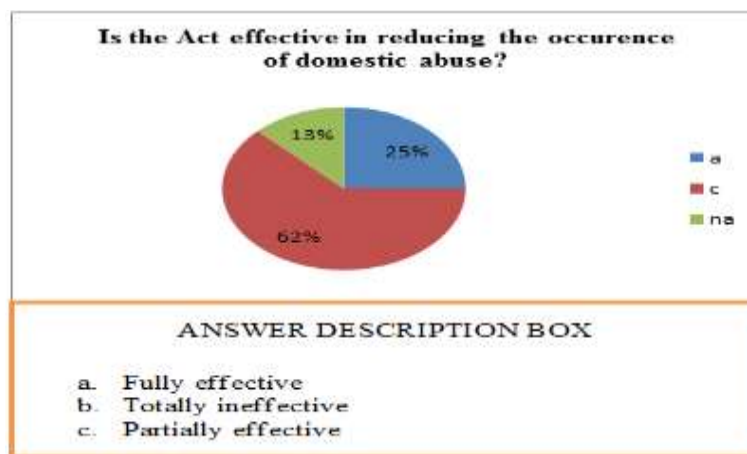


**FIGURE 16**  
**RESPONSES OF POLICE OFFICERS REGARDING SOFT VIOLENCE BEING NORMAL PART OF MARITAL LIFE**

From Figure 16, it is clear that a majority of police officers accept that although soft violence is an unacceptable behaviour yet the nature of such violence being not severe enough for legal intervention and counselling of the husband would be adequate to rectify such violent behaviour. There were around 16% of officers who accept that such kinds of acts are normal part of family life and the wife doesn't get hurt from such behaviour. Interestingly, there were 14% of officers who opined that such violent controlling behaviour can only be rectified by psychiatric treatment as only counselling will not be able to rectify such attitude and getting a divorce or initiating criminal proceedings or filing application against the PWDVA will also not solve the problem permanently as such controlling temperament if not treated, will continue and maybe one victim wife might get some relief but another woman will fall prey again.

### Data analysis of Protection Officers

Under Sec. 8 the State Government appoints Protection Officers and their duties are enumerated under Sec. 9 of the Act. The Act, although does not mandate but prefers the PO's to be women with at least three years of experience in social sector and their tenure under the Act shall also be of three years.



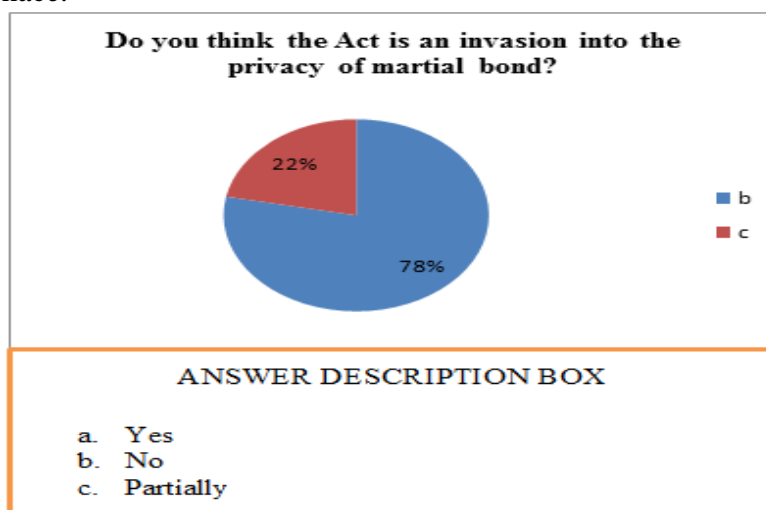
**FIGURE 17**

### RESPONSES OF PROTECTION OFFICERS REGARDING THE EFFECTIVENESS OF THE PWDVA ON REDUCING THE OCCURRENCES OF DOMESTIC VIOLENCE

Despite the uniqueness of the PWDVA, 2005, around 62% of POs stated that the Act is partially effective in deterring people to commit domestic violence. The sheer majority of POs entertaining this belief are quite alarming, which raises few questions regarding the Act.

The PWDVA has various unique piece of legislation which not only provides a broad definition of domestic violence, inclusion of all types of domestic relationships under its purview but also lays down various reliefs catering to the diverse needs of the victims. Yet, from Figure 17, when the POs show a partial faith towards the effectiveness of the Act, it seems to be clear, that there lies a problem not with the drafting of the legislation but with its implementation. When a co-relation is drawn from the responses provided through all the above figures, the various weaknesses in the implementation process is visible, and it is due to these loopholes that the Act still fails to instil confidence of its success among its executioner officers.

In the below Figure 18, the PWDVA was received by the Indian society with mixed emotions, some considered it an excellent piece of legislation which will help curb the phenomenon of domestic violence but some others also saw it as a weapon for exploitation of men, in the hands of vindictive women. The debate relating to the justification of State interference in the private lives of its people especially regarding domestic relationships, is long and old and though in the initial stage of making these laws a lot of resistance was faced by all those States in the western world which were the harbinger of laws on women emancipation and protection, times have changed today. When the Act was passed in 2005, India had already had a criminal law on matrimonial violence which gave only punitive relief to the aggrieved and thus inadequate, so it was time to address domestic abuse in its entirety, which is reflected through various provisions of this Act. It is heartening to find that majority of POs have received this Act in an optimistic way believing in its broad interpretations, reliefs and implementation procedures in curbing this menace.

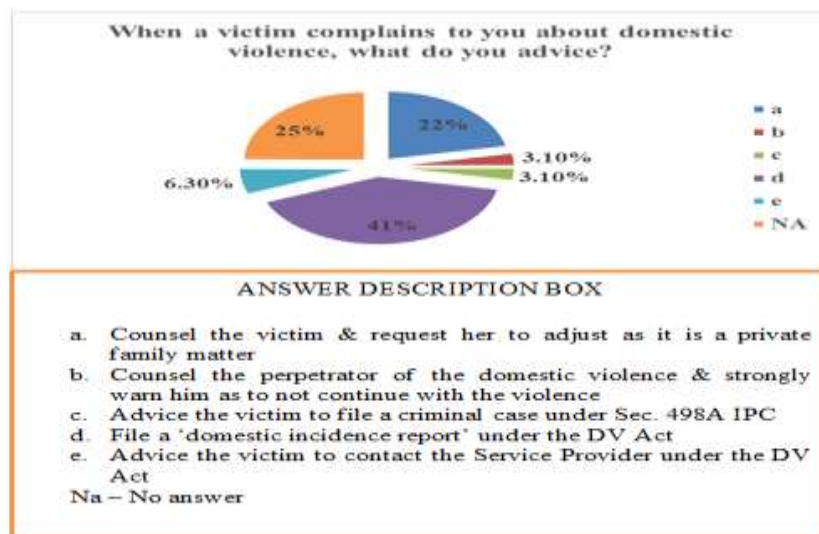


**FIGURE 18**  
**RESPONSES OF PROTECTION OFFICERS REGARDING THE ACT INVADING THE PRIVACY OF THE BOND OF MARRIAGE**

Although there also appears a small percentage of POs having the opinion that the Act interferes in the marital bond of people, holding such belief is not a matter of concern, but the fact some of the implementers of the Act who are to act in the best interest of victims of domestic abuse, entertain this view, is a cause for concern. For the best implementation of the Act to fight against domestic violence, it is imperative that all its officers have a common belief in the cause and only through this conviction this fight can be won.

The role of the POs under the Act is of paramount importance. So, when a victim of domestic violence comes to the PO, his initial response shapes the way for the victim. It is reassuring to see from Figure 19, that most of the POs, on receiving a complaint from of abuse, encourage victims to file a domestic incident report under the PWDVA. This report acts as a record, includes details of the victims and also the abuse perpetrated, which helps the PO, in consultation with the victim, to proceed further under the Act. This question also had another option, i.e., the POs advising the victims to seek the help of the service providers, but it is disappointing to see that none of the POs had opted for this option. This is a natural reaction to

the fact of the lackadaisical approach service providers in both their presence in the districts as well as their response to the Act.



**FIGURE 19**  
**RESPONSES OF PROTECTION OFFICERS REGARDING THEIR REACTION ON RECEIVING A COMPLAINT OF DOMESTIC VIOLENCE**

The POs do not have any authority under the Act to counsel the parties involved but it seems they resort to it; and although the percentage of POs counselling the perpetrator to be quite low, yet the percentage of POs resorting to counselling the victims and to persuade her to adjust as domestic violence is a family matter, is quite high. This conduct of the POs can be the result of two reason; either the POs face some cases without merit that is where there is no domestic violence and the women is under a misconception reading such violence or of getting relief under the Act. Under these situations, it might be for the interest of such women to counsel them about the reality of their positions and return to their matrimonial family. But again, such a decision to judge a case on it merit is not the duty of the PO's. In fact, the correct approach to deal with such cases is to register a domestic incident report and then refer the victim to counselling. The apprehensions of the POs regarding such frivolous cases can be dealt aptly by the counsellors. The POs must understand that any misjudgement on their part in handling a case can lead to grave injustice, so to follow the diktats of the Act is the correct way to execute their duties.

## CONCLUSION

One often wonders as to the reason behind the growing rate of violence against women in India despite having several laws protecting the rights of women. The answer is the lack of sensitization among our people which disassociates them from understanding the needs of one gender to feel safe and be inclusive in the society. Gender sensitization or to make people sensitive towards a particular gender is the need of the hour specially for a country which ranks as one of the most dangerous countries for women and specially for those people who act as the

enforcers of the laws aiming to protect the victims of abuse. It is apparent from the data presented in this study that the judges and police personnel needs mandatory and periodic training in gender sensitization else it will further lead to trivialization of marital abuse, especially those abuse which do not cause serious battering and injury, and are perceived by most men as a normal and acceptable part of married life. The PWDV Act, 2005, recognised this requirement and provided for such training through sec.11 (b) but again it is apparent from this study that neither the judges nor the police personnel received any kind of training on gender sensitization. Acknowledging that there is a dearth of female judges in the Indian judicial system and fewer female officers in the police force of the country, one also acknowledges that not all male judges and police officials associate to patriarchal notions but it is also blatantly clear that there is also a majority of officers of the court who cater to their patriarchal instincts while deciding cases especially cases on marital abuse, totally ignoring the problems of the victim women. Although the legislature has been progressive with the enactment of various gender specific laws thus recognising the specific needs of women victims and paving the way for women to have an equal access to justice, but the lack of sensitization in the judiciary often acts as a bias against such victim women. It is to rectify such fallacies that compulsory gender sensitization of the officers of the court is urgently needed for better implementation of the laws and recognising the agency of victim women in the Indian judicial system and it is through gender sensitization that a collective awareness will pave in a new society where women will enjoy an equal space, in the reality of the term.

### ACKNOWLEDGEMENT

The author Jayita Moulick is a recipient of Indian Council of Social Science Research Doctoral Fellowship. This article is an outcome of her doctoral work sponsored by ICSSR.

### REFERENCES

- Acharya, N.K. (2018). *Protection of women from domestic violence act*. Hyderabad: Asian Law house.
- Acharya, N.K. (2021). *Commentary on protection of women from domestic violence act 2005 and rules, 2006. Hyderabad: Asian Law House.*
- Dhingra, J.K. (2006). *Digest on protection of women from domestic violence. New Delhi: LRC Publications.*
- Dwivedi, S., & Dwivedi, V. (2019). *Commentary on the protection of women and domestic violence act. Allahabad: Dwivedi & Company.*
- Ghosh, B., & Choudhuri, T. (2011). Legal protection against domestic violence in India: scope and limitations. *Journal of Family Violence, 26*(4), 319-330.
- Gupta, D.G., Gupta, A., & Gupta, R. (2021). *Commentary on the protection of women from domestic violence act 2005 (exrt-marital, live-in relations & labtqi)*. Ludhiana: Vinod Publications.
- Jain, M.P. (2018). *Indian constitutional law*. New Delhi: Lexis Nexis.
- Jaising, I. (2009). Bringing rights home: Review of the campaign for a law on domestic violence. *Economic and Political Weekly, 50-57.*
- Kaur, R., & Garg, S. (2008). Addressing domestic violence against women: An unfinished agenda. *Indian Journal of Community Medicine: Official Publication of Indian Association of Preventive & Social Medicine, 33*(2), 73.
- Klugman, J. (2022). *Gender based violence and the law.*
- Kothari, J. (2005). Criminal law on domestic violence: Promises and limits. *Economic and Political Weekly, 48*43-4849.
- Laxminath, G., & Sarada. (2011). *Comparative law and select legal systems. New Delhi: Hind Law Publication.*

- Mackintosh, T.T., & Swann, S. (2020). *Domestic violence killings reach five-year high*.
- Mahserjian, C. (2015). We're all in this together: A global comparison on domestic violence and the means necessary to combat it. *Albany Law Review*, 79, 297.
- Majumdar, M. (2004). Social status of women in India. *New Delhi: Dominant Publishers and Distributors*.
- Martinez, M., & Schrottle, M. (2006). *State of European research on the prevalence of interpersonal violence and its impact on health and human rights*.
- NCRB. (2018). *Crime in India 2018 report*.
- Ray, S. (2006). Legal constructions of domestic violence. *Sociological Bulletin*, 55(3), 427-448.
- Sachdev, C. (2022). *Rape is a crime in India but there are exceptions*.
- Singh, R. (2019). India's rape crisis: Redefining India's rape laws based on a constructive and comparative analysis of the rape epidemic in India and the United States. *International and Comparative Law Review*, 19(2), 7-26.
- Suneetha, A.S.R.V., & Nagaraj, V. (2006). A difficult match: Women's actions and legal institutions in the face of domestic violence. *Economic and Political Weekly*, 4355-4362.
- UNIFEM. (2009). *Domestic violence legislation and its implementation—an analysis for asian countries based on international standards and good practices*. India at UNIFEM: Lawyers Collective Women's Rights Initiative.
- Weldon, L., & Htun, M.N. (2010). Violence against women: A comparative analysis of progress on women's human rights. In *APSA 2010 Annual Meeting Paper*.

**Received:** 14-May-2022, Manuscript No. JLERI-22-12016; **Editor assigned:** 16-May-2022, PreQC No. JLERI-22-12016(PQ); **Reviewed:** 30-May-2022, QC No. JLERI-22-12016; **Revised:** 25-Jul-2022, Manuscript No. JLERI-22-12127(R); **Published:** 01-Aug-2022