

LEAVING HOME, LEAVING RIGHTS

PAROMA RAY*

“All problems arise from our homes and all problems from outside the home come back to our homes. It is a place where women must have security and dignity and be happy, supported by the rule of law, as reflected in the constitution and international human rights”

Ketevan Dadunashvili, Georgia¹

One of the first hurdles that a victim of domestic violence faces is lack of shelter. In Indian society, where housing deeds are almost always in the name of the male member of the family, victims often stay back in an abusive relationship due to lack of adequate housing options. Typically, problems arise because the victims of domestic violence not only fail to understand that their husbands do not have the right to be violent towards them but are also unaware that upon marriage they acquire a right to reside in the home and that they cannot be dispossessed without the due process of law². Failure at an international level to draw direct linkages between victims of violence and the issue of housing rights has led to the formulation of laws and policies which are neither necessarily gender sensitive nor embody any feminist perspective on housing. This article looks at the laws and structures put in place in the USA and the UK for the victims of domestic violence with respect to housing. In the subsequent sections, the structures

* The author is a lawyer working on issues relating to women's rights and violence against women. She is currently a Research and Advocacy Volunteer with AWARE, Singapore.

¹ Asia Pacific Forum on Women et al., *Proceedings of the Asia Regional Consultation on 'The Interlinkages between Violence against Women and Women's Right to Adequate Housing'* (2003), http://www2.ohchr.org/english/issues/housing/docs/interlinkages_VAW_RAH.pdf.

² F. Agnes, *Making Laws Work for Women*, MANUSHI 25 (Sep-Oct, 2006), available at <http://www.manushi.in/docs/15Making%20Laws%20work%20for%20women.pdf>.

put in place in India have been considered and an attempt has been made to suggest the possible measures that can be incorporated. It has been noted with great regret that in a country like India where all women till date live in constant fear of dispossession from their matrimonial homes, no efforts have been made to initiate and institutionalize the efficiency of its housing laws and policies for battered women.

I. INTRODUCTION

Domestic violence is in some ways, an unacknowledged problem in India. It occurs behind closed doors at the hands of members of family and is by and large looked upon as a private, family matter. The firm belief of Indian society that marriage and family honour must be saved at all costs, leads a victim of domestic violence to suffer in silence and live with abuse. Flavia Agnes narrates her own experience³:

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

Women have remained vulnerable to situations of domestic violence due to various complex and interconnected social and cultural factors. One of these factors is the kind of gender norms existing in society, which are essentially a manifestation of the historically unequal power relationships between men and women.⁴ Factors contributing to these unequal power relations include “socio-economic factors,

³ *Id.*, at 25.

⁴ UNFPA, *Gender Based Violence*, http://www.unfpa.org/gender/icl_02.htm (last visited Oct. 5, 2012).

the family institution where power relations are enforced, fear of and control over female sexuality, belief in the inherent superiority of males, and cultural sanctions that have traditionally denied women and children an independent social status India with its deep rooted patriarchal societal structure which has to a certain extent normalised and legitimized familial violence.” The norms of patriarchy are manifested in the demarcation of sex roles⁵ in various familial relationships, and significantly, in issues of property and housing.

Domestic violence and the right to adequate housing may not always appear to have a direct causal link.⁶ However, when property rights including lease deeds are vested primarily in men, lack of tenure and ownership of the property create an immediate barrier to the woman leaving the home even though domestic violence may make it necessary for her to do so; she is left with limited confidence to create a shelter for herself and often her dependent children. Additional barriers come in the form of a lack of civic services, with housing systems and opportunities being embedded within structured and institutionalized relations of power which are gendered. In spite of the Protection of Women from Domestic Violence Act, 2005 coming into force, the lack of laws and policies and their implementation at the state level, and the discrimination against women at the community level allow the continuance of such gendered power relations.⁷ “Women who are financially dependent on their abusers and women whose abusers control their assets lack the economic means to leave their abusers without risking homelessness.”⁸

⁵ Traditionally in patriarchal societies, men would be the designated heads of household and dominate jobs within the society while women would be assigned a role inferior to men and their traditional task of house keeping and child rearing would therefore also be looked upon as inferior to that of men. Such demarcation of gender roles, unfortunately, continues till date with most properties being registered in the names of male heads of household.

⁶ Agnes, *supra* note 2.

⁷ Asia Pacific Forum on Women et al., *supra* note 1, at 37, 38.

⁸ Stop Violence Against Women, *Domestic Violence and Housing*, http://www.stopvaw.org/domestic_violence_and_housing.html (last visited Feb. 1, 2013).

This article seeks to lay out the international provisions on rights to housing along with experiences from the United States and United Kingdom with respect to victims of domestic violence and their right to housing. It also looks at the housing options in India with some suggestions of changes that can be brought about in housing policies in the country to better facilitate access to housing for victims of domestic violence.

II. RIGHT TO HOUSING: INTERNATIONAL PERSPECTIVE

Article 25 of the Universal Declaration of Human Rights (1948) recognises the right to housing:

*Everyone has the right to a standard of living adequate for the health and well being of himself and his family including food, clothing, housing and medical care and necessary social services and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.*⁹

The right to housing has been enshrined in Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) which provides that everyone has a right to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.¹⁰ Article 11 of the Covenant was further elucidated by General Comment No. 4,¹¹ which put forth that the right to housing should be interpreted liberally, so that it is not equated with a mere

⁹ Universal Declaration of Human Rights, G.A. Res. 217A at art. 25, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc. A/810 (Dec. 12, 1948), *available at* <http://www.udhr.org/UDHR/ART25.HTM>.

¹⁰ International Covenant on Economic, Social and Cultural Rights, art. 11 (Dec. 16, 1966), U.N. G.A. Res. 2200A XXI, *available at* <http://www.unhcr.org/refworld/docid/3ae6b36c0.html>.

¹¹ U.N. High Commissioner for Human Rights, CESCR General Comment No. 4, The right to adequate housing, (Dec. 13, 1991), *available at* <http://www.unhchr.ch/tbs/doc.nsf/0/469f4d91a9378221c12563ed0053547e>.

structure of a shelter. The Committee specifically linked the right to adequate housing with the right to live with dignity and provided the components of adequate housing to include legal security of tenure, availability of services, materials, facilities and infrastructure, affordability, habitability, accessibility and location.¹² Further, Article 2 of the ICESCR obliges states to take appropriate steps to ensure the progressive realization of this right.

The ICESCR Committee also adopted a second general comment on housing¹³ where forced eviction was identified as gross violation of the right to housing. The Committee defined forced evictions as the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.”¹⁴

However, in spite of international conventions laying down the right to adequate housing, women continue to face barriers brought about by gender discrimination and the ensuing different socio-economic positions that they find themselves in.¹⁵ At the face of it nothing seems to be lacking in the provisions for the right to adequate housing. It is essentially the interpretation and implementation that are deficient and need modifications, because at the moment, women’s perspectives are insufficiently, if at all, taken into account.¹⁶

¹² *Id.*

¹³ U.N. High Commissioner for Human Rights, CESCR General Comment No. 7, The right to adequate housing (Art.11.1): forced evictions, U.N. Doc. E/1998/22 (May 20, 1997), *available at* <http://www.unhchr.ch/tbs/doc.nsf/0/959f71e476284596802564c3005d8d50>.

¹⁴ The right to adequate housing (Art.11.1), forced evictions: 05/20/1997, CESCR General comment 7 (General Comments), <http://www.unhchr.ch/tbs/doc.nsf/0/959f71e476284596802564c3005d8d50>.

¹⁵ See I. Westendorp, *Women’s housing rights: Is anything wrong with the international norms?* in WOMEN AND HOUSING AN INTERNATIONAL ANALYSIS 11, 21 (Patricia Kennett & Chan Kam Wah eds. 2011).

¹⁶ *Id.*

Even international conventions have, unfortunately, till date failed to draw direct linkages between victims of domestic violence and the right to adequate housing. The Office of the High Commissioner for Human Rights¹⁷ analyses forced evictions in an in-depth manner but does not locate the plight of domestic violence victims within its purview. It is even more unfortunate that the Convention of Elimination of all forms of Discrimination against Women (“CEDAW”), while encouraging states to eliminate discrimination against rural women and provide adequate housing to them¹⁸ still struggles to establish direct connections between domestic violence and the right of the victims to adequate housing. It is the Center on Housing Rights and Evictions (“COHRE”) that firmly declares that “housing rights violations are not gender neutral”¹⁹ and that women often find themselves in violent situations due to strategic forced evictions. It also recognizes that the concept of “head of household” is often used to deprive women of equal ownership and security of tenure.²⁰

III. HOUSING OFFERED TO VICTIMS OF DOMESTIC VIOLENCE: EXPERIENCES WITHIN THE UNITED STATES LEGAL SYSTEM

Housing costs and shortages, especially with regard to adequate housing for victims of domestic violence, are also a concern in several countries including the United States of America (USA). A 2003 report on ‘domestic violence and housing’ in Georgia, USA found that the lack of adequate housing facilities often forced women to continue to stay on in an abusive relationship.²¹ The American Civil Liberties Union (ACLU) reported that 46% of homeless women in Minnesota

¹⁷ FACT SHEET NO. 25, FORCED EVICTIONS AND HUMAN RIGHTS (May 1996), <http://www.ohchr.org/Documents/Publications/FactSheet25en.pdf>.

¹⁸ Convention on the Elimination of All forms of Discrimination Against Women (Dec 18, 1979), *available at* <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article14>.

¹⁹ CENTRE ON HOUSING RIGHTS AND EVICTION, WOMEN AND HOUSING RIGHTS (Jan. 19, 2013), <http://www.cohre.org/topics/women-housing-rights>.

²⁰ FACT SHEET NO. 25, *supra* note 17.

²¹ K. DADUNASHVILI ET AL., VIOLENCE AGAINST WOMEN AND RIGHT TO ADEQUATE HOUSING: THE CASE OF GEORGIA (2003).

claimed that they had previously stayed in abusive relationships because they had “nowhere to go”, and that in 36% of U.S. cities, “domestic violence was a primary cause of homelessness.”²²

Housing policies can further complicate a battered woman’s situation. As per a survey of local Public Housing Authorities in the USA, “zero-tolerance” policies have caused landlords to evict battered women along with their abusers if the police make too many visits to their housing unit.²³ It is evident from this that if women fear eviction, they are less likely to seek police intervention for their safety.

To combat this, USA provides some interesting housing opportunities and facilitates access to adequate housing to victims of domestic violence²⁴ by way of innovative programmes. In Massachusetts²⁵ for example, victims of domestic violence who need to relocate for their safety are entitled to priority public housing, assisted housing or rent subsidies.²⁶ In addition to this, state-assisted

²² AMERICAN CIVIL LIBERTIES UNION, *Domestic Violence and Homelessness* (2008), http://www.aclu.org/pdfs/womensrights/factsheet_homelessness_2008.pdf.

²³ NAT’L L. CTR. ON HOMELESSNESS & POVERTY & NAT’L NETWORK TO END DOMESTIC VIOLENCE, *Lost Housing, Lost Safety: Survivors of Domestic Violence Experience Housing Denials and Evictions Across the Country* 3 (2007), http://www.nlchp.org/content/pubs/NNEDV-NLCHP_Joint_Stories_%20February_20072.pdf (analyzing seventy-six surveys from legal and social services providers in the U.S.).

²⁴ U.S. OFFICE ON VIOLENCE AGAINST WOMEN, U.S. DEP’T OF JUSTICE, DOMESTIC VIOLENCE, <http://www.ovw.usdoj.gov/domviolence.htm> (last visited Aug 12, 2012) (defining domestic violence as a “pattern of abusive behavior in any relationship that is used by one partner to gain or maintain power and control over another intimate partner” and that it “can happen to anyone regardless of race, age, sexual orientation, religion, or gender”, and can take many forms, including physical abuse, sexual abuse, emotional, economic, and psychological abuse).

²⁵ Memorandum from Assistant Secretary for Enforcement and Programs for the Office of Fair Housing and Equal Opportunity (Feb. 9, 2011), <http://www.hud.gov/offices/fheo/library/11-domestic-violence-memo-with-attachment.pdf>.

²⁶ M. McCreight, *Victims or Witnesses of Domestic Violence Who are Not Citizens: Housing Information*, <http://www.masslegalservices.org/node/13773> (last visited Jun 11, 2011).

housing programs have an “emergency case plan” which is available on a priority basis for victims of domestic violence who are homeless through no fault of their own.²⁷ Such programs include State public housing and the Massachusetts Rental Voucher Program²⁸ subsidies. Partial housing assistance is also available to qualified non-citizens. The housing authorities are explicitly prohibited from imposing a more demanding set of rules on victims of domestic violence as compared to tenants who are not victims of abuse.²⁹ Further, the authorities are not allowed to ask for physical proof of violence from the victims, and may only ask for certification.³⁰ As per the provisions of the Violence Against Women Act³¹:

A public housing agency, tribally designated housing entity, or assisted housing provider receiving funds under this section may request that an individual claiming relief under this section certify that the individual is a victim of domestic violence, dating violence, sexual assault, or stalking. The individual shall provide a copy of such certification to the public housing agency, tribally designated housing entity, or assisted housing provider within a reasonable period of time after the agency or authority requests such certification.

New York City has domestic violence shelters that have been set up at confidential locations by the Human Resource Administration (HRA) Office of Domestic Violence. In addition to this, the New York City Task Force on Domestic Violence and Permanent Housing

²⁷ *Id.*

²⁸ Executive Office of Housing and Economic Development, Massachusetts Rental Vouchers, <http://www.mass.gov/hed/housing/rental-assistance/mrv.html> (last visited Jan. 19, 2013).

²⁹ Boulder Housing Partners, *Violence against Women Act*, <http://www.boulderhousing.org/content/violence-against-women-act> (last visited Oct. 3, 2012).

³⁰ *Id.*

³¹ See Violence Against Women Act, Pub. L. No. 103-322, tit. IV, 108 Stat. 1902 (1994) (codified as amended in scattered sections of 8, 16, 18, 28, and 42 U.S.C.).

introduced the first ever housing subsidy program targeted at victims of domestic violence who are leaving the HRA domestic violence shelters. This scheme provides a rental subsidy for families coming out of the HRA shelters, and grants an extension period of six months after they have obtained housing, to secure employment and recover from the trauma of abuse. The Department of Housing Preservation and Development of New York City has a number of units set aside for this particular housing program.³²

However, the United States even with these structures and systems, has been criticised severely for not being able to provide adequate housing to battered women at their time of need.³³ Women are frequently discriminated against because of their marital status, and have to face inadequate income support programmes and barriers to securing credit while trying to purchase or rent housing.

The truth that women quickly slip into homelessness while fleeing from situations of domestic violence was highlighted when in 1999, Jessica Gonzales³⁴ had obtained a protective order against her abusive husband but local police refused to enforce it, ultimately resulting in the death of her two daughters. In 2006, the Supreme Court dismissed Gonzales' case against the city, effectively saying that the local police were under no obligation to protect her in her home.³⁵

However, it is encouraging to note that in 2011 the Inter American Commission on Human Rights decided that the state had

³² Press Release, *Mayor Bloomberg and New York City Task Force on Domestic Violence and Permanent Housing Announce First-Ever Housing Subsidy Program Targeted to Domestic Violence Victims* (Oct. 25, 2007), available at <http://www.newdestinyhousing.org/userfiles/file/related%20research%20and%20press/PressRelease-DV-Taskforce10-25-07.pdf>.

³³ See L. Farha, *Women & Housing*, in *WOMEN AND INTERNATIONAL HUMAN RIGHTS LAW 3* (K. Askin & D. Koeing eds., 1999).

³⁴ *Castle Rock v. Gonzales*, 545 U.S. 748 (2005).

³⁵ M. Foscarinis & E. Tars, *Housing rights and wrongs: The United States and the Right to Housing*, in *BRINGING HUMAN RIGHTS HOME: PORTRAITS OF THE MOVEMENT* 149, 161-163 (Cynthia Soohoo et al. eds., 2008).

failed to act with due diligence to protect Jessica and her daughters from domestic violence which violated the state's obligation not to discriminate and to provide equal protection before the law. The Commission also said that "the failure of the United States to adequately organize its state structure to protect [the Gonzales girls] from domestic violence was discriminatory and constituted a violation of their right to life."³⁶

IV. HOUSING OPPORTUNITIES TO VICTIMS OF DOMESTIC VIOLENCE: BRIEF OVERVIEW OF LAWS PREVAILING IN THE UK

It is the prevailing law in the United Kingdom (UK) that truly reflects that breaking the cycle of domestic violence includes giving the victims of domestic violence real housing options.

The two legislations that deal with domestic violence with respect to secure housing options, in the UK are the Housing Act 1996 (HA 1996) and the Homelessness Act of 2002 (HA 2002). Moreover, the Homelessness Code of Guidance 2002 (the "Code") makes it clear that domestic violence is not just physical violence, and specifically states that it should be understood to include threatening behaviour and violence or abuse whether psychological, physical, sexual or emotional. Apart from the exhaustive definition of domestic violence, the Code explicitly recognises that:

*Domestic violence (or threat of violence) is not confined to instances within the home but extends to violence outside the home from a person with whom the applicant or a member of his or her household is associated. The fact that violence has not yet occurred does not, on its own, mean that it is not likely to occur*³⁷.

The Code mandates that the local authorities ask for proof of violence, but ensures that if the victim is unable to show any evidence

³⁶ IACHR report No. 80/11 case 12.626 merits Jessica Lenahan (Gonzales) et al., available at www.oas.org/en/iachr/decisions/2011/uspu12626en.doc.

³⁷ Homelessness Code of Guidance for Local Authorities, § 6.18 (2002).

of violence then the council³⁸ does not use the same as an excuse for not providing temporary accommodation.³⁹ The victim has to be provided with temporary accommodation while the council makes its enquiries. The Code clearly lays down that in cases of domestic violence, “it is not advisable for the housing authority to approach the alleged perpetrator, since this could generate further violence, and may delay the assessment.”⁴⁰

The investigation procedure varies from one council to another. In some, the victims are interviewed by a Homelessness Officer and are warned against giving false information, while in others the investigation may involve obtaining corroboration from friends, relatives and other agencies such as the police. However, this can be done only with the consent of the victim.⁴¹

The victims have the right to ask about the factors that were considered in making a decision and also have the right of review. It is the duty of the housing departments to ensure that its review procedures are “clear, accessible and fair.”⁴²

The system of priority housing for victims of domestic violence has been given more structure by providing a registration system so that there is no need for every local housing authority to register the victim, in case the victim chooses to move around from one county to another. Further, the local housing authority is also under an obligation to provide shelter to the victims while completing the formalities for priority housing and is obligated to uphold the right of the victim of domestic violence to emergency housing regardless of whether the

³⁸ District Councils have been set up in areas where there are no social services authorities, for e.g.- District Council in counties.

³⁹ See Women’s Aid, *THE SURVIVOR’S HANDBOOK*, <http://www.womensaid.org.uk/domestic-violence-survivors-handbook.asp?section=000100010008000100320002> (last visited Oct. 3, 2012).

⁴⁰ *Id.*, Ch. 3, ¶3.14 (dealing with Applications, Inquiries, Decisions and Notifications).

⁴¹ *Id.*

⁴² *Id.*

victim rents from the council, a private landlord, a housing association or if the victim owns her own home.⁴³ Some local housing authorities operate a sanctuary scheme⁴⁴ in their jurisdictions, the objective of which is to encourage the victims to remain in their own homes if they choose to do so, if safety can be assured and the perpetrator no longer lives within the accommodation.⁴⁵

Apart from the HA 1996 and the HA 2002, there is a provision under Part IV Schedule 7 of the Family Law Act of 1996 by way of which, a victim who rents her home with her abuser can have the tenancy transferred to her own name in case her name is not included in the tenancy agreement.⁴⁶ However, this is applicable only to a married couple or civil partners living together.

Although the UK has been known for detailed provisions on housing options for women, these have been heavily criticized as social policies based on the “accepted truth of the white middle class male experience, which in effect excludes the needs of women within society.”⁴⁷

Despite the recognition and acceptance of domestic violence and promises of change by government department there is still little understanding of the issues surrounding domestic violence and women are still unable to access services that would enable them to make a fresh start in life.⁴⁸

⁴³ Homelessness Code of Guidance for Local Authorities 2002, <http://www.communities.gov.uk/documents/housing/pdf/152056.pdf> (last visited Mar. 19, 2013).

⁴⁴ *Id.*, Ch. 1, ¶1.21 (dealing with Homelessness Reviews and Strategies).

⁴⁵ *Id.*

⁴⁶ Family Law Act, 1996, c. 27, §. 53, sch. 7, (Eng.), available at <http://www.legislation.gov.uk/ukpga/1996/27/schedule/7>.

⁴⁷ S.L. Bartky, *Foucault, Femininity & the Modernization of Patriarchal Power* in FEMINISM & FOUCAULT: REFLECTIONS ON RESISTANCE 61 (I. Diamond & L. Quinby eds, 1988).

⁴⁸ C. Morgan, *The Changing Needs of Women and Children Experiencing Domestic Violence*, UNIV. YORK, <http://www.york.ac.uk/chp/hsa/papers/spring03/morgan.pdf> (last visited Mar. 19, 2013).

V. HOUSING OPPORTUNITIES: EXPERIENCE IN INDIA

Keeping in mind the backdrop of the laws in the United States and the United Kingdom, it would be interesting to explore housing opportunities for victims of domestic violence in India and to understand the initiatives taken by the government in order to fulfil its international obligations.

India being a state party to the ICESCR submits periodic reports to the Committee on ICESCR; however, it is noticeable in the reports that under Article 11 of the Convention, more attention has been given to the housing needs of those living below the poverty line and those belonging to the scheduled castes and scheduled tribes.⁴⁹ The housing needs of distressed women like victims of domestic violence have clearly been left out from the ambit of the reports, and have also found no place in the housing schemes of the Central government and those offered by different state governments. The demand for housing is clear since there is an appropriate arrangement for individuals and families from economically backward classes and those belonging to scheduled tribes and scheduled castes. However, since women facing domestic violence have never been grouped as a class, their housing needs have also been never looked upon as being an urgent necessity.

While the government has not provided for any secure 'housing schemes' for victims of domestic violence, a short-stay programme has been undertaken by the Department of Women and Child Development, Government of NCT of Delhi, which has set up Crisis Intervention Centres for girls and women, the aim of which is to provide protection and respite to women in distress through short-term temporary shelter. The Short Stay Home scheme⁵⁰ for women

⁴⁹ U.N. ESCOR, *Implementation of The International Covenant on Economic, Social and Cultural Rights* U.N. Doc. E/C.12/IND/5 (Mar. 1, 2007), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/407/53/PDF/G0740753.pdf?OpenElement>.

⁵⁰ Gov't of NCT Delhi, Dep't of Women & Child Dev., *Short Stay Homes for Women and Girls (SSH)*, <http://wcddel.in/giassh.html> (last visited Mar. 19, 2013).

and girls extends temporary shelter and rehabilitation to those women and girls who have no social support systems due to family problems, mental strain, social ostracism, exploitation and other causes. The scheme also includes provision of medical care, psychiatric treatment, case-work services, occupational therapy, educational-cum-vocational training, and recreational facilities. The scheme however, remains a far cry from being a housing option for women and continues to operate only as a stop gap solution to those who attempt to access it.

Further, the Ministry of Women and Child Development also initiated a *Swadhar*⁵¹ scheme to provide support services like shelter, food, clothing and care to marginalized women and girls living in difficult circumstances. However, as per the report of the Steering Committee on Empowerment of Women and Development of Child for the Eleventh Plan⁵², the number of homes under the *Swadhar* scheme is grossly inadequate since it does not accommodate the needs of women in difficult circumstances.

The UPA Government in India has also designed the ambitious *Rajiv Awas Yojana (RAY)*⁵³ which is yet to be approved by the Cabinet. Under this scheme, flats will come up wherever possible in existing slum areas as part of *in situ* development, and in cases where this is not possible, the government will provide alternate

⁵¹ GOV'T OF INDIA, MINISTRY OF HUMAN RES. DEV., *Swadhar* (Sep 25, 2002) <http://wcd.nic.in/schemes/swadhar.pdf> (explains the target groups of women under Swadhar and the package of assistance under this scheme which includes provisions for shelter, food, clothing, health care and counseling for women, etc. and the implementing agencies can be the relevant Department of State Government, Women's Development Corporations, Urban Local Bodies, reputed Public/Private Trust or other Voluntary Organizations who are willing to take up the responsibility of rehabilitating such women).

⁵² GOV'T OF INDIA, PLANNING COMM'N, *Report of the Steering Committee on Empowerment of Women and Development of Children for the Eleventh Plan* (2006), http://planningcommission.nic.in/aboutus/committee/strgrp11/str11_wcd.pdf.

⁵³ GOV'T OF INDIA, MINISTRY OF HOUS. & URBAN POVERTY ALLEVIATION, *Progress of Rajiv Awas Yojana* (2011), http://mhupa.gov.in/W_new/DMU_REPORT_RAY.pdf.

land before such slum dwellers are evicted. The Centre and State Governments will bear 85 – 90% of the cost of the flats. It has been reported⁵⁴ that women will get priority in allotment. It is encouraging to note that in the guidelines of RAY, as released by the Ministry of Housing and Urban Poverty Alleviation, Government of India, a specific clause⁵⁵ has been incorporated in the State Plan of Action stating:

“...The Slum-free State Plan would include the following suggestive steps/actions:

(a) Preparation of State-wide Legislation –

- *For Assignment of Property Rights to slum households: The legislation should provide that the **legal title is conferred either on the woman or jointly with the main male householder** (emphasis supplied) ...”*

A closer look at the report on women’s agency and empowerment submitted by the Working Group on the Twelfth Five Year Plan⁵⁶ reveals a declaration made by the Working Group owing up to the fact that although in rural areas, programmes like the *India Awas Yojana* have increased women’s access to housing, the same issue has remained largely neglected in urban areas. The concerned Ministry of Women and Child Development in the same report has mentioned that special attention will be given to engender schemes like the *Rajiv Awas Yojana* in the Twelfth Plan.

⁵⁴ M. K. Singh, *Govt. readies law to ensure housing for all*, THE TIMES OF INDIA (May 23, 2011), http://articles.timesofindia.indiatimes.com/2011-05-23/india/29573463_1_slum-free-slum-areas-encroachment-on-government-land.

⁵⁵ GOV’T OF INDIA, MINISTRY OF HOUS. & URBAN POVERTY ALLEVIATION, *Rajiv Awas Yojana: Guidelines for Slum-free City Planning*, http://mhupa.gov.in/w_new/RAY%20Guidelines-%20English.pdf (last visited Apr. 24, 2012).

⁵⁶ GOV’T OF INDIA, MINISTRY OF WOMEN AND CHILD DEVELOPMENT, *XIIth Five Year Plan, Report of the Working Group on Women’s Agency and Empowerment*, http://planningcommission.nic.in/aboutus/committee/wrkgrp12/wcd/wgrp_women.pdf (last visited Apr. 25, 2012).

The report encouragingly goes on to promise the restructuring of the Rashtriya Mahila Kosh⁵⁷ (RMK) as a non-banking finance company of systemic importance with an enlarged corpus of Rs. 500 crores. The report seems to be confident that this will enable it to reach out to a larger number of poor, asset-less and marginalised women for income generation, production, skill development and for housing activities.

No discussion on domestic violence and the “right of residence” in India can be completed without a detailed discussion on the Protection of Women from the Domestic Violence Act, 2005 (“PWDVA”). The definition of domestic violence in PWDVA⁵⁸ includes a range of harm, injuries and threats. It is important to point out that the definition not only includes physical and emotional violence but for the first time also recognizes sexual violence in domestic relationships which includes sexual violence within marriage. The PWDVA was specifically designed to provide for the first time, a

⁵⁷ The Rashtriya Mahila Kosh (RMK) was established in 1993 to provide microcredit in a quasi-formal manner to the poor women for income generating, production, skill development and housing activities in order to make them economically independent. RMK mainly channelizes its support through NGOs, Voluntary agencies, States Women Development Corporations, Cooperative Societies, State Government agencies, Urban Women Co-op Banks etc. to the women SHGs.

⁵⁸ The Protection of Women from Domestic Violence Act, 2005, No. 43, Acts of Parliament, 2005, §. 3: For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it—

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

comprehensive definition of domestic violence along with effective civil reliefs⁵⁹.

PWDVA is unique since it does not limit the understanding of domestic violence to only matrimonial relationships. In fact, it includes in its ambit all relationships of consanguinity, marriage, adoption and importantly, even relationships which are in the “nature of marriage”. This is significant since it recognizes for the first time that unmarried women are also victims of domestic violence and that victims of fraudulent or bigamous marriages are also in need of protection.

Further, Section 9(1)(f) of the Act empowers Protection Officers to refer the victims of domestic violence to shelter homes in case of need. Moreover, Section 6 of the Act casts a duty on Shelter Homes to provide shelter to an aggrieved person if such person is referred by a protection officer.

However, the most important provision in the whole legislation was the introduction of the concept of “right to residence”⁶⁰ which protects women from being thrown out of their homes. The objective behind introducing this concept is to provide women with a legal right to reside in the shared household which stems from the conviction that women should not be deprived of their rightful place in a shared household⁶¹ without the application of due process of

⁵⁹ The Act also has a criminal element which comes into play on a breach of civil order by a perpetrator which leads to imprisonment and/or fine.

⁶⁰ § 17: Right to reside in a shared household.

⁶¹ § 2(s): “shared household” means “a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household”.

law. The concept of ‘shared household’ has been brought into the law since the Act aims to also cover women who are not in matrimonial relationships. The objective of “shared household” is to provide women with the right to reside in a household even without a formal title over it. This being said, the concept of “shared household” does not create a substantive right over the property but only a right of residence which in its way seeks to work as a safeguard against dispossession.

In the above context, it becomes necessary to examine the *Batra*⁶² judgment where the Supreme Court excluded the self-acquired property of in-laws from the purview of shared household under section 2(s) of the PWDVA. In this case, the husband and wife were residing with the husband’s mother in the matrimonial home which belonged to the wife’s mother-in-law, and who had taken a loan to purchase the same. The husband filed for divorce and moved out to a rented accommodation. The deserted wife, who had been thrown out of her matrimonial home moved back in the premises and applied for an injunction order against being thrown out by her mother-in-law and her husband. The lower Court issued the injunction order which the Senior Civil Judge discharged on appeal. However, the High Court restored the injunction the order.

The appeal came up in the Supreme Court at a time when the PWDVA had just come into force. The Court, in its decision, ruled that that self-acquired property of in-laws was excluded from the purview of “shared household” and went further, stating that such a relief cannot be granted in cases where the property is not a joint family property and hence cannot be deemed to be “shared household”.

This decision posed a variety of challenges. Such an interpretation of the provisions of the PWDVA had the potential of being mischievous since the usual pattern of households in India is that of parents and married children living together, where adult sons often do not leave the family due to both economic and cultural reasons. It was precisely due to this reason that the PWDVA sought

⁶² S.R. Batra v. Taruna Batra, (2007) 3 S.C.C. 169.

to distinguish Hindu ancestral property from self-acquired property. This judgment also posed problems for women married to NRIs, whose husbands often leave their new brides at their parents' house, live there for a month and then go abroad. Now, following the judgment in this case, the wife would not have any right to reside in that household unless the husband could arrange for her visa or an alternate accommodation. This judgment also provided a potential escape route for husbands to move out of his parents' house to a rented accommodation and then dispossess the wife of the matrimonial home. In this particular case, the Court also neglected to consider whether the husband moved out deliberately into rented premises to defeat the wife's claim.

A very significant point that has been raised in the criticism of the *Batra* judgment is the fact that the Supreme Court exclaimed that the expression "shared household" was clumsily drafted as it used the expression "lived or has lived"⁶³ which could mean that the wife could claim that anyone else's house was her shared household as all that was required to be proved was that she and the respondent had lived there and in doing so the Court failed to distinguish between living as cohabiters and living as guests. As a result, no mention was made of the fact that the right not to be dispossessed without the due process of law is associated with cohabiters but not with guests.

Moreover, the Supreme Court completely failed to consider the two pronged test of relationship of consanguinity and that of conjugality while deliberating on "domestic relationship" and also neglected to consider previous cases⁶⁴ where women have been deemed to have the right to matrimonial home as a part of maintenance.

The Supreme Court's decision in the *Batra* judgment posed challenges with respect to narrow interpretation of the provisions of the PWDVA and effectively defeated the very purpose of the legislation.

⁶³ *Id.*

⁶⁴ B.P. Achala Anand v. S. Appi reddy & Anr., (2005) 3 S.C.C. 313; Ruma Chakraborty v. Sudha Rani Banerjee & Anr., (2005) 8 S.C.C. 140.

However, it is encouraging to note that the High Courts have been upholding the woman's right to reside in the shared household, emphasizing the fact that the woman must be provided with a roof over her head.⁶⁵ Examples can be found *inter alia* in the cases of *Sri Sujoy Kumar Sanyal v. Smt. Shakuntala Sanyal (Halder) and Anr.*,⁶⁶ *Natasha Kohli v. Manmohan Kohli*.⁶⁷ In fact, in the latter judgment it was specifically mentioned that "the wife's right of residence must, therefore, be respected not only because of the statutory mandate of Section 17 of the PWDVA, which acknowledges a woman's right to reside in a shared household but also on the principles of equity." Further examples can be found in cases like *Evenet Singh v. Prashant Choudhury*⁶⁸ and also in the case of *Kavita Choudhury v. Evenet Singh*⁶⁹ where the judgment upheld the aggrieved person's right to reside in the shared household when the husband had no ownership rights in the property, thus differentiating the case from the controversial *Batra* judgment⁷⁰ on points of fact and context. However, the lower courts in different states present a different picture. For example, in states like Assam, Manipur and Sikkim, courts are denying residence orders, stating that the aggrieved person does not need the same since she has been staying at her natal home. In Delhi, relief is being denied on the grounds of ownership of property and enforcement of property rights.⁷¹

However, in spite of all the provisions in the PWDVA, infrastructural issues continue to plague its implementation. The Fifth Monitoring and Evaluation Report on the Implementation of PWDVA highlights the problems that Shelter Homes face across the country

⁶⁵ *Ruma Chakraborty v. Sudha Rani Banerjee & Anr.*, (2005) 8 S.C.C. 140, 147.

⁶⁶ MANU/WB/0597/2010.

⁶⁷ MANU/DE/2506/2010.

⁶⁸ C.S. (O.S.) 1307/2010.

⁶⁹ C.S. (O.S.) 505/2010.

⁷⁰ (2007) 3 S.C.C. 169.

⁷¹ LAWYER'S COLLECTIVE ET AL., STAYING ALIVE: FIFTH MONITORING AND EVALUATION REPORT ON THE IMPLEMENTATION OF THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005 20 (2012), *available at* <http://www.lawyerscollective.org/files/Staying%20Alive%205th%20M&E.pdf> (hereinafter STAYING ALIVE).

due to lack of budgetary allocation.⁷² The trend over the years has been to notify those organizations as Shelter Homes under the PWDVA that already receive funding from the Central or State Government. Representatives from Shelter Homes across the country have repeatedly complained that they face problems in admitting victims of violence and in the day-to-day functioning of their organizations due to the poor allocation of funds.⁷³

VI. LOOKING AHEAD: CHANGES THAT CAN BE BROUGHT ABOUT IN INDIA

The specific Indian variant of domestic violence includes the dispossession of a woman from the shared household, resulting in homelessness and dependence on her natal family, which may or may not support her.⁷⁴ Unfortunately, the PWDVA alone cannot wish away the complexities, nor can there be positive results without creating the necessary infrastructure and mechanisms.⁷⁵ If women have to leave their home because of violence, their problems are compounded by their domesticity and lack of access to financial resources. Thus, there is an imminent requirement for structuring an appropriate housing policy for women who are victims of domestic violence.

In the absence of data on implementation, India can draw from the theoretical frameworks of *inter alia* USA and UK, while designing its own housing policies for women, and make an attempt to locate it within the feminist perspective on the housing rights of women.

It is essential that when a victim of domestic violence accesses her right to priority housing, a certification process be designed to establish incidence of violence. On an examination of the laws prevailing in various countries it is observed that it is inappropriate to ask for evidence of domestic violence when a victim comes to

⁷² *Id.*

⁷³ *Id.*

⁷⁴ I. Jaising, *One Step Closer to Equality*, THE LITTLE MAG. (2007).

⁷⁵ Agnes, *supra* note 2.

seek shelter. In India, it is also difficult for the victims to obtain and produce medical certificates in support of abusive behaviour due to a lack of awareness and sensitivity among medical officers. It is even more difficult to establish emotional and verbal abuse and sexual violence within marriage. The PWDVA has, on its part, put together a system that helps record the victim's statement and the incidents where there has been violence against the woman. However, it is the need of the hour that such systems be gender sensitive and must at all times be working towards gathering information in support of the victim's statements.

Shelter homes should be equipped with adequate facilities like counselling, providing work options according to the requirements of the victims of domestic violence, etc. Such shelter homes should ideally cater to the needs of dependent children of the victims as well. Further safety and security can be provided to the victim if the shelter homes are at confidential locations so that the victims can avoid living in fear of being traced by their abusive partners and family members.

A rental voucher program should be designed to provide for subsidised rents to the victims of domestic violence after they leave the shelter homes, and adequate assistance should be provided to them to enable them to seek employment opportunities. Further, landlords should be offered sufficient incentives to sign up with the government for the rental voucher programs. A parallel can be drawn from Section 8 of the United States Housing Act of 1937 where a housing subsidy is paid to the landlord directly by the Public Housing Authority (PHA) on behalf of the participating family. The family then pays the difference between the actual rent charged by the landlord and the amount subsidised by the program. Under certain circumstances, if authorised by the PHA, a family may use its voucher to purchase a modest home.⁷⁶

⁷⁶ U.S. DEPT OF HOUS. & URBAN DEV., *Housing Choice Vouchers Fact Sheet*, http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/hcv/about/fact_sheet (last visited Apr. 25, 2012).

It is important to give a more concrete definition to the most relevant categories for “priority for housing needs”, and these should be inclusive of the following:

- *People who are vulnerable because of violence and threat of violence*
- *People in temporary or insecure housing*
- *People with dependent children living with them*
- *Pregnant women*
- *Those with particular needs on medical or welfare grounds or who are practically vulnerable*

Although the Rural Development authorities construct houses for economically backward sections of the society, such houses are often registered in the name of the male member of the family. This continues to vest the ownership and control of property in the hands of men, depriving women from accessing their rights to adequate and secure housing as a result. More attention in terms of vesting ownership rights with women must be paid to facilitate housing options for women who are victims of domestic violence. This will ensure that women can leave a situation of violence, and are not compelled to live with abuse due to lack of shelter and basic amenities. Single women with dependents should also be given priority in such cases.

The *Rajiv Awas Yojana*⁷⁷ (RAY) as proposed by the UPA government can go a long way in facilitating priority housing for victims of domestic violence. Although the scheme focuses on approaching the problems of slums and enabling slum dwellers to access the same basic level of amenities as the rest of the town or city by tackling the shortages of urban land and housing, provisions can be laid down within this scheme to offer housing opportunities to victims of domestic violence on a priority basis. There is a definite potential for designing the activities under RAY from a gender based perspective by empowering women to participate in the decision-making processes, and thus help in creating better living conditions for them.

⁷⁷ GOV'T OF INDIA, MINISTRY OF HOUS. & URBAN POVERTY ALLEVIATION, *Rajiv Awas Yojana* (2011), <http://mhupa.gov.in/ray/02-RAY-Guidelines.pdf>.

The same holds true for options provided by the housing development authorities around the country. The Delhi Development Authority (DDA) allots flats as per a computerized draw based on the random number indicated technique.⁷⁸ The Maharashtra Housing and Area Development Authority (MHADA) provides flats not only for different income groups but also has reservation quotas for such allotment. The allotment by the MHADA is done on a lottery basis as well. However, neither the DDA nor the MHADA have provided any priority housing for women in distress which would include victims of domestic violence. It is therefore urgent that women facing such violence be categorised as people with “priority housing needs” and housing authorities like the DDA and MHADA should be directed to provide housing opportunities to them not on the basis of lottery, but on the basis of quotas exclusively reserved for them.

A system of registration should be put in place so that if a victim goes back to the abusive household and chooses to come back to the shelter home, she is spared the difficulty of going through the formalities of obtaining housing all over again.

The Eleventh Five Year Plan had highlighted the need to focus on single women. However, no significant progress was made in this direction. The lack of adequate data on the issues of single women and the attempt to merge the issues of single women with other development programmes limited the scope of progress of this issue. The report of working group of the Twelfth Plan promises⁷⁹ that it will look into issues like “proof” of separation, so that pensions, health benefits, school support for children, housing benefits and other government entitlements can be availed by these women; it will also

⁷⁸ A random number generator (RNG) is a computational or physical device designed to generate a sequence of numbers or symbols that lack any pattern, i.e. appear random.

⁷⁹ MINISTRY OF WOMEN & CHILD DEVELOPMENT, GOV'T OF INDIA, *XII Five Year Plan Report of the Working Group on Women's Agency and Empowerment* (2012), http://planningcommission.nic.in/aboutus/committee/wrkgrp12/wcd/wggrp_women.pdf.

consider property rights of single women, promotion of a separate forum for single women, and creation of employment opportunities for them. A rights-based approach should be adopted rather than a welfare-oriented one in education; health services; ownership of land and its development through irrigation and other means; employment; and in provisions for housing and living conditions.

The concerned Ministry needs to consult with the women affected by domestic violence and their representatives to understand their housing needs and formulate an effective policy for the same. More coordination is required by way of more structured reporting mechanisms between ministries and the regional and local authorities like the Urban and Rural Development authorities and the Panchayats to reconcile related policies so as to provide adequate housing to the victims of domestic violence.

Women facing domestic violence and other vulnerable sections of women, with scarce sources of economic support, should get priority in obtaining housing loans. Additionally, appropriate incentives can be designed for private companies which provide a certain minimum percentage of the total number of housing loans to such women.

The civil and political rights of women have been debated for a long time, and have received the due attention that they deserve. However, it is time now to look deeper into the socio-economic factors that affect a victim of domestic violence on a day-to-day basis. Battered, traumatised, ostracised, often with children and no financial resources, these women are literally left homeless. The society sympathises with a woman when she stays back in a violent relationship but promptly turns its back on her when she walks out of it. The natal family may offer support, but soon enough the victim turns into a burden. In such a socio-economic backdrop, it is only the Government, which, through housing schemes and laws, can offer substantial support in terms of housing opportunities to victims of domestic violence and their children.

Domestic violence in itself is a trauma of a complex nature. When this is coupled with homelessness, the ordeal is made worse.

Hence, tackling the problem of domestic violence in a holistic manner will not only require multifarious support systems but also strong political will and commitment to the development and implementation of a system to reduce and eliminate violence while supporting those who have been victims of it.