Staying Alive

Fourth Monitoring & Evaluation Report 2010
on the Protection of Women from Domestic Violence Act, 2005

Lawyers Collective
Women’s Rights Initiative

In collaboration with
The International Center for Research on Women

Supported by
UN Trust Fund to End Violence against Women
The Lawyers Collective Women’s Rights Initiative (LCWRI)
The Lawyers Collective is a group of Lawyers with a mission to empower and change the status of marginalised groups through the effective use of law, and an engagement in human rights advocacy, legal aid and litigation. LCWRI actively uses the law as a tool to address critical issues of women such as domestic violence, sexual harassment at the workplace, matrimonial and family related matters, crimes against women particularly sexual assault and reproductive rights. The LCWRI was instrumental in the drafting of, lobbying for and enactment of the Protection of Women from Domestic Violence Act, 2005 (PWDVA).

Understanding that evaluation is at the core of effective functioning of any legislation, the LCWRI has been conducting an annual monitoring and evaluation exercise on the manner in which PWDVA is being implemented across the country since its enactment. This is the fourth year of the Law and we present to you the Fourth Monitoring and Evaluation Report, in an effort to appraise the promise of the Act.

International Center for Research on Women (ICRW)
ICRW, founded in 1976, is a private, non-profit organization headquartered in Washington, DC, with the Asia regional office in New Delhi, India, and field offices in Hyderabad and Mumbai in India and Kampala in Uganda. ICRW’s mission is to empower women, advance gender equality and fight poverty in the developing world. To accomplish this, ICRW works with partners to conduct empirical research, build capacity and advocate for evidence-based, practical ways to improve policies and programmes.
For the fourth successive year, we bring you the Monitoring & Evaluation Report on the implementation of the Protection of Women from Domestic Violence Act, 2005. Brought into force with effect from 26 October 2006, this Act has acquired an identity of its own and an irreplaceable function of protecting women from violence. It contained several revolutionary features that were designed to bring effective relief to the women in distress. Combining civil and criminal remedies, it vested jurisdiction in the Magistrates to grant protection orders in order to make it accessible to as many women as possible. Many felt that the Magistrates were not the appropriate forum, and still others said that they would not know how to handle civil remedies. They have been proved to be wrong. From the very first year we have been noticing that the spirit of the Act was understood by the Magistrates and appropriate orders were being passed; rather it was the High Courts that were entertaining petitions to quash proceedings under the Act and were slow to give relief.

We tried to understand this phenomenon and concluded that the Magistrates were closer to the concerns of women than the other courts. Four years later, the High Courts seem far more comfortable with the law and have been handling several issues, which require guidance. This is a new law with multiple agencies in place to assist women and the courts. The Service Providers have been mandated by the Act to perform the much required pre litigation services and the Protection Officers to assist the court – they are as we have been saying, the eyes, ears and arms of the court. Concepts such as these being new to the law are slow to be accepted and understood. Nevertheless they have the potential of unfolding their role over a long period of time to become permanent features of any social legislation. They provide the outreach required for access to justice. This is why we have been focusing a great deal in our reports on their functioning.

A law like a good wine matures with age, and this year we see maturity in the judgments delivered under the Act. Interpretation, which is at the heart of any judicial process, is assuming its true role. When in doubt, the judges are referring to the object of the law, which is to stop violence against women. Increasingly we are seeing that violence is being understood not just as physical violence but as sexual and emotional violence as well. This is a leap in consciousness as the tendency of the courts so far has been to associate violence with physical violence or the demand for dowry. This is not to say that dowry is not a central issue in the way in which marriage is transacted; it continues to be given and taken and the women
continue to be viewed as a source of wealth enhancement. Yet, the focus is shifting to other forms of violence which are as debilitating and undermine the dignity of a woman, devaluing her status. This is as it should be; the voice of the victim must be heard and in listening lays a transformative effect, empowering women to break their silence.

I have maintained in the earlier reports that for some inexplicable reasons, the Supreme Court is the last to change when it comes to interpreting the law in its true letter and spirit. In *Batra v. Batra (2007) 3 SCC 169*, a statutory guarantee of the right to reside in the shared household was linked to the ownership of the home, rather than the fact of residence in the joint household. The effect of this judgment was to deny to hundreds of women living in joint families the protection of a roof over their heads only for the reason that the parents-in-law owned the home, notwithstanding that it was the actual and the only place of residence of the woman. This judgment continues to dominate the legal landscape and its negative impact is spreading. Enough has been said about this judgment; suffice to say that it betrayed a mindset, which was fixated on the right to protect property rather than human rights. In fact, I have often said that women in this country are less protected than tenants or trespassers. It seems, 60 years after the Constitution was enacted, some of our judges have not imbibed the ethos of the Constitution.

This year, we had yet another judgment on an extremely critical issue, namely, the interpretation of the expression “relationship in the nature of marriage.” The expression is self-explanatory and has been interpreted by many courts across the world and there is enough guidance in case law. It obviously relates to those cases in which the parties are not married yet cohabit with each other. The words “in the nature of” make the relationship akin to marriage though not a marriage. In doing so, one of the criteria for inclusion was said to be that the parties must not otherwise be married. This would mean that if a married man deceived a woman into marrying him, and lived with her as if married, this would not be a relationship in the nature of marriage, even though they represent to the world that they are married and live in a stable relationship and have children together. This was not the intention of the Act and it was in some measure intended to protect women like these. To that extent, the Act denies the protection of the law to women in relationships in the nature of marriage. The phenomena of a man marrying more than once is well known in this county, and the history of permitting multiple marriages has not been erased by the law but continues to influence the behaviour of men. The strange result of this interpretation has been that the man will not be in a relationship in the nature of marriage for he is previously married but the woman will be in a relationship in the nature of marriage, as she is not previously married. Relief to the woman can be denied.

Apart from this, while outlining the types of relationships, which would not fall within the category of relationship in the nature of marriage, the judges created the category of a “keep.” A more offensive expression could not have been used to describe a woman living with a man.
without being married. Ironically, apart from the offensive language, the expression precisely fulfills the requirement that the relationship be of a long term and stable nature! Hence, what we have is a moral judgment being pronounced on women who do not marry but live with men in long-term relationships.

More importantly, in law, humans cannot be “kept,” only slaves could be kept, as they were less than human, they were chattel. This much at least the judges are expected to know. Hence, the use of the expression violated the fundamental duty of every citizen to respect women and renounce practices derogatory to women. The world over, in keeping with the dignity of human beings, the expression “cohabitees” or “partners” is used to describe any such relationship. Women rejected discrimination based on sex and marital status, this is the reason why they described themselves as “Ms” rather than “Mrs”, their marital status being irrelevant to their individuality. The word “keep” applies only to women not to men; this is indeed an extreme form of discrimination based on sex and marital status.

The use of expressions like “one night stand” in judgments does not do justice to the judges themselves as these expressions have no meaning in law. Public messaging on safe sex, now part of any official programming on sex education, advises people not to have casual sex, not for moral reasons but to avoid unprotected sex and the danger of HIV. Hence, the expression has been in the public domain for more than a decade now and ought to be known to judges. The reference to sex with a “servant” for exclusion from the protection of the law is not understood at all. Consistent with the principle of dignity of labour, the use of the word “servant” has been replaced by “domestic worker” or “domestic help”, in legislation fixing minimum wages, which the judges are expected to know. Moreover, it is not relevant if the man is having sex with the woman but whether he is in a relationship with her. Hence, the fact that a woman is a domestic help will not disentitle her to the rights under the Act, if she is otherwise in a relationship in the nature of marriage. The use of these expressions coming from the Apex Court betrays an almost unconscious gender bias, and needs correction.

Violence against women is discrimination based on sex is the foremost message of the Act and this is the principle that must guide all decision-making.

We continue to see the judges saying that the women are misusing the law but on closer scrutiny, what they seem to be saying is that women are using the law. It appears that Section 498 A CrPC represented a threat to persons committing violence against women as they could be arrested for violating the law, similarly, this Act represents a threat to them, as it seems that women are after their property! It is heads I win, tails you lose.

Despite the widespread awareness about the issue of violence against women, it is disappointing that women seem to be told not to use the law, and remain content with what is being doled out to them in their subordinate status. But the good news that this report brings is that the
law is being used. The number of cases being filed under the Act is steadily on the increase and so is the number of protection orders. There is indeed a contradiction here. On the one hand, the larger number of cases could indicate that the incidence of violence against women is on the rise and this is not good news. It may also indicate greater awareness of the law over a period of time. After all, the true test of the success of a law is the voluntary compliance with its norms. Hence, when new laws are passed, we may expect to see a large number of cases but as the picture becomes clearer, and the provisions of the law are known, we can expect to see fewer cases as all parties know what the law means. We will await the day when it would no longer be necessary for women to file cases, and violence against women will cease to exist.

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<td>All India Reporter</td>
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<td>AP</td>
<td>Aggrieved Person</td>
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<td>Bom LR</td>
<td>Bombay Law Review</td>
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<td>Crime Against Women Cells</td>
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<td>Convention on Elimination of all forms of Discrimination Against Women</td>
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<td>Criminal</td>
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<td>DIR</td>
<td>Domestic Incident Report</td>
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<td>DLT</td>
<td>Delhi Law Times</td>
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<td>DPA</td>
<td>Dowry Prohibition Act, 1961</td>
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<td>DWCD</td>
<td>Department of Women and Child Development</td>
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<td>FCC</td>
<td>Family Counselling Centre</td>
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<td>FGD</td>
<td>Focus Group Discussion</td>
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<td>First Information Report</td>
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<td>Gujarat Law Reporter</td>
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<td>Gender Resource Centre</td>
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<td>HUF</td>
<td>Hindu Undivided Family</td>
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<td>ICDS</td>
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<td>ICRW</td>
<td>International Center for Research on Women</td>
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<td>IDI</td>
<td>In-Depth Interview</td>
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<td>Investigating Officer</td>
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<td>Abbreviation</td>
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<td>IPC</td>
<td>Indian Penal Code 1860</td>
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<td>LCWRI</td>
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<td>Medical Facilities</td>
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<td>Madras Law Journal</td>
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<td>MWCD</td>
<td>Ministry of Women and Child Development</td>
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<td>NCT</td>
<td>National Capital Territory</td>
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<td>NCW</td>
<td>National Commission for Women</td>
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<td>NGO</td>
<td>Non-Governmental Organisation</td>
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<td>NIPCCCD</td>
<td>National Institute of Public Cooperation and Child Development</td>
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<td>NJA</td>
<td>National Judicial Academy</td>
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<td>NLSA</td>
<td>National Legal Services Authority</td>
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<td>PFG</td>
<td>Participatory Focus Group</td>
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<td>Participatory Focus Group Discussion</td>
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<td>PLR</td>
<td>Punjab Law Reporter</td>
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<td>PPO</td>
<td>Protection cum Prohibition Officer</td>
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<td>PWDVA</td>
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<td>PWDVR</td>
<td>Protection of Women from Domestic Violence Rules, 2006</td>
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<td>Station House Officer</td>
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<td>Special Cells</td>
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<td>Service Provider</td>
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<td>Social Welfare Department</td>
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<td>TISS</td>
<td>Tata Institute of Social Sciences</td>
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<td>UN</td>
<td>United Nations</td>
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<td>UNDP</td>
<td>United Nations Development Programme</td>
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<td>UNIFEM</td>
<td>United Nations Development Fund for Women</td>
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<td>United Nations Trust Fund to End Violence against Women</td>
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<tr>
<td>VAW</td>
<td>Violence against Women</td>
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Violence against Women (VAW), although frequent across cultures, is surprisingly an under recognised issue in human rights. It was only in 1993 that VAW was formally recognised in the United Nations Declaration on Elimination of Violence against Women, and defined not only as freedom from violence but also from the threat of violence. Norm setting around the issue of VAW was an outcome of the sustained advocacy efforts of the global women’s rights movement, and brought about the Vienna Accord of 1994, Beijing Declaration and Platform for Action of 1995, and the Convention on the Elimination of all forms of Discrimination against Women (CEDAW), which came into force in 1981.

Domestic violence is one of the most traumatic forms of violence that is inflicted on women. The violence occurs within the safe confines of a home at the hands of a close family member. Violence within the home is considered to be a strictly private matter and as such has been endorsed over centuries. Prior to the enactment of the Protection of Women from Domestic Violence Act, 2005 (PWDVA) in India, domestic violence was addressed through Section 498 A of the Indian Penal Code, 1860 (IPC). Under Section 498 A, physical or mental cruelty to the wife by the husband or his relatives was made a cognizable and non-bailable offense punishable with imprisonment up to three years and fine. Subsequently, Section 304B was introduced in the IPC in 1986 which created a new offence of “dowry death”.

While criminal law provides for prosecution of perpetrators, it does not take into account the woman’s immediate needs of protection, shelter and monetary relief. Also, criminal law alone does not fully recognise the responsibility of the state towards the victims of violence. On the other hand, existing civil law remedies of divorce and maintenance were unable to provide effective reliefs to women facing violence and the proceedings under the civil law were time consuming. Even when injunction orders were available, the enforcement of the same was weak due to absence of penalties for violation.

The PWDVA was thus enacted with the objective of protecting women from all forms of domestic violence. In defining domestic violence, the Act went beyond mere physical forms of violence, to include mental, sexual and economic violence. In its written form, its distinctive feature is that it provides a civil remedy to the woman. It also prescribes strict penalties for the breach of protection orders. Moreover, the role of the PO as a primary link between the victim and the court has emboldened women to initiate legal action against the perpetrators.
As the Act enters its fourth year, the execution of the law presents new challenges as also opportunities. With more and more women filing cases under the PWDVA, the courts are being confronted with domestic violence, and concomitant issues like never before. Therefore, the attempt of the fourth Monitoring & Evaluation (M&E) Report is to provide an overview of what has worked and what has not. Examining court orders, judgments, meeting with relevant stakeholders, interviews, and other materials has provided useful insights into the working of the law. Since the data collection for this report builds on the earlier reports, it seeks to ascertain emerging trends, glean best practices, and identify gaps. The report covers the time period between April 2009 and March 2010. However, the data for Section III of the report includes an additional period between June-August 2010. As the ICRW wanted to conduct interviews only after the trainings on the PWDVA for the relevant stakeholders was completed, it meant that their data included the information for the additional months beyond March 2010.

Overall, married women remain primary users of the law. At the same time, divorced women, widows, and women in relationships in the nature of marriage are also using the PWDVA to challenge domestic violence. In Maharashtra, in fact, women have also moved against the members of their natal family. In two states, mothers have also filed cases against their sons. In this context, the role of the PO has assumed significance. From filling of Domestic Incident Reports (DIRs) to assisting in the enforcement of court orders, POs have been performing various functions. Under the PWDVA, the DIR containing the formal complaint can be recorded with the PO, the Service Provider (SP), and the head of the Medical Facility (MF).

In the first year, based on the ways in which the Aggrieved Person (AP) was approaching the courts, three models were identified by the LCWRI, namely, the Public, Private and Mixed. The Private Model constituted of cases in which the women appointed the lawyers themselves. The Mixed Model was available in states where women who could afford lawyers went to the court through lawyers directly, with or without a DIR signed by a PO. The Public Model consisted of the best existing example of multi-agency responses, where the police, the POs, the SPs and the Legal Aid Service Authorities coordinated their services to facilitate access to the courts. With the passage of time, however, the strict distinctions between the models seem to have blurred, and women are approaching the courts through a combination of private lawyers, SPs and POs.

Under the Act, the role of the various stakeholders such as the POs, SPs and MFs is complementary. However, even after four years, the MFs have still not become visible in the implementation of the Act. For this year, an interesting observation is that the referral system, whereby the POs, Shelter Homes (SHs) and MFs refer relevant cases to each other, has more or less started working in some of the states.

The recent establishment of the Special Cells in Haryana at the police headquarters of each district by the Department of Women and Child Development (DWCD), Haryana in coordination
with the Department of Home, Haryana and Tata Institute of Social Services (TISS) is an evolving model for the implementation of the Act. An equal number of qualified lawyers and social workers have been appointed as Protection & Prohibition Officers (PPOs) in the Special Cell.

As mandated by the law, the courts have been passing several orders, including ex-parte ad interim and interim orders, residence orders, and protection orders. Given that the final disposal of the cases is not taking place in a time-bound manner, interim orders are significant in providing immediate relief to the AP. It is promising that courts, particularly in Delhi and Maharashtra, have been leaning towards providing interim relief to the women.

With more cases reaching the courts, their decisions have also been clarifying and explaining the provisions contained in the Act, including the definition of the term ‘respondent’, the right to reside, and ‘shared household.’ Several High Courts have clarified that women can be arrayed as a respondent. A Division Bench of the Madras High Court in *R. Nivendran and Ors v. Nivashini Mohan @ M. Nivashini*¹ held that the “respondent” under Section 2(q) of the Act includes a female relative of the husband or the male partner. Similarly, in *Varsha Kapoor v. Union of India & Ors,*² the Delhi High Court held that when the aggrieved woman was either in a marital relationship or a relationship in the nature of marriage, she could seek relief against the female relative of the husband or male partner. Last year, on the question of right to reside, the courts were distinguishing on facts, the case at hand, from the Supreme Court judgment in *S. R. Batra v. Taruna Batra*³ (*Batra v. Batra*) which held that the shared household meant a house owned or tenanted by the husband, or which is the joint family property in which the husband has a share. However, this year it was noticed that the courts were by and large adhering to the principle laid down in the Batra decision, while deciding the cases brought before them, and denying the right to reside in a house owned by the in-laws.

In another case, while denying relief to the woman, the court held that the right to reside under the PWDVA should not be used to settle property dispute. Mostly, though the courts seem to be ruling in favour of women using the equality approach and taking cognisance of the vulnerability faced by them. On the issue of procedures, the courts are more and more cognisant of the fact that rigidity of procedures must not be allowed to defeat the substantive rights of women under the Act. At the same time, the higher judiciary has also taken note of the need to prescribe guidelines to ensure uniformity of practice in conducting proceedings under the PWDVA.

As noted above, the Act itself provides a framework for moving against the breach of court orders. In all the states, breach has been reported in very few cases. Furthermore, the courts

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¹ Crl. O.P. No. 24598 of 2008.
² Writ Petition (Crl.) No. 638 of 2010.
are not confining breach proceedings to protection orders but taking cognisance of breach of all the orders. Interestingly, whenever there is a breach of a protection order, the courts have been framing charges and trying the case under the procedure laid down in the Code of Criminal Procedure, 1973 (CrPC) for a cognizable and non-bailable offence. However, when the breach complained of is of any other order, the courts adopt a different approach, despite taking cognisance of the same.

An encouraging practice, though by no means uniform across states, has been with regard to the increased assistance by the police in enforcement of orders. In addition, the Police in several states such as Tamil Nadu, Manipur, Mizoram and Assam have taken swift action when breach of court orders was reported to them. But, in some other states like Delhi and Maharashtra, the Police have failed to provide meaningful assistance in either enforcing or taking action against the breach of court orders. The role of Police still needs further clarification to ensure that whenever orders get passed, they are efficiently enforced to provide relief to the aggrieved woman.

Last year, several persons had cited the lack of infrastructure and resources as reasons for the failure to enforce court orders. In this regard, it was decided that an appraisal of the PWDVA should include a review of the budgetary allocation by the various states. Accordingly, in analysing the data for this year, it was found that only 14 out of 28 states have provided separate allocations for the PWDVA. Furthermore, a majority of these states have devised State Plan Schemes for the implementation of the PWDVA. Broadly, the allocations have been made under the following heads: Protection Officers, Workshops for various Stakeholders, Publicity, and Awareness. Some states have channeled money for the PWDVA through existing schemes for women welfare. Even in states that have assigned money separately for the PWDVA, budgetary allocations have been marred by insufficient funds, lack of transparency in allocating resources, and under-spending of the money allocated.

Unless sufficient money is allocated and an efficient infrastructure is put in place in the states, the implementation of the Act would be far from satisfactory. There have been significant improvements from the first year, but as previously mentioned, several gaps remain. The tracking of implementation itself is largely compromised due to lack of a comprehensive and uniform data collection and compilation system. The Act has laid down specific duties to be performed by the central and state governments. Indeed the complete lack of initiative by the central government to ensure effective implementation of the Act reveals its reluctance to follow up on legislation after enactment.
Section I

Background
Chapter 1

METHODOLOGY

The PWDVA identifies specific stakeholders such as the POs and the SPs whose primary duty is to assist women in accessing reliefs provided under the law. A crucial step towards ensuring the success of any law is monitoring its implementation. In the absence of any initiative from the state to monitor the implementation of the Act, LCWRI has been involved in its M&E. Eventually, it is hoped that the government would take up this role. The data for the Fourth M&E Report was collected by the LCWRI and ICRW. The methodologies followed by both have been discussed in detail below.

A. DATA COLLECTION AND METHODOLOGY FOLLOWED

1. Infrastructure

The PWDVA provides for a system where the nodal department in each state is responsible for taking all measures for better implementation of the Act. The authorities in the department are required to address issues of infrastructure, training and awareness, and budgetary allocation to ensure that the officers appointed are able to carry out their duties efficiently.

1.1 Methodology followed in the last three years

LCWRI has been following various methods to collect data on infrastructure since 2007 when the First M&E Report was published.4 In the first year, the PWDVA was still in its nascent stage, and the nodal departments had not yet developed the entire infrastructure. Thus, limited information was received from only a few states. In the second year, apart from undertaking 20 state visits in collaboration with the local partners, LCWRI organised a meeting of the representatives from the nodal departments.5 The same pattern was followed in the third year as well although field visits were conducted only in the states of Kerala and Andhra Pradesh.

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1.2 Methodology for the current year

1.2.1 Pre-Conference Meeting for WCD

This year, LCWRI in collaboration with the NCW organised a pre-conference meeting of all the state nodal departments to collect data. The states that were represented in the meeting were: Rajasthan, Delhi, Chandigarh, Madhya Pradesh, Bihar, West Bengal, Tamil Nadu, Gujarat, Manipur, Assam, Karnataka, Mizoram and Uttar Pradesh. Apart from these states, information was also received from Kerala and Maharashtra. The state nodal departments filled in a questionnaire developed by LCWRI, which sought detailed information on the POs, SPs, MFs, SHs, and training and awareness initiatives. Although invitations were sent out to all the states, some states did not send any information. A few of the states returned the questionnaire without verifying them. Hence, the information provided by them could not be used in this report. In particular, it was disappointing to see Andhra Pradesh not responding to repeated requests for submission of the questionnaire since Andhra Pradesh had been highlighted in the previous reports for its good practices.

The data collected from the pre-conference meeting has been used as the primary source of information in the chapter on infrastructure.

1.2.2 Meeting of the Non-Governmental Organisations (NGOs)

A meeting was also organised for members of the NGOs from different states to understand the working of the PWDVA. The states that were represented at the meeting were: Tamil Nadu, Assam, Meghalaya, Kerala, Maharashtra, Delhi, Andhra Pradesh, Uttarakhand, West Bengal, Madhya Pradesh, Orissa, Karnataka and Gujarat. Each member was given a questionnaire to provide information on all the key stakeholders under the PWDVA. More importantly, all the participants were encouraged to discuss the implementation of the PWDVA in their respective states to understand the status of the Act in each state.

1.2.3 Limitations

There were some significant hurdles faced by LCWRI while collecting data. Not all states responded to the invitation for the pre-conference meeting. Some of the states which were represented at the meeting were unable to provide complete information due to lack of a systematic method of data collection in their respective states. There were some other states that provided detailed information in response to the questionnaire provided to them. However, they were unable to explain the data.

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6 This meeting was held on 7 September 2010 at the India Islamic Cultural Center, New Delhi.
7 The NGO meeting was held on 7 August 2010 at the India Habitat Centre, New Delhi.
8 The term ‘stakeholders’ has been used for the Protection Officers, Service Providers, Medical Facilities, and other functionaries under the Act as they all have a stake in the successful implementation of the Act.
In the meeting of the NGOs, although a lot of information was gathered from the representatives, very few states submitted substantive documents to support the information. Hence, the same could not be used in the current report.

2. The Litigation Process: Practices & Trends

2.1 Methodology for the current year

Primary data collection focused on an in-depth understanding of the trends that emerged from the quantitative surveys last year regarding the process of implementation of the Act in the pre-litigation, litigation and post-litigation phases. The data gathered thus, by ICRW, used different qualitative methods. In each of the six sites across the three study states, In-Depth Interviews (IDIs) were conducted with the POs. In addition, Focus Group Discussions (FGDs) using participatory method were conducted with the police personnel. Selected SPs were interviewed. Women who had used the law were also interviewed at each site. Finally, key informants such as nodal officers of the WCD department and the Police were interviewed. A total of 60 IDIs with POs, 61 IDIs with women, 10 interviews with SPs, and 18 FGDs with Police were conducted. It must be noted that for the purpose of this report, the term women police station has been broadly used to describe women’s cell and/or desk within the police stations.

The questions included: At what point is the DIR being filled? Are women beginning to approach the POs directly? What is the primary role that the POs are playing, and at what stage? What does “counseling” mean and who imparts it? What is a PO report? Are SPs filling DIRs, and if not, then why?

The sample of POs and police stations was drawn from the survey conducted last year. Since the specific objective this year was to understand the interaction of POs with the women, only those POs who had reported being approached by women in the last year were selected. In the sites where the number of such POs was more than 10, those POs were selected who had interacted with more women. The chapter, thus, must be read keeping in mind that the findings do not represent the views of those POs who have not interacted with women last year. From the police stations surveyed, those that had a higher likelihood of complaints on domestic violence were selected, while ensuring that both rural and urban stations were represented. Two police centres, which have been designated to deal with complaints related to the women, were also included.

Women were identified and contacted through stakeholders, namely organisations working on issues of domestic violence, and POs. It was subsequent to receiving the consent of the women that the interviews were scheduled. For details on the women and POs interviewed, please refer to Annexure 2.
2.2 Limitations

Due to transfer of a key official in the Delhi Police, permission for FGDs had to be re-sought. The permission was not processed on time given the preparations for the Commonwealth Games in Delhi. The analysis presented thus, is based on data gathered from the Police in Maharashtra and Rajasthan.

3. Order Analysis

The impact of legislation can only be assessed when the intended beneficiaries can access the courts and obtain the reliefs that have been provided under the law. While a number of factors contribute to the women using the law successfully to file for their claims in the court, it is ultimately the judges who determine the nature of reliefs granted, the circumstances under which such reliefs are granted and the effectiveness of the same. The process of order analysis is one of the most comprehensive methods to understand the impact of any legislation.

3.1 Methodology followed in the last three years

In the First M&E Report, orders were obtained from all the states through the office of the Hon’ble Chief Justice of India (CJI) and analysed. The analysis was focused on the quantitative data to ascertain whether or not the women were beginning to use the law. In the second year, LCWRI was unable to obtain orders from the states and hence, only relevant judgments were analysed. In the Third M&E Report, analysis of orders from the three states of Gujarat, Delhi and Maharashtra was undertaken in order to identify trends, track development of the jurisprudence under the PWDVA, and examine the role played by the Judiciary.9

3.2 Methodology for the current year

This year, analyses of orders from seven High Courts have been undertaken, namely, Delhi, Maharashtra, Guwahati, Himachal Pradesh, Jharkhand, Chhattisgarh and Andhra Pradesh. Out of a total of 4812 orders received from the seven High Courts, 3493 orders were tabulated and subsequently analysed by LCWRI. The details of the number of orders analysed for the purpose of this report are provided in Chapter 6 on the analysis of court orders. To discern the trends and patterns, a representative number of orders have been analysed. In order to obtain a nationwide picture, the states examined are representative of the different regions in the country.

3.2.1 Data Collection

For the purpose of this M&E Report, the orders passed between 1 April 2009 and 31 March 2010 have been analysed.

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The orders from states were received in response to LCWRI’s request to the Hon’ble CJII and the Registrar General, who in turn had written to the different High Courts. The High Courts have collated this data from the information received through the Magistrate’s and Session’s Courts in all the districts of the respective states.

3.2.2 Indicators

Based on the experience of LCWRI last year, the indicators for order analysis have been improved to arrive at a holistic understanding of the implementation of the Act by the court. As the methodology and indicators have been described in detail in the previous report, a brief overview of the same is provided here. A three-step methodology was followed in analysing the orders from the states. Firstly, a matrix of indicators was developed to identify good practices based upon the socio-cultural context, the specific substantive and procedural issues that required clarification, and to evaluate the trends. The second step entailed transferring the information from the orders to the matrix generated by LCWRI based on the above-mentioned indicators. Finally, an analysis of the trends and emerging models of implementation based on the substantive law and its application by the courts was completed.

3.3 Limitations

While the order analysis for this year was nationwide, obtaining the orders from the courts continues to be a challenging and time consuming process for LCWRI. As has been repeatedly mentioned in the previous reports, establishing a central depository of data and information is required.

Some of the key limitations include:

- Due to the lack of any information from Rajasthan, LCWRI was again unable to undertake analysis of the orders from Rajasthan, which has been identified as a control state for the M&E exercise as explained in the previous report.

- Orders received from the states of Karnataka and Madhya Pradesh could not be analysed this year as they were not sent on time.

- The lack of uniformity in the orders posed another major limitation to the study. Although all the courts are required to provide reasoned orders, the detailed reasoning is missing in most of the orders, which has affected the final analysis.

- Another major hurdle continues to be the absence of key information from the orders. As a rule, the orders do not provide full details about the DIR, the application of the AP or the argument of the respondent. This would inevitably affect some of the findings from the orders as LCWRI is restricted by the information provided in the orders.

10 Ibid.
Chapter 2

OVERVIEW OF THE PAST MONITORING & EVALUATION REPORTS

The PWDVA for the first time recognised a woman’s right to a violence-free home. The Bill was passed unanimously in both the Houses of Parliament in 2005, and the Rules under the Act were framed and passed in 2006. For the last three years, LCWRI has been conducting a comprehensive annual review of the functioning of the PWDVA with a view to identify best practices on the one hand, the gaps on the other, and make relevant policy recommendations.


1.1 Background

The First M&E Report was put together in 2007 to commemorate the first anniversary of the PWDVA with the overall objective of conducting annual assessments to ensure proper implementation of the Act. The report sought to collect nationwide experiences of the implementation of the law in its first year, identify best practices and limitations, and suggest remedial measures.

1.2 Methodology

The report collated data on the infrastructure put in place to implement the Act. It also collected information on the operationalisation of the law by examining the cases filed, proceedings adopted, and reliefs obtained. LCWRI collected data in collaboration with the Ministry of Women and Child Development (MWCD), NCW, The Office of the Chief Justice of India, Solutions Exchange Programme (UNDP), lawyers, and women’s rights groups.

Questionnaires were circulated to elicit feedback on the infrastructure, and cases and/or complaints filed under the Act. In addition, interviews and consultations were held with the stakeholders and other individuals, organisations, and lawyers engaged either in using the law or monitoring its compliance. Orders and judgments of the different courts passed under the PWDVA were also analysed. Members of the LCWRI also gathered information on the implementation through site visits to the Magistrate’s courts in NCT Delhi, Chandigarh, Jaipur, Ahmedabad, Mumbai, Calicut, Trivandrum, Hyderabad, Lucknow, Calcutta, Guwahati and Imphal.
1.3 Main findings

The main findings of the first M&E Report were as follows:

- The report claimed that it was too early to draw conclusions from the data presented in the report, as the implementation of the law was at its preliminary stage. In this context, the trends in implementation were divided into three separate categories: Private, Mixed and Public Models. The Public Model consisted of the best existing example of multi-agency responses, where the Police, the POs, the SPs and the Legal Aid Service Authorities coordinated their services to facilitate access to the courts.

- The primary users of the law were married women. There were also a number of cases where relief was granted to widows and daughters.

- All states, except five, had appointed POs. However, except in NCT Delhi and Andhra Pradesh, none of the appointments were made on a full-time basis.

- Only five states had registered SPs, and only 12 had notified MFs and SHs. In these states, it was the existing SHs and MFs that were notified under the Act. Government sponsored support facilities were inadequate.

- There was inadequate information about the SPs and their role, which could have been because of the delay in registering SPs.

- According to official reports, the service of notice was completed within the statutory period in most states, especially where the Police or the process server were involved.

- While in some cases the reports filed by the POs were either inaccurate or biased, in others the POs were not trained in conducting home visits or preparing reports. Often, home visit reports were not shown to parties even though they were used as the sole basis on which the reliefs were granted.

- There was a need for coordination among the government departments, particularly the departments of WCD, social welfare, home, and law and order to build a multi-agency response that would be uniform across the country.

- There seemed to be complete misinterpretation of the role of counselling under the law. SPs were not registered in most states, which was further evidence that qualified counsellors were yet to be identified. In cases where the court directed the parties to undergo counselling and attempt settlements, it was found that in some cases, POs or the Magistrate were directed to render counselling or take on the role of a counsellor or mediator. Women, therefore, were being compelled to take decisions that were perhaps not
reflective of their needs. It was recommended that the parties should be ordered to undergo joint counselling only when they so desire, and that too by qualified counsellors.

- The most commonly granted relief was for maintenance. The second most commonly granted were residence and protection orders.

- Residence orders were granted in most cases, and the most common residence order granted was against dispossession from the shared household. In general, POs and/or the Police were often directed to assist in the enforcement of orders.

- Finally, it was felt that it was too early to make a meaningful evaluation of the three different models, since much depended on the numbers of POs appointed, their qualifications, accessibility and the coordination between the different agencies. The manner in which the law was operationalised indicated the need for multiple agencies to assist the woman in distress and the courts in the discharge of their function.


2.1 Background

The objective of the Second M&E Report was to map the infrastructure put in place by the state governments to implement the PWDVA, collate the experience of the stakeholders in using this infrastructure to provide relief to the victims of domestic violence, and to draw provisional conclusions about the functioning of the Act.

2.2 Methodology

The data for the Second M&E Report was collected during March-August 2008. The methods and sources of data collection included: data on infrastructure collected from the representatives of the relevant state nodal departments through questionnaires; collaboration with local partners to gather data; and interviews with the heads of nodal departments, POs, SPs, MFs, the State Legal Services Authorities (SLSAs), and the NGOs.

2.3 Main findings

Unfortunately, the evaluation of functioning of the Judiciary was not possible, since applications were not made available for analysis. The lack of data was symptomatic of a deeper institutional crisis: the underfunding of Magistrates’ Courts, the lack of legal literature, and the absence of computerised data. However, the PWDVA proved to be a popular law since women across the country were using it and there was a significant increase in the number of cases filed in the second year. The main findings included:

- Married women remained primary users of the PWDVA.
• All states had appointed POs, and there was an increase in the appointments at the sub-district level, thus improving women’s access to justice at the local level. The post of officials appointed as POs varied from state to state, and the most common post seemed to be the District Social Welfare (DSW) officers and officers serving under the Integrated Child Development Services (ICDS) Scheme.

• Majority of the POs appointed had B.A., B.Com or B.Sc degrees, and fewer had degrees in either social work or law.

• The report recommended that full-time POs be appointed across the country, and it was also essential for every state government to provide its POs with a comprehensive list of state-sponsored services and schemes.

• As far as the SPs were concerned, the predominant trend was to register organisations that provided counselling, SH services, or a combination of both. Organisations that were registered as SPs were entirely state-run or received funds from the central or state government schemes.

• Most states relied on existing MHs and SHs to provide services under the PWDVA. Most existing government hospitals and primary healthcare centres had been notified under the Act.

• Judges were granting maintenance orders routinely, though not always to the satisfaction of the women. Relief was obtained quicker under the PWDVA when compared with the delays in granting orders under Section 125 of the CrPC.

• The right to reside in a shared household was being interpreted to mean that women have a right to be restored to the shared household or to a portion thereof or to an alternate accommodation.

• Compensation orders were being claimed and granted.

• While the law provided a timeline for the disposal of applications, it did not provide a timeline for the disposal of an appeal; since many orders were appealed, it was suggested that protocols must be issued to address this problem.

• A significant number of High Court judgments reflected a commendable gender-sensitive interpretation of the law.

• A recurring theme of the Second M&E Report was the need for adequate budgetary allocations and infrastructural investments by the central and state governments for better implementation of the Act.
• The report also led to the conclusion that while all states had appointed P0s, very few had adequately budgeted for their functioning in terms of providing them with infrastructural support and training. Most states had not appointed full time P0s, but instead given the duty of P0 as an additional charge to the existing Child Development Project Officers (CDPOs). States that had adequately budgeted for the proper functioning of the P0s were better able to implement the PWDVA.

• Finally, the low rate of referrals from the Police also indicated that they were not proactive in their approach to the new law.

3. Third Monitoring & Evaluation Report 2009

3.1 Background

In addition to presenting court order analysis and infrastructure assessment, the Third M&E Report presented data on Knowledge, Attitudes and Practices (KAP) of the Judiciary, P0s and Police on various aspects related to the PWDVA and women, and explored how they influence the implementation of the law. Some of the other questions that the report sought to answer were: What were the attitudes of the stakeholders towards gender equality? In what manner and to what extent did the different stakeholders work together to implement the law? Whether or not the current levels of knowledge and attitudes be improved through focused training programmes? What were the women’s experiences in using the law at different stages of pre-litigation, litigation, and post-litigation?

3.2 Methodology

Data was collected from Delhi and Maharashtra, and for comparative purposes, data related to Police Officers and P0s from Rajasthan was also included. The key states for the purpose of this study were Delhi and Maharashtra (Intervention States), where LCWRI had conducted trainings, and Rajasthan (Comparison State), where there was no intervention by LCWRI. The methods of data collection included: self-administered qualitative data from training participants during pre and post-training phases; observations recorded during training sessions; quantitative surveys of Police and P0s; Key Informant Interviews (KIIs) with the officials of nodal departments; Participatory Focus Groups (PFGs); and court order analysis.

3.3 Main findings

• P0s had been appointed in all states, although the ratio of P0s to women varied from state to state. Majority of appointments of P0s appeared to be at the district level. Moreover, Haryana, Tamil Nadu, Delhi and West Bengal appointed independent P0s.

Note: Supra note 9.
• In states such as Maharashtra, Himachal Pradesh and Orissa, despite a large number of POs, very few cases were filed. Women were not aware of the POs and were filing cases directly through lawyers.

• It appeared that the number of PO appointments bore no direct correlation to the number of cases filed.

• Over a period of three years, the practice of serving notice through the police gradually emerged.

• In terms of service of notice, the POs successfully sought the assistance of the Police. However, in a majority of cases, the Police did not take action when breach was reported.

• An important trend was to register counseling centres or shelter facilities as SPs. Nature of service provided by most of the SPs was counselling.

• In most of the states, the issue of lack of clarity on the roles of SPs was raised. There was also lack of funding or budgetary allocations.

• POs were expected to report to the nodal department, who in turn reported to the MWCD. However, a similar reporting practice was not followed with respect to other stakeholders (such as SPs, SHs and MFs).

• Coordination committees were set up in a number of states, and most were formed at district level to encourage and facilitate coordination at lower levels. State governments had also taken initiatives to create awareness under the law.

• In almost all the cases, the court granted the reliefs based on cohabitation between the parties.

• In an overwhelming number of cases, the husband was the respondent. In other cases, the husband was the respondent, with in-laws being co-respondents. In a majority of the cases, a combination of the different forms of abuses was alleged.

• Monetary relief (in the form of maintenance) was sought in maximum number of cases. Other kinds of commonly sought reliefs were residence orders and protection orders. In Delhi, there were a comparatively high number of compensation orders. Interim orders were granted when the need for such an order was established. Issues of compensation and custody were primarily left to be decided at the final stage.
• A woman’s evidence and affidavit was considered to be sufficient for a finding of domestic violence and grant of interim order of relief under the Act.

• The report found that the orders in general reflected a gender-sensitive approach of the Judiciary.

• Trainings needed to be undertaken with the stakeholders to clarify that domestic violence is not restricted to just physical violence, but also sexual, domestic and emotional abuse.

• There was a clear need to further explain the scope of “shared household” under the Act and the right to reside as providing a right of residence, irrespective of ownership, title or interest in the premises. Clarification and revisiting the definitions of APs and respondents was also needed.

• There was also a need to understand counselling as mandated by the law. Better understanding with regard to the DIR was also required. There was also no clarity on the role of the Police in the implementation of the PWDVA.

• It was also necessary to review and ensure uniformity in terms of qualifications of POs. There was a need for coordination between the stakeholders, and increase in the budgetary allocations.

• The states needed to adopt a comprehensive system for the M&E of the implementation of the law on an annual basis. There was an urgent need to ensure accountability through developing a robust system of mandatory reporting for all stakeholders, including the Judiciary.
Section II

Implementation of the PWDVA
The primary objective of the PWDVA is to ensure that a woman leads a life free from domestic violence. To this effect, the Act envisages a multi-agency response system for supporting a victim of domestic violence. The Act places specific onus on the central and state governments to provide appropriate infrastructure for the effective implementation of the Act. This chapter seeks to examine the status of the infrastructure that has been put in place by the various state governments for the key stakeholders under the Act, the facilities and support given to enable them to carry out their duties efficiently, the initiatives taken for training them, and the efforts to generate awareness about the PWDVA.

A. STAKEHOLDERS UNDER THE PWDVA

1. Protection Officers

POs are considered as a crucial link between the women seeking relief under the PWDVA and the agencies that facilitate and/or provide such relief. The PO on one hand assists the woman in availing support services and on the other, acts as a coordinator between the court and the woman. The PO, therefore, has been mandated to perform a role not only through his or her own initiative but also in close coordination with the SPs, MFs, SHs and under orders of the court.

Under the PWDVA, the PO is one of the first official persons to whom an AP can turn to for assistance. Upon being approached, the PO’s duties are to minimise the exposure of the AP to additional violence and provide for her safety; to facilitate her access to support services such as SHs and MFs; and to assist in the preparation of the DIR and applications to the court. After the AP files an application under the PWDVA, the court assumes supervision and directs the PO to perform various functions stipulated under the PWDVA.

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12 Section 11, PWDVA, 2005.
13 Section 9, PWDVA, 2005.
1.1 Appointment and profile of POs

The state governments have been made responsible for the appointment of the POs. Much discretion has been given to them to determine the number of POs to be appointed, the jurisdiction of such appointed POs, and any notification required to that effect.\textsuperscript{14} The detailed guidelines regarding the qualifications and experience of POs have been provided in the Protection of Women from Domestic Violence Rules, 2006 (PWDVR).\textsuperscript{15} It has been laid down that the appointment of POs may be from among government officials or members of NGOs and that preference should be given to women for such appointments.\textsuperscript{16} It further states that the POs must have at least three years of relevant work experience, and should be appointed for a minimum term of three years.\textsuperscript{17} Furthermore, the state governments have been directed to provide necessary office support to the POs.\textsuperscript{18}

Table 3.1: State-wise Appointment of POs

<table>
<thead>
<tr>
<th>State</th>
<th>Total population\textsuperscript{19}</th>
<th>No. of districts</th>
<th>No. of POs</th>
<th>Level</th>
<th>Additional charge: Nature of post/s held</th>
<th>Independent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assam</td>
<td>26,655,528</td>
<td>24</td>
<td>27</td>
<td>District</td>
<td>District Social Welfare Officers</td>
<td></td>
</tr>
<tr>
<td>Bihar</td>
<td>82878796</td>
<td>38</td>
<td>38</td>
<td>District</td>
<td>Project Managers of Women Helpline</td>
<td></td>
</tr>
<tr>
<td>Chandigarh</td>
<td>9,00914</td>
<td>1</td>
<td>3</td>
<td>District</td>
<td>Child Development Project Officers and Superintendents of Nari Niketan</td>
<td></td>
</tr>
<tr>
<td>Delhi</td>
<td>13782976</td>
<td>9</td>
<td>17</td>
<td>District</td>
<td>Independent on contract</td>
<td></td>
</tr>
<tr>
<td>Gujarat</td>
<td>50,671,017</td>
<td>25</td>
<td>50</td>
<td>District</td>
<td>31 Social Defence Officers and Zonal Dowry Prohibition Officers</td>
<td>19</td>
</tr>
<tr>
<td>Haryana</td>
<td>21,144,564</td>
<td>19</td>
<td>20</td>
<td>District</td>
<td>Contractual but given the charge of Child Marriage Prohibition Officers (PPOs)</td>
<td></td>
</tr>
</tbody>
</table>

\textsuperscript{14} Section 8, PWDVA, 2005.
\textsuperscript{15} Rule 3, PWDVR, 2006.
\textsuperscript{16} Rule 3 (1), PWDVR, 2006.
\textsuperscript{17} Rules 3 (2) à 3 (3), PWDVR, 2006.
\textsuperscript{18} Rule 3 (4), PWDVR, 2006.
\textsuperscript{19} This information is derived from Census of India 2001.
<table>
<thead>
<tr>
<th>State</th>
<th>Total population</th>
<th>No. of districts</th>
<th>No. of POs</th>
<th>Level</th>
<th>Additional charge: Nature of post/s held</th>
</tr>
</thead>
<tbody>
<tr>
<td>Karnataka</td>
<td>52,850,562</td>
<td>27</td>
<td>214</td>
<td>District and Taluk (29 +185)</td>
<td>Child Development Project Officer</td>
</tr>
<tr>
<td>Kerala</td>
<td>31,841,374</td>
<td>14</td>
<td>31</td>
<td>District</td>
<td>Probation Officers</td>
</tr>
<tr>
<td>Madhya Pradesh</td>
<td>60,385, 118</td>
<td>50</td>
<td>453</td>
<td>Taluk</td>
<td>Child Development Project Officers</td>
</tr>
<tr>
<td>Maharashtra</td>
<td>96878627</td>
<td>35</td>
<td>3910</td>
<td>District, Block and Taluk</td>
<td>Sub-Divisional Officers, Tehsildars, Nayab Tehsildars, Block Development Officers, Extension Officers, District Women and Child Development Officers, Community Development Officers, CDPOs, Social Workers from TISS</td>
</tr>
<tr>
<td>Manipur</td>
<td>2,388634</td>
<td>9</td>
<td>9</td>
<td>Block level</td>
<td>Child Development Project Officer and District Programme Officers</td>
</tr>
<tr>
<td>Mizoram</td>
<td>888,573</td>
<td>8</td>
<td>9</td>
<td>District</td>
<td>Child Development Project Officer, District Social Welfare Officer, Supervisors, Superintendent Homes if women in distress, Superintendent Homes for Protection of Women</td>
</tr>
<tr>
<td>Rajasthan</td>
<td>56473122</td>
<td>33</td>
<td>574</td>
<td>District and Block level (541)</td>
<td>Deputy Directors, WCD in districts, CDPO, Prachetas</td>
</tr>
<tr>
<td>Tamil Nadu</td>
<td>62,405,679</td>
<td>32</td>
<td>33</td>
<td>District</td>
<td>2 POs appointed on additional duties - District Social Welfare Officers</td>
</tr>
<tr>
<td>Uttar Pradesh</td>
<td>166,197,921</td>
<td>70</td>
<td>72</td>
<td>District</td>
<td>District Probation Officers</td>
</tr>
<tr>
<td>West Bengal</td>
<td>80,221,171</td>
<td>18</td>
<td>20</td>
<td>District</td>
<td>Independent</td>
</tr>
</tbody>
</table>

**Fourth Monitoring & Evaluation Report 2010**
On the basis of the information in Table 3.1, some general observations can be made:

- Most of the states have continued to appoint POs at the district level.

- Karnataka, Manipur, Maharashtra and Rajasthan have appointed POs at levels lower than the district level.

- Delhi, West Bengal, Haryana and Tamil Nadu have continued with independent POs this year. Gujarat is the only state which has started appointing independent POs from this year.

- Last year, Kerala had reported of an approved proposal to create a cadre of independent POs and appoint 14 such officers. However, this year, the data from Kerala does not reflect any such appointment and the state continued with 31 POs of additional charge spread across 14 districts.

- It was suggested in the previous year that there might be a correlation between the appointment of POs at the grassroots level and women’s accessibility to POs. However, the same has not been established till now.

1.2 Role of POs

The PO acts as a link between the women, the courts and all the other stakeholders under the PWDVA. Therefore, the role of the PO consists of various functions, inter alia submission of the DIR, service of notice, and enforcement of orders.

1.2.1 Submission of DIR

The DIR has been defined as a “report made in the prescribed form on receipt of a complaint of domestic violence from an aggrieved person”. Form I provided in the PWDVR, 2006 is the prescribed format. It provides for a convenient and detailed format for recording all incidents of domestic violence. The DIR is looked upon as a public record of a complaint and is somewhat similar to a First Information Report (FIR). Upon receipt of a complaint, the PO is required to fill in a DIR irrespective of whether the woman wants to proceed under Section 12 of the PWDVA. This is laid down clearly in Rule 5(1) of the PWDVR:

“Upon receipt of a complaint of domestic violence, the Protection Officer, shall prepare a DIR in Form I and submit the same to the Magistrate and forward copies thereof to the police officer in charge of the police station within the local limits of jurisdiction of which

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20 Supra note 9.
21 Section 2(e), PWDVA, 2005.
the domestic violence alleged to have been committed has taken place and to the service providers in that area”.

However, it was noticed last year that the proviso to Section 12(1) of the PWDVA, which states that “before passing any order on such application, the Magistrate shall take into consideration any DIR received by him from the Protection Officer or the service provider”, has caused considerable confusion amongst the Magistrates. While some courts interpreted the proviso as making the DIR a mandatory requisite for every application, others continued to accept applications without DIRs. In certain states, there was no uniform practice where the Magistrate sometimes accepted applications without DIRs and at other times they did not.

The same trend has been noticed this year as well in the data obtained from the state nodal departments. While Chandigarh, Rajasthan and Gujarat always accept applications without a DIR, the Magistrates from Maharashtra\(^{23}\), Mizoram and Manipur do not accept applications without DIRs at all. The courts in Bihar, Tamil Nadu, West Bengal, Madhya Pradesh, Assam, Kerala and Karnataka seem to lack uniformity and they sometimes accept applications without DIR but at other times they do not. No information has been received from Delhi and Uttar Pradesh.\(^{24}\)

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**Report of the PO made mandatory**

The High Court of Bombay in the case of *Shri Darshanand Markendey Rai v. The State of Maharashtra and Anr.* (Criminal Revision Application No. 484 of 2008)* set aside the orders passed by the Court of Additional Chief Metropolitan Magistrate, 5th Court, Dadar Mumbai (Regular CC No. 220/Misc/2007) and the Court of the Additional Sessions Judge at Sewari (Criminal Appeal No. 127 of 2007) by laying down that:

“In absence of any report of the Protection Officers, under Section 12, even though exercise is not futile, but it is required to consider whether in fact there is domestic violence for which the complaint is lodged by the applicant - second respondent. In absence of this exercise, the order passed by both the Courts below is irregular which cannot be cured.”

Further, the Court directed the Magistrate to:

“...dispose of criminal case No. 220/Misc/2007, within a period of three months from the date of this order, but after calling for report from the Protection Officer as well as Service Provider as contemplated under Sec 12 of the Act...”

* For a copy of the order, please refer to Annexure 3.

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\(^{23}\) It has been the experience of LCWRI in Maharashtra that the Magistrates accept applications under the PWDVA without a DIR. The Magistrate asks for a DIR only before passing any order under the PWDVA.

\(^{24}\) For details, see chapter 6 at 113, 114.
The above judgment has been understood by the Magistrates that DIRs have to be filed mandatorily, and the judgment has led the Magistrates in Maharashtra to send back the applications of domestic violence that have been filed without a DIR to the concerned PO or SP. At this moment, Magistrates are also not accepting any applications under the PWDVA without a DIR from the PO or SP.

1.2.2 Complaints received by the POs

The term “complaint” has not been defined anywhere in the PWDVA. However, the same has been defined in the PWDVR as:

“2(b)- “Complaint” means any allegation made orally or in writing by any person to the Protection Officer”.

The term “complaint” has also been used in the PWDVA in Section 5 which provides for the duties of Police Officers, POs, SPs and Magistrates. Therefore, “complaint” in this chapter will have the same meaning as has been assigned to it by Rule 2(b) of the PWDVR.

The data for the table below has been provided by the nodal departments and consists of complaints received by the POs. The figures quoted are inclusive of the DIRs that have been filed by the POs on their own as well as the cases where the POs have been directed by the Magistrates to file DIRs. Some of the states have also mentioned that the number might be reflective of the number of DIRs completed by the SPs and forwarded to the court or Magistrates. Almost all states have further confirmed that these numbers include “complaints” received by POs, but such “complaints” might not have led to filing of a DIR or an application before the Magistrate. It is therefore, clear that the statistics below do not reflect the total number of cases filed in the courts under Section 12 of the PWDVA. On being asked, the nodal agencies repeatedly mentioned that they would not be able to clarify the nature of the “complaints”.

Table 3.2: Complaints Received under the PWDVA
(Reporting period: August 2009 – June 2010)

<table>
<thead>
<tr>
<th>States</th>
<th>No. of POs appointed</th>
<th>Total no. of complaints received under the PWDVA</th>
<th>Total no. of DIRs filed</th>
<th>Total no. of DIRs filed under court directions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assam</td>
<td>27</td>
<td>399</td>
<td>do</td>
<td>No information</td>
</tr>
<tr>
<td>Bihar</td>
<td>27</td>
<td>2212 (in Women Helpline). 1356 cases have been disposed over the Helpline by counselling</td>
<td>do</td>
<td>11</td>
</tr>
<tr>
<td>Chandigarh</td>
<td>3</td>
<td>165</td>
<td>do</td>
<td>249</td>
</tr>
<tr>
<td>Delhi</td>
<td>17</td>
<td>3153</td>
<td>2093</td>
<td>2093</td>
</tr>
<tr>
<td>States</td>
<td>No. of POs appointed</td>
<td>Total no. of complaints received under the PWDVA</td>
<td>Total no. of DIRs filed</td>
<td>Total no. of DIRs filed under court directions</td>
</tr>
<tr>
<td>----------------</td>
<td>----------------------</td>
<td>-------------------------------------------------</td>
<td>-------------------------</td>
<td>-----------------------------------------------</td>
</tr>
<tr>
<td>Gujarat</td>
<td>50</td>
<td>2269</td>
<td>No information</td>
<td>No information</td>
</tr>
<tr>
<td>Haryana</td>
<td>20</td>
<td>3504 (April 2009 – March 2010)</td>
<td>1668 (recorded DIRs)</td>
<td>do</td>
</tr>
<tr>
<td>Jharkhand</td>
<td>204</td>
<td>No information</td>
<td>No information</td>
<td>No information</td>
</tr>
<tr>
<td>Karnataka</td>
<td>214</td>
<td>6251</td>
<td>1283</td>
<td>do</td>
</tr>
<tr>
<td>Kerala</td>
<td>31</td>
<td>3509</td>
<td>1487</td>
<td>1487</td>
</tr>
<tr>
<td>Madhya Pradesh</td>
<td>453</td>
<td>9654 (2682 applications were directly filed in the Court by the victim)</td>
<td>4142</td>
<td>No information</td>
</tr>
<tr>
<td>Maharashtra</td>
<td>3910</td>
<td>1284</td>
<td>No information</td>
<td>1284</td>
</tr>
<tr>
<td>Manipur</td>
<td>9</td>
<td>108</td>
<td>108</td>
<td>No information</td>
</tr>
<tr>
<td>Mizoram</td>
<td>9</td>
<td>No information</td>
<td>52</td>
<td>do</td>
</tr>
<tr>
<td>Rajasthan</td>
<td>574</td>
<td>1332 (Jan 2010 to June 2010)</td>
<td>No information</td>
<td>do</td>
</tr>
<tr>
<td>Tamil Nadu</td>
<td>33</td>
<td>1473</td>
<td>1742</td>
<td>118</td>
</tr>
<tr>
<td>Uttar Pradesh</td>
<td>72</td>
<td>4792</td>
<td>No information</td>
<td>No information</td>
</tr>
<tr>
<td>West Bengal</td>
<td>20</td>
<td>2929</td>
<td>2929</td>
<td>do</td>
</tr>
</tbody>
</table>

Observations

- There seems to be no uniformity in the understanding of the nature of “complaint” in the different states. For instance, the figures from Tamil Nadu reflect a higher number of DIRs filed than the number of complaints registered whereas figures from the other states indicate the opposite.

- In Bihar, Project Managers of the Women Helpline have been appointed as POs under the PWDVA. There has thus, been a collapse of the two roles. As a result of this, every call made to the Helpline may have been registered as a complaint. This could possibly explain the high number provided by the nodal agency.

- In Kerala and Delhi, the total number of DIRs filed is the same as the number of DIRs filed on the direction of the court whereas in Maharashtra, the number of complaints received by the POs is the same as the number of DIRs filed under the direction of the court. This may indicate that in these three states, the DIRs are filed by the POs only once the matter goes to the court.

- In West Bengal, the number of complaints received by the PO is the same as the number of DIRs filed. This suggests that the POs in West Bengal are filling DIR for every complaint of domestic violence received by them. However, data regarding the number of DIRs filed on court directions has not been provided.
• It is interesting to note that although Delhi has recorded a total of 3153 complaints received by the PO, a total of only 233 orders have been received at the LCWRI office for the purpose of order analysis. No data was available regarding the number of applications filed in the court under the PWDVA. On seeking clarification at the DWCD, both the Welfare Officer and the PO seemed surprised at such low numbers. The PO specifically informed us that the Magistrates have completely stopped sending them copies of the orders and they come to know about the cases only when they “accidentally” meet the AP or her lawyer in the court premises. It is thus, impossible for them to keep a track of the case.

• The highest number of complaints received by the POs has been recorded in Madhya Pradesh, followed by Karnataka, Uttar Pradesh, Kerala, Delhi, West Bengal and Bihar. In the previous year, the highest numbers were also reported from Andhra Pradesh and Kerala apart from the others. Unfortunately, this year, no data was received from Andhra Pradesh. The data received does not reflect the number of applications filed in the court for the mentioned states.

• For this year, the lowest number of cases has been recorded in Manipur. Last year, Manipur had reported a total of 208 cases for a period between April 2008 and July 2009. However, the data received should be considered in light of the fact that Manipur is a thinly populated state.

Courts to digitise their dockets

Justice G. K. Sharma, District and Sessions Judge, Ujjain, Madhya Pradesh had informed that the courts are in the process of digitising their docket systems and such system would be applied in a uniform manner across India. This would go a long way in maintaining a database of cases in the country, which is the need of the hour.

- LCWRI & NIPCCD Training, NIPCCD Regional Training Centre, 26 & 27 August 2010, Indore

Categorising cases of domestic violence

The practice of categorising the cases of domestic violence was already prevalent in Andhra Pradesh. A “D.V.C. No.” was assigned to each case filed under the PWDVA and every order was accompanied by a cover sheet with the gist of reliefs given, interim orders granted. This almost amounted to an executive summary.

This practice in Andhra Pradesh is unique since in most other states, cases of domestic violence are assigned C.C. No. or a C. Misc. No.

*See Annexure 4 for the cover sheet.
1.2.3 Service of notice

Once an application under the PWDVA is filed in court, a notice is served upon the respondent to appear in court. Although the PWDVA vests the PO with the responsibility of having the notice served, the wordings of the relevant section do not indicate that the PO should serve the notice personally. Further, the rules explicitly provide that the PO may direct any other person to serve notice on his behalf. Once this notice is served, the PO makes a declaration in the court of service of notice and the same is deemed to be proof that the notice has been served on the respondent.

In the First and Second M&E Reports, it was observed that the POs were repeatedly being asked to serve notice personally. The POs who had additional charge were able to delegate this task to their existing staff. However, the independent POs faced considerable difficulty as they had to serve notice in the absence of any infrastructure or vehicle, often compromising their own safety.

In the Third M&E Report, it was noted that a trend of serving notice through the Police was developing. The High Courts of Andhra Pradesh and Delhi issued directions to the Police and the Nazarat Branch to depute personnel for the service of notice and provide adequate protection to the PO whenever they served notice in person. The Directorate of Social Justice and Empowerment had issued a circular stating that the PO was free to order the Police to serve notice. In other states like West Bengal, Tamil Nadu, Gujarat, Haryana, Manipur and Delhi, the notice was being primarily served through the Police.

The trend of serving notice through the Police has continued with most states reporting that POs served notice personally within their local jurisdictions but Police help was available in most cases.

- Bihar has reported that the Project Managers who have been appointed as POs serve notice personally in all the cases.
- Mizoram, Karnataka and Tamil Nadu have reported that SPs help in serving the notice.
- Maharashtra and Kerala have reported that POs serve notice in almost all the cases but with the help of their own staff. West Bengal continues to use wireless services, radiogram and registered post to serve notice.

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25 Section 13(1), PWDVA, 2005.
28 Supra note 9.
29 Ibid.
It is interesting to note that in Rajasthan, the POs have been repeatedly advised about the relevant provisions of CrPC pertaining to the service of notice during all their trainings under the PWDVA. The POs have also been provided with the provisions of the legislation for their reference.

1.2.4 Enforcement of orders

The PWDVA provides that the Magistrate may direct the PO to assist in the enforcement of orders. A copy of the order is to be provided to the PO when such directions are issued. A copy of the same order is to be provided free of cost to the person in whose favour it is passed. Further as per the provisions of the PWDVA and PWDVR enforcement procedures under Sec 125 CrPC can be used, and such orders may be enforced by a Magistrate in any place where the party against whom the order is to be enforced resides.

In the previous M&E Reports, it was observed that it was extremely difficult for the POs to enforce orders primarily due to geographical limitations and lack of infrastructure. It was reiterated over and over again that assistance from the Police was of pivotal importance during the enforcement of orders.

In the Third M&E Report, it was noticed that in some states such as West Bengal, Maharashtra, Delhi, Orissa, Tamil Nadu and Chandigarh, assistance was available from the Police for enforcement of orders. Andhra Pradesh was given special mention since it was the only state, which had actively encouraged the POs to make a separate application under Section 19(7) of the PWDVA for police assistance at the time of enforcement of orders.

This year, all the states have reported that Police assist in the enforcement of orders. In Rajasthan, it has been mentioned that directions have been issued from the office of the Director-General of Police regarding enforcement of orders. However, this does not necessarily lead to the conclusion that in Rajasthan, the Police are actually helping in enforcement. It is disappointing to observe that no new and innovative practices have been reported from any of the states.

1.2.5 Breach

The breach of a protection order or an interim protection order has been made punishable with imprisonment and/or a fine. As per Rule 15 of the PWDVR 2006, an AP is required to submit a written report of a breach of order duly signed by her to the PO. The copy of the protection order along with the complaint is also to be forwarded by the PO to the Magistrate. The AP can also make a direct complaint to the Police or the Magistrate.

30 Rule 10(1)(e), PWDVR, 2006.
31 Section 28(1), PWDVA, 2005; Rule 6(5), PWDVR, 2006.
32 For details, see chapter 5 at 86.
In the first two years, very few cases of breach were reported. This was presumably due to the lack of understanding and awareness of the law among the stakeholders and Police.

However, the Third M&E Report provided a mixed picture from the states regarding breach. While some states like West Bengal, Karnataka and Sikkim reported that on receipt of a complaint of breach, in most cases, the police immediately take action, others such as Maharashtra and Delhi stated that the Police do not take any action in these cases. This could have indicated that the instances of breach are not reported to the Police in both Delhi and Maharashtra. Tamil Nadu had specifically mentioned that the Police do not take immediate action in cases of breach whereas Manipur had informed that the Police only issued a warning to the respondents for breach of an order.

This year, the information received also shows a mixed scenario. While there are some positive changes, several challenges remain.

- Tamil Nadu has reported that the Police have been taking immediate action in cases of breach but only when directed by the court.

- In Mizoram, the Police have started taking action by apprehending the respondent when breach is reported.

- The Police in Manipur have also started to arrest the respondents on receiving complaints of breach instead of issuing a warning. They also help in recovering the Stridhan and rescuing children wherever necessary.

- In Assam, it has been reported that the Police have been issuing a warning to the respondent directing him to follow the court orders.

- The Police in Rajasthan arrest the concerned respondent and register a FIR.

- Further, in Bihar, all cases of breach are reportedly being handled by the Women Helpline and only exceptional cases are being sent to the court. It was also mentioned that the Police provide assistance in cases of breach although the nature of the action taken by the Police was left unexplained.

- Maharashtra has categorically mentioned that the Police do not take action for breach of order although no explanation was given for the same.

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For details on cases of breach dealt by the Courts in Maharashtra and Delhi, see chapter 6 at 116, 117.
• It was unfortunate that Delhi continued to report that the Police do not take action in cases of breach. However, the representative of the nodal department gave no reason for the same.

In both Maharashtra and Delhi, this might be indicative of the fact that the cases of breach are not reported to the Police at all.\(^{34}\)

**Practices adopted: Haryana**

A circular was issued by the Director General of Police to all District Superintendents of Police in Haryana as well as to all DCPs regarding the efficient functioning of the Special Cells for Women and Children. The direction *inter alia* includes the following:

1. Provision of an appropriate room for an office of SP in each district.
2. Deputing Police personnel in the Special Cell.
3. Issuing identity cards for Protection cum Prohibition Officers (PPOs).
4. Providing vehicles to PPOs to help them carry out their duties, providing assistance for service of notice and summons, and arranging for other office support.
5. Direct the cases under PWDVA to be forwarded to the Special Cell.
6. Invite PPO to present information on the Special Cell in monthly crime meeting held in each district.

For details, see Annexure 5.

**Practices adopted: Rajasthan**

In Rajasthan, a letter dated January 21 2010 has been issued by the DWCD to the Superintendent of Police, which contains guidelines on the role of the Police under the PWDVA. It provides that the Police could be asked to appear before the Magistrate for cases of PWDVA, the Police should refer cases of domestic violence to the POs, and assist the latter whenever the need arises.

It is very interesting to note that in the same guidelines, it has been mentioned that the Police are authorised to fill up DIRs when requested by the AP to do so.

The guidelines also provide for mandatory reporting on PWDVA cases every three months in a prescribed format. The first format has provision for details of women who go to the thana as the first point of contact, the second format provides for the details to be recorded in case of breach, and the third format contains the details that are to be maintained at the thana. It is this third format that is to be sent every three months to the district police headquarters. There is also another format 4, which is along the same lines as format 3 and has to be sent by the police headquarters to the DWCD every three months.

For details of letter dated 21 January 2010 and the formats, see Annexure 6.

\(^{34}\) For details, see chapters 5 and 6.
1.3 Evolving models for the appointment of POs

1.3.1 Special cells: Haryana

In 2009, Special Cells for Women and Children were established at the police headquarters of each district in Haryana by the DWCD, Haryana in coordination with the Department of Home, Haryana, and TISS. Out of the 20 PPOs appointed, 10 are qualified Social Workers while the other 10 are qualified lawyers. All these PPOs are women and were appointed on a contractual basis.

Location of the PPOs has been of special significance in Haryana as they are located in the Special Cells for Women and Children established in the office of the Superintendent of Police of each district. The PPOs along with subordinate staff ensure effective implementation of the PWDVA and Prohibition of Child Marriage Act, 2006, and coordinate with the Police to deliver summons and execute orders.

Details of complaints received

During the period April 2009 – March 2010, PPOs dealt with 3504 complaints of domestic violence. In 1668 complaints, DIR was recorded by the PPOs. In 403 complaints, PPOs filed applications (Form II) in the courts on behalf of the AP, and in 233 cases, the PPO has been successful in obtaining a relief order for the women. In 439 complaints, PPOs conducted enquiries on court orders. In 2387 complaints, counselling was provided by the PPOs at the request of the woman, and as a result, 1263 complaints were mutually resolved between the parties.35

During the period of April 2010 – August 2010, PPOs dealt with 2181 complaints of domestic violence. In 788 complaints, DIRs were recorded by the PPOs. In 219 complaints, PPOs filed applications (Form II) in the courts on behalf of victims and in 101 cases, the PPO has been successful in obtaining a relief order for the women. In 266 complaints, PPOs conducted enquiries under court orders. In 1699 complaints, counselling was provided by the PPOs at the request of the victims and as a result, 940 complaints were mutually resolved between the parties.36

Core work of PPOs in special cell

It has been reported that the PPOs fill up DIRs, conduct enquiries, and submit the required reports on the directions of the court. The PPOs have been filing cases under the PWDVA through legal aid services, and in a few districts have also been enforcing court orders. They offer immediate service to the women in a crisis situation, counsel, and also provide mediation services to the parties referred by the Police, NGO, SPs, the District Court, etc. They also refer women for medical assistance and legal aid.37

35 For details, see Annexure 7.
36 For details, see Annexure 8.
37 Circular No. MSK – 2005/C.R. 202 D-2, issued by the WCD, Government of Haryana. As per this Circular, the functions of the Special Cells included offering counselling services.
PPOs have been conducting awareness activities at the village, block and district levels on a weekly basis with various target groups such as anganwadi workers, health workers, village panchayats, self-help groups, and other civil society and community-based groups. In the period of April 2009 – March 2010, PPOs have conducted 760 training programmes for the above mentioned target group and 60 training programmes for the Police Officers. In the period April 2010 – August 2010, PPOs have conducted a total of 250 training programmes for the above mentioned target group and 25 training programmes for the police officers on gender, violence against women and law.

Since the last six months, Special Cells have been actively coordinating with the Haryana State Legal Services Authority. The SLSAs have issued instructions to the DLSAs to set up legal aid clinics in the Special Cells and conduct legal literacy classes with the support of PPOs. PPOs have networked with 26 organisations registered as SPs and notified MFs to provide necessary assistance to the aggrieved women.

1.3.2 Special cells: Maharashtra

In Maharashtra, the TISS Special Cell has also been designated as additional PO in 16 districts of the state. Here, the persons appointed have been assigned a dual role, and function both as a PO and SP. In the current year, further developments in Maharashtra have been observed as regards the appointment of POs.

In the case of Sou. Ratnabai Jaising Patil v. State of Maharashtra, the High Court of Bombay had directed that one social worker from each of the 20 counselling centres (Special Cell for Women and Children) shall be notified by the Government of Maharashtra as a PO, and the others be registered as SPs under the Act. Subsequently, a Public Interest Litigation (PIL) was filed on 3 August 2009. In this PIL, the petitioner raised issues pertaining to the implementation of the PWDVA including the appointment of full time POs, providing them with adequate infrastructure and assistance, conducting periodic sensitisation and awareness training programmes for POs, and ensuring that the POs, Police and Legal Services Authority (LSA) perform their duties as envisaged under the Act. The Government in its reply stated that a proposal has already been submitted for the creation of one post each of PO, Assistant PO and Data Entry Operator in each district.

On 24 June 2010, the Bombay High Court appointed a High Power Committee headed by the Chief Secretary of the State and other Secretaries responsible for the implementation of the provisions of the Act and appointment of POs. It was further directed that this High Power Committee should take a decision within a period of two weeks and that the

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38 Criminal Appeal No. 359 of 2008.
recruitment process should be completed within three months. However, on 15 July 2010, the Additional Government Pleader informed the court that as per the decision taken in the Cabinet Meeting dated 26 May 2010, the Government of Maharashtra has already constituted ‘Selection Committee’ under the Chairmanship of Secretary, Women and Child Development vide its Government Resolution (GR) No. SAN-2007/Case No. 226/Desk-2 dated 8 June 2010. This Committee comprised of members from the Women and Child Development Commissionerate, Law and Judiciary Department, Home Department, State Women’s Commission, TISS, Nirmala Niketan and Karve Institute. This GR further mentioned that instead of appointing separate officers under other Acts pertaining to women, the PO who would be appointed under the PWDVA would also look into effective implementation of Dowry Prohibition Act, 1961, Child Marriage Restraint Act, 2006, and the Maharashtra Devadasi System (Abolition) Act, 2005. This GR further affirmed that the POs would be appointed from amongst selected NGOs. Moreover, this Committee would frame guidelines to decide the selection criteria, terms and conditions, stipend for the POs, and miscellaneous expenses.

Lawyers Collective too filed an intervention application in the same PIL on 8 July 2010 on behalf of five NGOs to direct the state government to appoint independent POs as per Rule 3(2) of the PWDVA Rules, notify and declare them as public servants, and ensure effective coordination between the concerned ministries and departments, amongst others. The Bombay High Court disposed off the PIL as well as the Intervention Application filed by LCWRI on 15 July 2010 stating that the government has taken necessary steps and put on record the GR passed on 8 June 2010. The government also agreed to frame the guidelines for the appointment of POs within two weeks and the related appointments within four months. Liberty was given to the petitioners to apply again in case of any difficulty.

The government pleader also informed the High Court that the Selection Committee include representation from the NGOs. Interestingly, the Committee grouped TISS, Nirmala Niketan, and Karve Institute as NGOs even though they are academic institutions. Thus, in effect, there is no NGO representation on the Committee. The NGO network in Maharashtra has strongly opposed this GR primarily on the ground that the security of woman is a state subject and cannot be outsourced to NGOs. Secondly, it has expressed that the POs should be independent officers and notified as public servants.

Data received on special cells

Across six districts, for the period between February 2010 and July 2010, a total of 88 DIRs have been filed by the POs, while the SPs have filed only 3 DIRs. A total of 63 applications have been registered in the Court. However, it is still not known how many of these DIRs were filed in court by the POs themselves and how many were filed on directions of the court. The number of cases settled in the Special Cells is also not known from this data.

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This information was received from TISS. For details, see Annexure 9.
The low number of DIRs filed by the SPs corresponds with the finding regarding the visibility of the SPs.\(^{41}\)

1.3.3 Public model: Andhra Pradesh\(^{42}\)

The public model is an example of the multi-agency approach as envisaged under the PWDVA. In this model, the Police, POs, SPs and the SLSA work together to implement the PWDVA.

Andhra Pradesh was the only state to follow the public model. In Andhra Pradesh, the POs were assisted by an extension officer, data entry operator, two counsellors (a social worker and an advocate), and two home guards. All the details of SPs and the Police were maintained at the PO’s office. The SP carried out counselling only with the consent of the women. The staff from the PO’s office assisted the woman not only at the time of filling a DIR but also throughout the court proceedings. Police assistance was also available for the enforcement of orders.

The only departure from this model was noticed last year when it was reported that the Magistrates insisted on an advocate representing the woman. This is not a compulsory requirement under the PWDVA.\(^{43}\) Over the last three years, Andhra Pradesh has been viewed as a state having best practices under the PWDVA. Unfortunately, due to lack of data on Andhra Pradesh this year, the data collected last year has been relied upon.

1.3.4 Independent POs

Some states such as Bihar, Delhi, Gujarat, Tamil Nadu and West Bengal have appointed a separate cadre of POs who are independent of any other charge under the government. While the appointment of independent POs has been encouraged due to their availability to victims of domestic violence as well as to the court for timely submission of reports, the POs have consistently reported about the hurdles that they face due to lack of infrastructure. The independent POs have also reported that they are often not recognised as public servants, which hampers their effective performance. The appointment of independent POs has also become an additional financial and infrastructure burden. They have also encountered difficulty in creating an office of a supervisor to monitor the work of the POs.

1.3.5 POs with additional charge

Almost all the states have appointed POs with additional charge, which means that instead of creating a separate cadre of independent appointees, the state government has

\(^{41}\) For details, see chapter 5 at 73, 74 and chapter 6 at 114.

\(^{42}\) Over the last three years, the public model of Andhra Pradesh has been mentioned as a working model. Although the same is mentioned as an evolving model this year, it is not possible to confirm if they still function in a similar manner since no data was received from the state this year.

\(^{43}\) Supra note 9.
entrusted some of the existing government officers with the responsibility of the PO. The rationale behind such appointments is manifold. The existing government officials possess knowledge about social legislations, government schemes, database for coordination with other agencies, and infrastructure to help them carry out their duties efficiently. On the other hand, the POs with additional charge are often overburdened with additional duties which affects their interventions required under the PWDVA. The state governments also do not provide any additional remuneration or reimbursements to the additional POs. Therefore, the POs feel discouraged to carry out their additional responsibilities under the PWDVA.

2. Service Providers

In recognition of the pivotal role played by the NGOs on women’s rights, Section 10(1) of the PWDVA provides for their registration with the state government as SPs.\footnote{Section 10(1), PWDVA, 2005.} Through this, not only is their work given legitimacy but they are also recognised as public servants under the Act and protected from any act done in good faith towards preventing domestic violence.\footnote{Section 10(3), PWDVA, 2005.} Their role extends beyond providing counselling and pre-litigation support services to assist the woman in court and follow through till she receives all the relevant reliefs.

2.1 Registration of SPs

The Act provides a procedure for any voluntary association to apply for registration as SP.\footnote{Rule 11(1), PWDVR, 2006.} It was meant to be an optional responsibility that any civil society organisation could choose to take. However, over the last three years, it has been observed that states had registered Family Counselling Centres (FCCs), Special Cells or SHs, which were already receiving state funds under different schemes as SPs. As a result, many of these organisations had to channelise the funds they received under different government schemes for the purpose of implementation of the PWDVA. Moreover, most of these organisations were not even aware of the provisions of the Act and their role under it. It has also been consistently observed that the concerned NGOs in the different states have been hesitant to register themselves as SPs under the PWDVA primarily due to lack of infrastructure and funding.

Table 3.3 contains details for registration and notification of SPs in the different states including the nature of services rendered by them. The representatives of the nodal departments provided the following information.

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\footnote{Section 10(1), PWDVA, 2005.}
\footnote{Section 10(3), PWDVA, 2005.}
\footnote{Rule 11(1), PWDVR, 2006.}
Table 3.3: Details of SPs

<table>
<thead>
<tr>
<th>State/Union Territory</th>
<th>Total no. of SPs notified</th>
<th>Services provided</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assam</td>
<td>54</td>
<td>Counselling, legal aid and shelter, awareness and capacity building workshops</td>
</tr>
<tr>
<td>Bihar</td>
<td>Under process (76-including 38 Women Helplines of which 27 are functional) and 38 short stay homes have been identified and registration is under process)</td>
<td>No information</td>
</tr>
<tr>
<td>Chandigarh</td>
<td>13</td>
<td>Counselling and shelter</td>
</tr>
<tr>
<td>Delhi</td>
<td>Under process (Short stay homes, FCCs, mutli-service organisations have been identified and have been working under the PWDVA but none are notified)</td>
<td>No information</td>
</tr>
<tr>
<td>Gujarat</td>
<td>13</td>
<td>Recently notified</td>
</tr>
<tr>
<td>Haryana</td>
<td>26</td>
<td>Counselling and shelter</td>
</tr>
<tr>
<td>Jharkhand</td>
<td>Under process</td>
<td>No information</td>
</tr>
<tr>
<td>Karnataka</td>
<td>116</td>
<td>Counselling and shelter</td>
</tr>
<tr>
<td>Kerala</td>
<td>60</td>
<td>Helpline, counselling, mediation and legal action</td>
</tr>
<tr>
<td>Madhya Pradesh</td>
<td>52</td>
<td>Counselling and short stay homes</td>
</tr>
<tr>
<td>Maharashtra</td>
<td>129</td>
<td>Counselling</td>
</tr>
<tr>
<td>Manipur</td>
<td>7</td>
<td>Counselling and legal aid</td>
</tr>
<tr>
<td>Mizoram</td>
<td>6</td>
<td>Counselling and support</td>
</tr>
<tr>
<td>Punjab</td>
<td>23</td>
<td>Counselling</td>
</tr>
<tr>
<td>Rajasthan</td>
<td>87</td>
<td>Counselling</td>
</tr>
<tr>
<td>Tamil Nadu</td>
<td>31</td>
<td>Counselling and shelter</td>
</tr>
<tr>
<td>Uttar Pradesh</td>
<td>112</td>
<td>Counselling, short stay homes and medical facilities</td>
</tr>
<tr>
<td>West Bengal</td>
<td>68</td>
<td>Counselling, short stay homes and legal aid</td>
</tr>
</tbody>
</table>

Over the last three years, it was observed that the state governments were keen to notify those organisations which were already funded by the state or central governments. However, this year a slight variation has been noticed with some of the states moving away from this trend and appointing NGOs as SPs. In Madhya Pradesh, five NGOs have been notified as SPs and they are functioning without any government funding. Also, in Maharashtra, 47 NGOs have been notified as SPs but they do not receive any government funding for the same.
Interestingly, the government representative from Assam reported that although 54 SPs have been notified in the state, several of them are still inactive. These organisations had primarily applied anticipating some extra funding from the government but the same had not come through. The states of Manipur and Mizoram have less than one service provider per district. However, Manipur reported that they plan to appoint at least three per district.

Furthermore, Tamil Nadu reported that it was conducting a review, whereby non-functioning NGOs would be disqualified. Also, Bihar informed that no SPs had been notified till date although 76 NGOs (38 short stay homes and 38 helplines) have been identified. This delay has been caused due to the police verification mandated by the WCD. For those NGOs who respond to the advertisements, a background check for pending criminal cases is conducted. Also, a team comprising one member of the district administration and two members from the WCD visit the organisation.

2. Role of service providers

As part of the multi-agency support envisioned under the PWDVA, the SPs have been assigned a substantial role. In addition to filling DIRs, the SP is expected to provide counselling, ensure medical attention if required, and send the AP to a shelter home whenever necessary. Unfortunately, however, it has been consistently observed that the SPs are largely unaware of their role under the Act. This trend continues this year as well with all the states reporting on the lack of awareness among the SPs.

It can be observed from the Table 3.3 that the primary role of the SPs is counselling, and until now, their work has centred around pre-litigation counselling, support and shelter.

**Exception: Kamrup district of Assam**

Three SPs went far beyond this pre-litigation role, not only by providing legal guidance and filling the DIR but also representing the women in court, and assisting her throughout the legal process.

**2.2.1 Domestic incident reports**

As mentioned above, a duly registered SP has the power to record a DIR if the AP so desires and forward a copy thereof to the Magistrate and the PO. However, in most states, the SPs are continuing to refer women either to POs or lawyers once they decide to file a case, with the exception of the seven states of Assam, Karnataka, Maharashtra, Madhya Pradesh, Manipur, Mizoram and Tamil Nadu. In Kerala, the SPs fill the DIRs through the legal counsellors provided to them.

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47 Section 10, PWDVA, 2005.
48 Section 10(2), PWDVA, 2005.
49 For details, see chapter 5 at 73, 75.
2.2.2 Other duties

The onus of serving notice has not been delegated to the SPs under the PWDVA. Nonetheless, it has always been observed that in a few states, the SPs assist in the service of notice. This year, Karnataka, Madhya Pradesh, Manipur and Tamil Nadu have reported on SPs assisting POs in serving notice.

The responsibility of conducting a home visit to the shared household for the purpose of a preliminary enquiry lies solely with the PO. It was reported by the five states of Assam, Karnataka, Madhya Pradesh, Manipur and Tamil Nadu that the SPs assist the POs in conducting home visits, and in the enforcement of orders. However, there was no clarity on whether these home visits were conducted on orders of the court or if they were carried out even before the case was filed in the court.

On the one hand, Bihar specified that SPs were still being notified, and on the other, their report mentioned that the SPs have filed 11 DIRs, served notice in 11 cases, and conducted seven home visits.

3. Medical Facilities and Shelter Homes

The PWDVA has formally recognised both MFs and SHs as support services available to abused women. It defines MF and SH, and enlists their duties. Furthermore, it provides that if an AP or a PO or SP on her behalf requests either for medical help or shelter, the person in charge of a MF or SH is under an obligation to provide such services. These services have to be provided to the woman, whether or not she has lodged a DIR before requesting for such assistance.

It must be borne in mind that notified MFs have the authority to register DIRs and forward a copy of the same to the PO for his or her records. The procedure by which a SH can be registered has been provided in the PWDVR. The relevant provision for the registration of SHs specifically lays down that the SH should have a record of maintaining a functional telephone connection or another medium of communication for the use of inmates. It also provides that the place should be secure for running the SH for women, and that adequate security arrangements can be put in place.

The following table provides nationwide statistics regarding MFs and SHs. However, data was not received from the nodal departments of any state even after repeated attempts to obtain information.

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50 Rule 10(a), PWDVR, 2006.
51 Sections 6 & 7, PWDVA, 2005.
52 Rule 17, PWDVR, 2006.
Table 3.4: State-wise Data of MFs and SHs

<table>
<thead>
<tr>
<th>States</th>
<th>Medical facilities and their profile</th>
<th>SHs and their profile</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assam</td>
<td>All government hospitals are providing medical facilities</td>
<td>No new ones notified but existing 5 SHs functioning under govt. schemes</td>
</tr>
<tr>
<td>Bihar</td>
<td>Not notified till date. Part-time MBBS doctors have been appointed in short stay homes and other MFs have been utilised through local influence and support</td>
<td>38 SHs notified and all run under the government scheme- “Mukhya Mantri Nari Shakti Yojna ”</td>
</tr>
<tr>
<td>Chandigarh</td>
<td>Two govt. medical colleges and hospitals have been notified along with all the govt. dispensaries</td>
<td>2 SHs notified- Nari Niketan and one SH under the Swadhar scheme</td>
</tr>
<tr>
<td>NCT Delhi</td>
<td>24 medical facilities notified-all Govt. Hospitals and Govt. Dispensaries</td>
<td>3 out of which one runs under a govt. scheme and the other two are licensed short stay homes</td>
</tr>
<tr>
<td>Gujarat</td>
<td>All civil hospitals and hospitals affiliated to govt. medical colleges have been notified as MFs</td>
<td>21 SHs notified and all of them run under govt. scheme</td>
</tr>
<tr>
<td>Haryana</td>
<td>Exact figure has not been provided but all government hospitals, primary health centres and community health centres</td>
<td>3 SHs notified (Mahila Ashram in Rohtak, Karnal and Kasturba Sewa Sadan, Faridabad)</td>
</tr>
<tr>
<td>Karnataka</td>
<td>All facilities provided in all hospitals owned, maintained or controlled by the State Govt., to be a medical facility (HFW 2003 FRP 2007 dated 1-2-2008)</td>
<td>154 SHs notified – all run under govt. scheme</td>
</tr>
<tr>
<td>Kerala</td>
<td>99 MFs have been notified</td>
<td>23 SHs have been notified and 15 among them receive govt. funding</td>
</tr>
<tr>
<td>Madhya Pradesh</td>
<td>All medical colleges, district hospitals, primary and community health centres</td>
<td>24 SHs notified; all are run under govt. scheme</td>
</tr>
<tr>
<td>Maharashtra</td>
<td>No separate notification but all District Civil Surgeons, Medical Superintendents, District Hospitals, Rural Hospitals, Women Hospitals have been directed to provide services under the PWDVA 2005⁵⁵</td>
<td>81 have been notified out of a total of 111 in the state. (There are 20 state homes, 30 SSHs, 15 Adhar Graih, 46 Swadhar Graih in total across the state which receive govt. funding only)</td>
</tr>
<tr>
<td>Manipur</td>
<td>Under process</td>
<td>19 SHs notified and all function under govt. schemes/funding</td>
</tr>
<tr>
<td>Mizoram</td>
<td>NIL</td>
<td>1 SH - this is a NGO in Aizwal</td>
</tr>
</tbody>
</table>

⁵⁵ Circular dated August 23 2007 issued by the Director of Health Services, Government of Maharashtra.
<table>
<thead>
<tr>
<th>States</th>
<th>Medical facilities and their profile</th>
<th>SHs and their profile</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rajasthan</td>
<td>505- All district, state, sub-district, community health centres along with satellite hospitals and dispensaries have been notified as medical facilities</td>
<td>13 SHs have been notified</td>
</tr>
<tr>
<td>Tamil Nadu</td>
<td>1849 MFs including primary health centres (1531), medical college hospital (15), non-taluk level hospitals (80), taluk level hospitals (155), headquarters hospitals (28) and other hospitals (40)</td>
<td>98 SHs have been notified (all run under govt. scheme)</td>
</tr>
<tr>
<td>Uttar Pradesh</td>
<td>All district hospitals, community health centres and primary health centres (unclear whether notified or not)</td>
<td>12 SHs, all run under govt. scheme (unclear whether notified or not)</td>
</tr>
<tr>
<td>West Bengal</td>
<td>No information</td>
<td>43 SHs run under govt. scheme</td>
</tr>
</tbody>
</table>

This year, the states continued to notify MFs and SHs, and the practice of notifying only government run institutions has again been noticed. As far as MFs are concerned, the states continue to report that only the government health centres and dispensaries were notified as MFs under the PWDVA, and that the homes run under the Swadhar scheme and the Short Stay Home scheme of the governments in their respective states were notified as SH.

It is encouraging to note that the WCD in Haryana vide a letter* addressed to the Director General of Health Services (DGHS) requested that the details of the Special Cell for Women and Children be circulated to all the notified MFs with the directions that any woman who comes to such MF for treatment and who appears to be a victim of domestic violence, the details of such woman be forwarded to the Special Cell for Women and Children in the concerned district.

* For details see Annexure 10.

Even after four years of the enactment, MFs have still not become visible in the implementation of the Act. Doctors are supposed to be the first port of call for aggrieved women who have been facing continuous physical and psychological abuse. They have, therefore, been assigned certain duties under the PWDVA, to address the issue of domestic violence. The Act requires that the MF not only provides medical aid to the AP but also records a DIR.
Dilaasa project: A case study

Even though in most states, the MFs have not been involved in the implementation of the Act, the Dilaasa Project on Maharashtra has proved to be an exception. Dilaasa, a Crisis Centre for Women, is the first hospital-based crisis intervention department designed to respond to the needs of women facing violence within their homes and families. It is a joint initiative of the Public Health Department of the Brihanmumbai Municipal Corporation (BMC) and the Centre for Enquiry into Health and Allied Themes (CEHAT). Dilaasa centre creates a multi-agency response system for the victim of violence. It provides both counselling and medical aid because of Centre’s location within the public hospital setting. Also, women who face extreme restrictions on their mobility from their abuser/s find it easier to come to Dilaasa on the pretext of a hospital visit. Women facing a threat to their lives, can be admitted “under observation” for a period of 24 hours, which allows time for sending them to a shelter home or relatives/friends. During the period 2001-09, approximately 2060 women underwent counselling at the Dilaasa centre.

Comment by Dilaasa on Strengthening the role of Medical Facility under PWDVA

Currently, hospitals record assault by husband/his relatives/members of natal family merely as ‘Alleged H/O of assault”. Cases of attempted suicide get registered as “accidental consumption of poisoning”, and burns cases, which could be homicide, are also recorded as “accidental burns”. Women are only provided medical treatment without any information on the law or referral to appropriate agencies. Given that the doctors and nurses are the first point of contact for most victims of domestic violence, it is necessary that they be mandated to perform their expected duties under PWDVA, mainly providing medical aid, filling in DIR, referring to PO etc. Training is also required in the area of gender sensitivity, understanding violence against women and its impact on physical and mental health of the women, and their role as a MF. Capacity building is needed for developing specific skills of screening for abuse, documenting history of violence, and informing women about legal provisions. Good documentation of the case history can also be an important basis on which the woman could seek legal recourse if she chooses to.

For details of Dilaasa Crisis Centre for Women: Intake Form, analysis of cases from 2001-06, role of healthcare provider, and the guidelines for health professionals to identify cases of violence, see Annexure 11.

B. MULTI-AGENCY COORDINATION

The PWDVA does not lay down a reporting format for the stakeholders. However, it has been largely recognised that a mandatory reporting format needs to be put in place for all the key stakeholders in order to effectively implement the Act.

For this year, an interesting observation is that the referral system, whereby the POs, SHs and MFs refer relevant cases to each other, has more or less started working in some of the states. The states have provided the numbers of cases that have been referred among the stakeholders, although the period during which such referrals were made was not specified by the states.
1. Reporting by P0s

As per the information received from the nodal departments, it appears that the reporting system has been more or less developed in several states, and they have adapted the format forwarded to them by the Central Government.\(^56\) The P0s typically have to report to the nodal agency as per the format, and the nodal agency in turn is to report to the MWCD.

However, the challenges regarding the format followed by the states remain. Most of the formats have more provision for quantitative data and less for qualitative information. It is difficult to understand the stage at which the cases are pending, the orders sought for and received, and either the nature of role or the challenges faced by the stakeholders in discharging their role. The P0s still do not receive copies of orders for the cases, and hence, more often than not they are completely unaware about the status of the cases.

2. Reporting by SPs

Despite the fact that periodic monitoring of the stakeholders by the nodal department is vital for the effective functioning of the law, the reporting process established is mostly for the P0s and not for the other stakeholders. This not only leads to an absence of official data on their functioning but is a major impediment to the co-ordination and multi-agency response system envisaged under the Act. Rajasthan is the only exception where a separate form for SPs to report has been issued.\(^57\)

3. Reporting by Other Stakeholders

Although the reporting system for the P0s has been developed in several states, the same cannot be said of the MFs and SHs. However, some of the states have provided information about the reporting done by the MFs and SHs.

- Rajasthan stated that the Chief Medical Officers have been requested to inform all notified MFs to maintain record of cases under the PWDVA and submit the same periodically in the prescribed format.

- Tamil Nadu mentioned that the MFs maintain a medical record, which is forwarded to the PO whenever requisitioned by the AP, Police or PO. In Tamil Nadu, SHs also maintain a record of cases and submit periodical reports to the nodal department.

\(^56\) The details of the reporting system developed by different states have been annexed in a tabular format as Annexure 12.

\(^57\) For details, see Annexure 13.
Karnataka informed that the records are maintained by both the MFs and SHs, and that they submitted reports directly to the PO.

Kerala has mentioned that the SHs maintain a common admission register for all inmates in which they make a separate note of the victims of domestic violence.

Apart from the above, no other state has provided any information about a reporting system for the MFs and SHs.

4. Coordination Committees

The formation of coordination committees was encouraged for better implementation, and to bring together all the key stakeholders under the Act. It was also expected that the committees would be in a position to collect state-wide data on the cases filed under the PWDVA and submit recommendations regarding the effective functioning of the Act.

In the previous years, it had been observed that Andhra Pradesh was the first state to form a coordination committee, followed by Kerala and Uttarakhand in the second year and Maharashtra, Madhya Pradesh, Rajasthan, Himachal Pradesh and Karnataka in the third year. The committees were gradually being formed at the district level to facilitate coordination at the lower levels. At the same time, it was observed that the committees formed were not functioning properly due to lack of a clear mandate.

This year, multi-coordination through the coordination committee remained inadequate. There is no significant progress reported by any of the states and no additional steps were taken to bring about better coordination among the different mechanisms. There continues to be an absence of clarity on the mandate and powers of the committee members. Eight states, moreover, reported that there was still no committee in place. These include Assam, Chandigarh, Delhi, Gujarat, Manipur, Mizoram, Uttar Pradesh and West Bengal. Assam further reported that they are in the process of forming a coordination committee.

The representatives from the nodal department reported that the functions of coordination committees were to monitor the implementation of the PWDVA in the states, facilitate coordination between stakeholders, and collect state-wise on the PWDVA cases. It was also mentioned that the committees are responsible for periodically reviewing the services made available to the AP, and issue guidelines regarding the same. The committees were also entrusted to create awareness under the Act. It was strongly expressed that separate funding should be allocated for managing these coordination committees to make them more effective.
C. TRAINING AND AWARENESS UNDER THE PWDVA

The Act explicitly lays down certain duties to be performed by both the central and state governments. The duties include providing wide media publicity of the Act, organising training for government officers and members of the judiciary, ensuring effective coordination between all the concerned departments of the government, and preparing protocols for various ministries to enable delivery of services to the women.

1. Training

Overall, most states have been organising trainings for the various stakeholders. Almost all the states which reported to LCWRI had conducted sensitisation and other training programmes. SPs have also been trained in various states with the help of NGOs and Magistrates. However, most training programmes have not been followed up by refresher courses.

- While a five-day sensitisation programme was organised by the National Institute of Public Cooperation and Child Development (NIPCCD) in Bihar for the Project Managers of the Helpline, Tamil Nadu reported that POs in their state were trained by judges in a four-day training programme. In West Bengal, both the POs and the police personnel have been trained extensively under the PWDVA by various authorities. Assam and Manipur have also conducted training programmes for POs and SPs. The Rajasthan High Court and the SLSA have been requested to organise trainings for the members of the Judiciary.

- Madhya Pradesh is the only state which carried out extensive trainings for the medical officers.

- Maharashtra conducted training of trainers for government officials and NGOs, which was led by women activists and experts from NGOs. This is the only state to have organised training of trainers.

- It is disappointing that in Delhi, the DWCD has not initiated any training on its own for any of the key stakeholders. A PO has informed LCWRI that the only training they attended this year was that organised by LCWRI and Crime Against Women (CAW) Cell for the police personnel. The DWCD reported that one or two trainings were organized by the NGOs this year.

- Finally, in Chandigarh, the state government has organised no trainings for the POs or other stakeholders. The information from Jharkhand shows that minimal efforts have been made in this regard, with only one orientation workshop being held for all POs by a District Session Judge.

58 Section 11, PWDVA, 2005.
59 The pre-conference meeting was held at the India Islamic Cultural Centre, New Delhi, 7 September 2010.
2. Awareness

While some states have integrated the awareness campaigns on the PWDVA with other campaigns on social legislations, others initiated exclusive campaigns on the PWDVA. This year, all states have reported regarding the initiatives taken by them to generate awareness on the PWDVA. It seems that they have used the media to a great extent to create awareness, and some have even come up with innovative ways of reaching out to the rural areas.

- In Delhi, contact details of the POs with their mobile numbers have been put up at the metro rail stations. Also, the WCD has reached out to the grassroots level through anganwadi centres and district officers by distributing 70,000 pamphlets.

- In West Bengal, the Officer of Directorate has used the radio to reach out to the city of Kolkata and sub-urban areas, and the regional offices have used hoardings and campaigns to reach out to the districts, sub-divisions and blocks. More than 3000 pamphlets have been issued by NGOs and distributed in the districts.

- Among the North-Eastern states, in Manipur, 10 hoardings have been placed throughout the state to create awareness campaigns. The nodal department has also produced a short film and a book. In Assam, the electronic and print media have been used for raising awareness. Campaigns have also been organised but no details were provided. Mizoram has held two radio programmes and several awareness campaigns.
• In Madhya Pradesh, awareness has been generated through the *Usha Kiran Yojana*. This includes 20 radio messages, hoardings, pamphlets, campaigns and television messages at the block and district levels.

• In Chandigarh, messages have been broadcast through the All India Radio as well as Doordarshan. Pamphlets have also been distributed at all the anganwadi centres.

While the above states have made substantial efforts to create awareness, the following four states have devised original strategies to ensure that their initiatives reach the grassroots level in their respective states.

• In Bihar, radio jingles have been composed regarding the Women Helpline, short stay homes, and violence against women. Apart from this, hoardings on the PWDVA have been placed in all the district headquarters. Pamphlets have also been distributed amongst two lakh families regarding the right of a woman to live in violence free home. Street plays on the theme of domestic violence and the PWDVA have been organised in 534 blocks in all districts of the state.

• In Tamil Nadu, the PWDVA was publicised through All India Radio, and has reached around five lakh people. All district headquarters and women police stations have been provided with a total of 80 hoardings regarding the provisions of the Act, which has reached about 30 lakh persons. A total of 1500 pamphlets in the form of printed booklets have been distributed to all the MLAs and MPs.

• In Gujarat, extensive efforts have been made to raise awareness throughout the state. Hoardings containing basic information on the PWDVA and contact numbers were put up on the buses by the GRC in all the districts. A film on the PWDVA was produced for dissemination amongst the stakeholders. More than 15,000 booklets, posters and stickers have also been printed in Gujarati and disseminated among all the stakeholders.

• In Karnataka, five phone-in programmes have been organised throughout the state via radio. Pamphlets on the PWDVA have been distributed at the district level to the Anganwadi Workers, SHG members and NGOs. The electronic media has been used to produce six programmes to raise awareness on the constitutional rights of women and children among the general public. Awareness campaigns with Anganwadi Workers, SHG members and NGOs have been organised for legal literacy on the PWDVA, Dowry Prohibition Act, 1961 (DPA) and other beneficial legislations. The Act and the Rules along with the PO manual have been printed in Kannada for the stakeholders.

Although the states have reported on their initiatives, the impact of their efforts cannot be definitely concluded in this report. It is encouraging to know that the state government is
actively engaging in effective implementation of the PWDVA but it would be important to understand the outcome of such programmes.

**BELL BAJAO! (RING THE BELL) CAMPAIGN**

Breakthrough’s successful signature campaign, Bell Bajao! (Ring the Bell) was launched in August 2008. The campaign used the media, including TV and radio spots, print ads, mobile video vans, and online campaign to urge men and boys to take a stand against domestic violence. The campaign sought to create a shift in public knowledge, attitudes and practices. The objective of the campaign was to increase awareness of women’s rights with special focus on domestic violence as well as to increase individual community action on violence against women. It also wanted to facilitate the access of women to both legal and health services in addition to addressing the need to increase public dialogue around HIV/AIDS and violence against women in order to enable women to negotiate safer sex and increase their ability to protect against HIV/AIDS.

Apart from the media campaign, which targeted almost 130 million people nationwide, extensive work at grassroots level was conducted. Regular trainings and workshops have reached over 75,000 persons belonging to NGOs, Positive People’s Network, university students, and marginalised communities. More than 27,000 people, including women from two states, have enhanced knowledge and awareness regarding their rights to live a life free of violence and discrimination.

To assess the impact of its work, Breakthrough uses qualitative tools like the Most Significant Change (MSC) technique to record and validate individual behaviour change and collective action. Breakthrough’s MSC stories have resulted in enhanced knowledge and self-confidence, shift in attitudes towards gender, sexuality, violence and HIV/AIDS. A number of video stories that talk about the impact of the campaigns were developed and are still being developed alongside advocacy. The recently concluded endline survey also showed that the outcome of the campaign includes greater awareness about domestic violence, shift in attitude towards understanding domestic violence, and increased intervention from the community in cases of domestic violence.

The ad campaigns of Breakthrough, depicting male role models in ending domestic violence, have won several awards, including the prestigious Silver Lion in the Film Category, at the Cannes Lions International Advertising Festival 2010. It has won the Gold Spike awards at the Spikes Asia Advertising Festival twice in 2009 and 2010. The Bell Bajao ad campaign won ‘Gold’ for the Best integrated campaign at Goafest Abby Awards in 2008, and made it to the “Final cut” at One Show, New York.*

* The information in this box was received from Breakthrough. The ad campaigns were designed by Ogilvy as a pro bono contribution.

**D. OBSERVATIONS FROM NGOs**

The PWDVA expressly recognises the efforts of the NGOs working on women’s issues, which continue to play an important role in ensuring smooth implementation of the Act. Accordingly, LCWRI had organised a meeting for members of NGOs60 to come together and share their

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60 The NGO meeting was held at the India Habitat Centre, New Delhi, 7 August 2010. Representatives from the states of Gujarat, West Bengal, Andhra Pradesh, Orissa, Madhya Pradesh, Maharashtra, Delhi, Tamil Nadu and Karnataka attended the meeting.
experience of the working of the PWDVA in different states. It was also felt that obtaining responses from NGOs working in different states would provide additional qualitative information on the implementation of the PWDVA in the different states. In the meeting, several issues were discussed.

1. Reality about the Working of POs

The conditions under which the POs are working in West Bengal are disappointing. It is only on paper that they have been provided with infrastructure. For instance, on paper they have been sanctioned computers for their work, but in reality the computer barely ever works and the money required for repairs is never sanctioned. The support staff for the PO has been sanctioned but such staff can be recruited only from the Sainik Board to work at Rs. 2500/- per month. No one is willing to work at that salary and thus, the POs are often left without any staff. The POs do not receive the reimbursements for telephone calls, and their salaries are often not paid for three or four months at once. All the representatives agreed that the POs are not being given adequate allowance, and their reimbursements are also disbursed sparingly. The representative from Madhya Pradesh mentioned that although POs are given a lumpsum amount to the tune of Rs. 300/- every month, any expense in excess of that amount is not reimbursed.

2. Experience with Service Providers

The NGOs also confirmed that the states have been notifying SPs regularly, but the latter are still unclear about their roles. Some SPs are not even aware that they have been notified under the Act. The members also agreed that there is a need for better coordination between the stakeholders and the nodal agency, adequate budget, and efficient coordination committees to monitor the implementation of the PWDVA at the state level.

A lack of knowledge of the Act and inadequate training has continually led to the ineffective performance of the SPs under the PWDVA. The only exception was Andhra Pradesh wherein the NGO representative strongly believed that SPs are actively participating in the implementation process. To some extent SPs in Maharashtra are also believed to be proactive in assisting the woman and providing her moral support in court.

Interestingly, it was reported, especially for Maharashtra and Karnataka that the DIRS filed by the SPs are not taken into consideration by the Magistrates though the Act provides for it, and the PO is again asked to fill the DIR. Additionally, Karnataka reported that in their state, it is mostly the advocates who have been filling the DIRS.

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61 Representative from West Bengal.
62 Representative from Madhya Pradesh.
63 Information received from Bhumika Women's Collective, Andhra Pradesh.
3. Inputs on Legal Services Authority (LSA)\textsuperscript{64}

Both Maharashtra and Karnataka have given very specific inputs on the role of the LSA. Maharashtra has categorically mentioned that the legal aid lawyers are paid a very nominal honorarium. The lawyers who are appointed by LSA accept cases but fail to attend them in the court. Karnataka has reported that the role of the lawyers from LSA has been questionable. It has been observed in Bellary district that lawyers from LSA counsel women complainants to go back and adjust, or take up their cases as private lawyers. Also, there have been instances of extorting money from women complainants. In another district, Davangere, some of the lawyers from LSA have said that they have been appointed as coordinators or legal advisors.

Finally, the representatives affirmed the finding of LCWRI that the coordination committees were not functioning properly. They expressed their concern about the insensitivity and non-serious attitude of some Magistrates. The Magistrates have also been causing delay by asking for DIRs. It was agreed by all the members that none of the Magistrates in any of the states were following the time frame prescribed under the PWDVA to dispose off cases. The low awareness among the police personnel and the complete exclusion of medical authorities in some states were of concern. The experience of the representative from Meghalaya\textsuperscript{65} deserves a special mention here. It has been reported that in Meghalaya, not a single case has been registered so far under the PWDVA. Majority of the cases are being registered under Sections 498 A, 376 and 354 of the IPC.

E. INADEQUACY IN INFRASTRUCTURE

Although the PWDVA has entered its fourth year of enforcement, there are several challenges in the way of its effective implementation.

1. Inadequate Data Available for Reported Cases

These conclusions present a picture of implementation of the Act from all sources including the courts, nodal agencies, stakeholders and implementers including POs, NGOs and woman users.

- All the states have given data on the number of complaints received during the period between August 2009 and June 2010. This would suggest that more and more women are using the law, but on closer scrutiny, this is not the reason for the high number. The unusually high number of complaints has become a cause of concern for the following reasons:

\textsuperscript{64} Information received from Stree Mukti Sangathana, Maharashtra & Hengasara Hakkina Sangha, Karnataka.

\textsuperscript{65} Information received from the North East Network, Meghalaya.
• The high number does not necessarily refer to the number of women seeking help under the PWDVA. Rather, it seems to be related to the number of women accessing existing government schemes for women, be they helplines or other such similar schemes.

• It seems that the ‘complaints’ are being registered at the PO’s office when a woman comes in with a report of domestic violence. This ‘complaint’ does not necessarily represent a record of violence under the PWDVA in the form of a DIR. There seems to be a lack of understanding on what constitutes a DIR and no uniformity among the states as to what is meant by ‘complaints’. Hence, every woman who walks in or calls in to a help centre or other women’s desk is being registered as a ‘complaint’. This figure, therefore, does not represent the action taken under the PWDVA. The representatives from the nodal departments have not been able to clarify the exact nature of the “complaints” that are registered with the POs.

• It is not known why DIRs are not filed even though such a high number of complaints are recorded.

• Also, it is of concern that in certain states including Haryana and Bihar, information was provided only about the number of cases that were mutually settled by the POs. It may be mentioned that it is not part of the duties of a PO to record such settlements. However, they seem to be responding to a felt need of the woman for pre-litigation settlements. Precise information is required about the procedure for such settlements to understand the exact role of the PO. Moreover, there is no way of monitoring whether or not these settlements are in fact honoured, or being filed in court.

• The number of cases settled by the POs in some states is quite high. This may indicate that the POs are themselves counselling whereas the PWDVA mandates that only the SPs can carry out counselling. Although there is very little data on the details of the counselling services being provided by the SPs, it may be observed that the SP’s role is clearly being underutilised whereas the POs are performing more tasks than they are required to under the PWDVA. The problem with the PO doing counselling is that they would be required to mediate between the complainant and the respondent, and this would seem to conflict with their main role of assisting the court in the very same proceedings. Respondents are known to want to cross examine the PO on a report of a home visit and invariably argue based on the pre-litigation mediation, that the PO’s report is biased. The practice of POs entering into a situation of conflict of duties should be avoided.

• In a state like Bihar, the position of the PO has been merged with the post of a Project Manager of the Women Helpline. While on one hand, this would mean easier access for women seeking help, on the other it does not clarify the nature of the complaint recorded (whether only a number is assigned or details are taken down) when a call comes through.
What action is taken on the “complaint” is not clear but it is clear that it is not an action under the PWDVA.

A similar trend is reflected in the analysis of court orders. For details, see Chapter 6 at 113, 114.

2. Support for Stakeholders

It has been consistently reported by the POs that lack of support services provided to them frequently hampers their effective functioning under the PWDVA. This year also, there have been reports of inadequate support provided to them in terms of staff, availability of vehicles, telephone and computer. The POs who have been appointed with additional charge have been overburdened with work and are not being able to discharge their duties effectively. On the other hand, the independent POs have had a range of problems including lack of office space, absence of staff, irregular payment of salaries and reimbursements.

3. Service of Notice

The POs have faced considerable difficulties while service of notice in remote geographical locations due to absence of staff and vehicles. No uniform protocol has yet been evolved for the service of notice. In the absence of adequate coordinating systems across the states, the issue of service of notice continues to be a challenge till date.

4. Medical Facilities and Shelter Homes

Most states report that women usually do not want to approach medical facilities on their own. A few states have reported that more often, medical facilities do not have lady doctors and hence, victims of violence feel uncomfortable about their medical examinations. In most government run hospitals, there is also a shortage of medical supplies.

At various LCWRI trainings, the POs have very often reported that there is very low awareness among the health professionals. This fact finds support in the data provided by the states on training and awareness where it is obvious that hardly any training have been organised for the medical personnel.

The states have consistently maintained that women who are victims of violence do not want to be sent to SHs at all. This is especially true for women who have children with them. Their unwillingness is often related to the deplorable conditions of the SHs, which function with minimum infrastructure and appalling hygienic conditions. The states also agree that women often refuse to live in SHs since the latter house not only victims of violence but also women who are HIV positive, and sex workers.
5. Multi-Agency Coordination

Although several states have formed multi-agency coordination committees, the effectiveness of these committees is questionable. In the previous year, LCWRI had observed that the members of such committees were not aware of the existence of the committee themselves. There were reports of irregular meetings of the committees and unavailability of the members due to their high profile government appointments. Similar observations have continued this year as well. It has been felt that the NGOs and lawyers should be represented in the coordination committees for expertise on the PWDVA.

6. Training and Awareness

Low levels of awareness has been an issue since the first year of implementation. Unfortunately, this issue still looms large. The representatives from different states were in agreement that intensive trainings needed to be held for all the stakeholders including the Judiciary. The state representatives also felt that health professionals should be included in the trainings. It has been reiterated that the State Judicial Academies and Police Academies should step up their gender sensitisation trainings on the PWDVA.
Chapter 4

BUDGETING FOR THE ACT

As per the Mid-Term Appraisal of the Eleventh Five Year Plan (2010), the PWDVA has been unable to reach the intended beneficiaries owing to lack of information and mechanisms for its enforcement. The CEDAW Committee in its Concluding Comments (2007-09) while appreciating the passage of the PWDVA also expressed its concern over the lack of any financial provisions by the central government to the state governments for its enforcement.

Given this context, some questions that merit attention include – In the absence of any Central funding, how are the states implementing the PWDVA? What are the mechanisms evolved by the states for allocating funds? What is the status of expenditure? What are the specific components for which the budget is being provided? Are there any good practices that can be identified? And finally, how can the Central Government assist states in enforcing the Act?

In an attempt to answer these questions, applications under the Right to Information (RTI) Act were filed in all 28 states of India. Information was primarily sought on three aspects: (a) the budgetary allocation made by the state for implementation of the Domestic Violence Act in 2008-09, 2009-10 and 2010-11; (b) the expenditure incurred for the years 2008-09 and 2009-10; and (c) the specific heads under which the allocations were made.

This chapter presents the analysis of information sought from the RTI applications. The information has been divided into following sub parts: Part I presents the overall scenario with respect to budgeting for the PWDVA by the states; Part II examines the allocations in depth, i.e. the specific components for which the allocations have been made; and Part III provides the conclusions.

Table 4.1 presents the following information:

- List of states that have allocated a separate budget for the implementation of the PWDVA
- List of states that do not have a separate budget
- Extent of allocations
- Expenditures incurred

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# A. BUDGETING FOR THE PWDVA: OVERALL SCENARIO

Table 4.1: Allocations by States for Implementation of the PWDVA (in Rs.)

<table>
<thead>
<tr>
<th>State</th>
<th>2008-09</th>
<th>2009-10</th>
<th>2010-11</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Budget</td>
<td>Expenditure</td>
<td>Budget</td>
</tr>
<tr>
<td>------------------------------</td>
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<td>---------</td>
</tr>
<tr>
<td>1. Andhra Pradesh</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2235-02-103-52 S.H.(28) Scheme for Implementation of the PWDVA</td>
<td>99,82,000</td>
<td>99,60,000</td>
<td>98,40,000</td>
</tr>
<tr>
<td>2. Arunachal Pradesh</td>
<td></td>
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<tr>
<td>3. Assam</td>
<td></td>
<td></td>
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<tr>
<td>2235-02-3615 Scheme for PWDV – Grants in Aid</td>
<td>1,000</td>
<td>Nil</td>
<td>84,00,000</td>
</tr>
<tr>
<td>4. Bihar</td>
<td></td>
<td></td>
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<td>5. Chhattisgarh</td>
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<tr>
<td>6. Delhi</td>
<td></td>
<td></td>
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<tr>
<td>2235-B-2(1)(3)(18) Plan Scheme for Implementation of the PWDVA</td>
<td>5,00,000</td>
<td>4,04,934</td>
<td>22,00,000</td>
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<tr>
<td>7. Goa</td>
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<tr>
<td>8. Gujarat</td>
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<tr>
<td>9. Haryana</td>
<td></td>
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<tr>
<td>2235-02-103-76 State Plan Scheme for the PWDVA (Setting up of Cells)</td>
<td>25,00,000*</td>
<td>23,72,000</td>
<td>80,00,000*</td>
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<tr>
<td>10. Himachal Pradesh</td>
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<tr>
<td>11. Jharkhand</td>
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<tr>
<td>12. Karnataka</td>
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<tr>
<td>2232-02-103-0-52-059 Programme for giving protection to women against domestic violence</td>
<td>1,50,00,000</td>
<td>1,46,62,000</td>
<td>2,92,34,000</td>
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<tr>
<td>13. Kerala</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>2235-02-103-90(01) Gender Awareness Programme implemented by SWD</td>
<td>1,00,00,000</td>
<td>99,97,990</td>
<td>1,15,00,000</td>
</tr>
<tr>
<td>State</td>
<td>2008-09 Budget estimate</td>
<td>2008-09 Expenditure</td>
<td>2009-10 Budget estimate</td>
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<td>---------------------------</td>
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<tr>
<td>14. Madhya Pradesh</td>
<td>2,92,00,000</td>
<td>1,08,76,000</td>
<td>2,50,00,000</td>
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<td>15. Maharashtra</td>
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<td>16. Manipur</td>
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<tr>
<td>State Plan Scheme for</td>
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<tr>
<td>Implementation of DVA</td>
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<tr>
<td>17. Meghalaya</td>
<td>3,20,000</td>
<td>3,20,000</td>
<td>3,50,000</td>
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<td>18. Mizoram</td>
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<td>19. Nagaland</td>
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<td>20. Orissa</td>
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<tr>
<td>State Plan Scheme for</td>
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<tr>
<td>Protection of Women from</td>
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<tr>
<td>Domestic Violence</td>
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<tr>
<td>21. Punjab</td>
<td>50,00,000*</td>
<td>Nil</td>
<td>50,00,000*</td>
</tr>
<tr>
<td>Awareness Programme for</td>
<td></td>
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<td></td>
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<tr>
<td>DVA, 2005</td>
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<td></td>
<td></td>
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<tr>
<td>22. Rajasthan</td>
<td>10,00,000</td>
<td>51,000</td>
<td>8,00,000</td>
</tr>
<tr>
<td>23. Sikkim</td>
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<td></td>
<td></td>
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<tr>
<td>State Scheme PWDVA</td>
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<tr>
<td>24. Tamil Nadu</td>
<td>97,54,653</td>
<td>97,54,653</td>
<td>84,90,000</td>
</tr>
<tr>
<td>25. Tripura</td>
<td>No information</td>
<td></td>
<td></td>
</tr>
<tr>
<td>26. Uttarakhand</td>
<td>50,00,000</td>
<td>Nil</td>
<td>50,00,000</td>
</tr>
<tr>
<td>27. Uttar Pradesh</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>28. West Bengal</td>
<td>26,31,520</td>
<td>26,31,520</td>
<td>32,15,000</td>
</tr>
</tbody>
</table>

* Revised Figures
RTI was not filed in J&K
Source: RTI
1. States that have Allocated a Separate Budget for Implementation of the PWDVA

With regard to the states that have a separate budget for implementation of the PWDVA, as the table indicates, 14 out of 28 states have provided separate allocations for the PWDVA. These include: Andhra Pradesh, Assam, Delhi, Haryana, Karnataka, Kerala, Madhya Pradesh, Meghalaya, Orissa, Punjab, Sikkim, Tamil Nadu, Uttarakhand and West Bengal. It is encouraging to note that Orissa, which did not have a separate budget until 2009, has added a budget head for the PWDVA in 2010.

A notable trend for majority of the states is that they have devised State Plan Schemes for implementation of the PWDVA. For instance, Haryana has initiated a Plan Scheme, ‘Protection of Women from Domestic Violence (Setting up of Cells)’. Likewise, Madhya Pradesh had launched a scheme, ‘Usha Kiran Yojana’ for the implementation of the PWDVA in 2008. Orissa is an exception, which has created a separate code ‘78354’. Similarly, Tamil Nadu has budgeted salaries of POs and Junior Assistant cum Typist under the Non-Plan head. The difference in the two modes is that while a Plan scheme can be terminated anytime, initiation of a separate code or budgeting under the Non-Plan head ensures continuity in allocations.

2. States that do not have a Separate Budget

The table also reveals the listing of states that have not separately budgeted for the PWDVA. Of the responses received, 12 states still do not have a separate budget for the implementation of the PWDVA. These include Arunachal Pradesh, Bihar, Chhattisgarh, Goa, Gujarat, Himachal Pradesh, Jharkhand, Maharashtra, Mizoram, Nagaland, Rajasthan and Uttar Pradesh. However, it should be noted that while Gujarat, Himachal Pradesh, Maharashtra and Nagaland have spent some amounts over the course of three years (2008-10) for awareness generation and training, five out of these 12 states – Arunachal Pradesh, Bihar, Chhattisgarh, Goa, Jharkhand, Mizoram, Rajasthan and Uttar Pradesh have not even made any ad-hoc allocations for various components of the Act such as training or publicity.

Findings of NFHS-3

Any violence is most common in Bihar (56%) followed by Rajasthan, Madhya Pradesh and Tripura (45-47%). As far as prevalence of physical or sexual spousal violence is concerned, it ranges from 6% in Himachal Pradesh and 13% in Jammu and Kashmir and Meghalaya to 46% in Madhya Pradesh and Rajasthan and 59% in Bihar. Other states with 40% or higher prevalence of spousal, physical or sexual violence include Tripura, Manipur, Uttar Pradesh, Tamil Nadu, West Bengal and Assam.*

In light of the above findings, it is disappointing that the states reporting a higher incidence of violence such as Bihar, Rajasthan and Uttar Pradesh have still not committed any resources for implementation of the PWDVA. Instead, they claim that they are able to meet the expenses for various provisions of the PWDVA through the existing schemes of women welfare. For instance, Bihar claims that its scheme, ‘Nari shakti’ with a total allocation of Rs. 10 crore covers the PWDVA and other activities. Similarly, in Chhattisgarh, under the scheme, ‘Mahila Jagriti Shivir’, women SHGs are informed about their entitlements under various schemes at panchayat, block and district levels. Domestic violence, the nodal department claims, is also one of the issues covered in such camps. For 2010-11, budget of Rs. 1.05 crore has been allocated to hold around 2000 such shivirs. Jharkhand on the other hand claims that any expenses for the PWDVA will be met through Dowry Elimination and Elimination of Witchcraft Practices programmes.

Further, it is interesting to note the geographical patterns that emerge from the analysis. While all states in the South have budgeted for the PWDVA, among the Eastern states of Bihar, Jharkhand, Orissa and West Bengal, only West Bengal has provided a budget for the PWDVA. Even in Central India, the only state that has committed resources is Madhya Pradesh. In North, out of the six states (leaving J&K), Delhi, Haryana and Punjab have dedicated resources for the PWDVA. Although as per the response received by Uttarakhand, Rs. 50 lakh have been allocated in the year 2009-10 and 2010-11, there has not been any expenditure incurred till now. This is because there is no clarity on the availability of funds with the nodal department. Lastly, out of the North-Eastern states of Arunachal Pradesh, Assam, Meghalaya, Manipur, Mizoram, Nagaland and Sikkim, only three states have budgeted for the PWDVA, while no information has been received from Tripura.

3. Extent of Allocations

An important aspect that needs consideration is the quantum of allocations made by the states for the PWDVA. As Table 4.1 shows, there exist wide variations. The allocations vary from a low of Rs. 2,30,000 in Meghalaya to Rs. 7,22,23,000 in Karnataka for the year 2010-11. A considerable jump in allocations can be noted for Karnataka since the state intends to appoint regular independent POs. A comparison of the total allocations made by the states would not provide a true picture because there are no minimum benchmarks set by the Union Ministry of Women and Child Development for providing allocations for the various provisions under the Act.

4. Allocations vis-à-vis Expenditure Incurred

While it is important to look at the allocations, it is equally vital to assess the extent of utilisation of the allocated funds. As noted from Table 4.1, states such as Andhra Pradesh, Haryana, Assam and West Bengal show near complete expenditure vis-à-vis allocations made. Although Tamil Nadu and Karnataka were able to spend almost 100 percent of the allocated
funds in 2008-09, the same has declined, especially for Tamil Nadu. Madhya Pradesh shows poor utilisation in both the years: 2008-09 and 2009-10. While the expenditure was 37.2 percent in 2008-09, it further declined to 34.2 percent. Punjab is an exception since no expenditure has been incurred in any year vis-à-vis the allocations made.

B. BUDGETING FOR THE CRITICAL PROVISIONS OF THE ACT

Across the country, women’s rights activists celebrated the introduction of the PWDVA for several reasons. One of the primary reasons was the inclusion of critical provisions in the Act to protect women from further injustice. Some of these include appointment of POs, notification of SPs, training and capacity building of different stakeholders such as the POs, Police and Judiciary, and awareness generation. Therefore, in addition to looking at whether the states have provided budgets or not, it is also important to carefully examine the heads for which the allocations have been made.

The information gathered from the RTI applications indicates that the states that have provided funds, with or without a separate budget have provided allocations largely for the following heads:

<table>
<thead>
<tr>
<th>Broad heads for which states have provided allocations:</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Protection Officers</td>
</tr>
<tr>
<td>2. Publicity of the Act</td>
</tr>
<tr>
<td>3. Holding Seminars and Workshops on PWDVA</td>
</tr>
</tbody>
</table>

1. Protection Officers

A critical component, which has received some attention with respect to the allocation, is the functioning of POs. Some of the instances below show how the states have provided funds so as to enable effective functioning of POs.

In Tamil Nadu, Rs. 15,42,653 was spent on purchasing computers and Rs. 4,00,000 for POs’ training in 2008-09. Further, Rs. 78,12,000 was spent to meet the salaries of POs (independently appointed) and Junior Assistant cum Typist’s salary (located in each district) @ Rs. 15,000 and Rs. 6,000 per month respectively. West Bengal also spent Rs. 24,00,000 for salaries of POs in 2009-10.

Most states have not appointed independent POs, but have given additional charge of POs to the existing government officials. Since these officials are already handling a particular scheme or a programme, this additional duty has added to their existing workload. Therefore, in order to assist these officials in discharging their duties effectively, some states have provided support staff to the government officials. For instance, Andhra Pradesh and Karnataka have appointed
staff to assist officials assigned with additional charge. The following table shows that Andhra Pradesh shows regular funding for Material Supplies and Other Contractual Services.

Table 4.2: Andhra Pradesh: Scheme for Implementation of Protection of Women from Domestic Violence

<table>
<thead>
<tr>
<th></th>
<th>2008-09</th>
<th>2009-10</th>
<th>2010-11</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Allocation</td>
<td>Exp.</td>
<td>Allocation</td>
</tr>
<tr>
<td>Travel allowance</td>
<td>11,50,000</td>
<td>11,50,000</td>
<td></td>
</tr>
<tr>
<td>Material &amp; supplies</td>
<td>10,00,000</td>
<td>10,00,000</td>
<td>10,00,000</td>
</tr>
<tr>
<td>Other office expenditure</td>
<td>11,50,000</td>
<td>11,50,000</td>
<td>5,00,000</td>
</tr>
<tr>
<td>Other contractual services</td>
<td>67,44,000</td>
<td>67,22,000</td>
<td>83,40,000</td>
</tr>
<tr>
<td>Adv &amp; publicity</td>
<td>9,38,000</td>
<td>9,38,000</td>
<td></td>
</tr>
<tr>
<td>Other expenses</td>
<td></td>
<td></td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>25,00,000</td>
</tr>
</tbody>
</table>

Source: RTI

The ‘Other Contractual Services’ includes salaries of Data Entry Operator @ Rs. 5,500 per month and Junior Assistant @ Rs. 4,900 per month at the Directorate level. In addition, it also includes salaries of two Counselors per district @ Rs. 6,500 per month; one Data Entry Operator @ Rs. 5,500 per month and two Messengers @ Rs. 3,000 per month for all 23 districts.

Similarly, Karnataka has revised the salaries of Computer Operator (one in each district) and Messengers (two in each District) to Rs. 5,000 and Rs. 2,000 per month respectively. In addition, Rs. 4,000 was allocated in 2008-09 to meet expenses for contingency.

Kerala provides allocations for the PWDVA under a State Plan Scheme, ‘Flagship Programme for Gender Awareness’ aimed at creating awareness on different laws including the PWDVA. For 2009-10, out of the total allocation of Rs. 1,15,00,000 for the scheme, following expenditure was incurred for the PWDVA. It is encouraging to note that for proper functioning of POs, allocations were made for office vehicles and stationery.

Table 4.3: Break-up of Allocations for ‘Flagship Programme for Gender Awareness’ in 2009-10

<table>
<thead>
<tr>
<th>Programme</th>
<th>Expenditure</th>
</tr>
</thead>
<tbody>
<tr>
<td>TA to SPs’ Selection Committee members</td>
<td>4,104</td>
</tr>
<tr>
<td>Selection Committee – P0s</td>
<td>5,000</td>
</tr>
<tr>
<td>Orientation class to Legal Counsellors by KSSWB</td>
<td>1,80,000</td>
</tr>
<tr>
<td>DV Act - conducting sensitisation programme in all districts on 15.08.2009</td>
<td>4,20,000</td>
</tr>
<tr>
<td>DV Act - conducting sensitisation programme in all districts on 15.08.2009 (KELSA)</td>
<td>1,40,000</td>
</tr>
<tr>
<td>DV Act - conducting one-day training class for Legal Counsellors on 10.10.2009 (KELSA)</td>
<td>67,719</td>
</tr>
</tbody>
</table>

Fourth Monitoring & Evaluation Report 2010 57
Hiring of office vehicle for POs & 4,97,804
Stationery for POs & 90,000
Honorarium to Legal Counsellors through KSSWB & 51,71,524
Written Test to Women POs & 1,86,000
DV Act – District-wise Seminar (Rs. 11,500 each) & 1,26,178

Source: RTI

The above examples indicate that while the first step is the recruitment of independent POs, financial provisions for other components that affect the quality of service delivery and overall motivation of the POs such as their training, appointment of support staff, office infrastructure, travel allowance, and contingency expenditure should also be paid equal attention. However, it should also be noted that independent POs who have been appointed in some states are all contractual appointments. No state has made regular appointments. This again is a trend that is noticeable across many schemes and programmes, whereby the individuals who are supposed to have a primary role are being appointed on a contractual basis, and not by creating a special cadre of such officials. This needs to be understood in the context of the limited funds available at the state level and also the low priority given by states to gender equity.

2. Publicity and Workshops for Various Stakeholders: Service Providers, Police Personnel and Judiciary

Allocations for holding workshops for different stakeholders and generating public awareness on the PWDVA by way of posters, hoardings and radio shows have also received attention. The following instances illustrate this.

While no allocations were made in Gujarat in 2008-09, it spent Rs. 25 lakh in 2009-10 under the head, ‘Advocacy, Training and Information, Education and Communication (IEC) activities’. Rs. 15 lakh have been allocated for the same purpose in 2010-11 also.

Assam allocated Rs. 84 lakh to a local NGO, which spent the money to sensitise school children of 84 schools regarding the PWDVA. The allocation of Rs. 76.5 lakh in 2010-11 is intended for trainings of SPs, POs and police personnel.

In Nagaland, Rs. 2,00,000 was spent in 2008-09 for printing of the PWDVA in local language. Sikkim spent Rs. 4,88,000 in 2009-10 for holding awareness camps on the PWDVA.

Himachal Pradesh spent Rs. 2,30,360 for training of POs in 2009-10.

Manipur initiated a State Plan Scheme, ‘Implementation of Domestic Violence Act’ in 2009-10 under which it allocated Rs. 45,000. It spent the entire amount on holding orientation workshops for the SPs, POs, police personnel, and Magistrates.
However, there are certain issues that need to be highlighted. Firstly, as seen above, Punjab has been allocating Rs. 50 lakh under the ‘Awareness Generation Programme’ since 2008-09; however, no expenditure has been incurred. Secondly, while many states have allocated funds under IEC activities for generating awareness, the same has not been a sustained exercise. As noted earlier, the Mid-Term Appraisal of the Eleventh Five Year Plan mentions that one of the impeding factors in effective implementation of the PWDVA is the lack of information. Many states provided funds for generating awareness and holding workshops when the Act came into force but no funds have been allocated thereafter.

It is important that sustained efforts are made to enable women in making informed choices. States need to make efforts to translate the Act in their local language and disseminate it widely. Here the role of print as well as electronic media will be critical. Lastly, while many states have provided funds for the training of POs, all other agencies and individuals involved in the implementation of the Act such as the Medical Officers, police personnel, Magistrates and SPs also need adequate information about the Act. In order to do this, dedicated resources under IEC should be allocated.

### 3. Some Neglected Issues

A component that has not received sufficient attention is the support for the SPs notified under the Act. As noted in the first part of this chapter, most of the states have notified existing SHs run under ‘Swadhar’ scheme or Nari Niketans. Swadhar is a central government scheme, which gives grants to the states to set up SHs for women in distress. The report of the Centre for Budget and Governance Accountability,\(^\text{67}\) 2010 highlights that Swadha scheme has consistently recorded Actual Expenditures higher than the Budget Estimates and Revised Estimates. This reflects a huge demand for such a scheme. Quite contrary to this, the output data of the annual report of the MWCD (2008-09) reveals that there were only 287 Swadhar shelter homes operational across the country, which means there is not even one per district. Given that the average population per district is more than 15 lakh, this is extremely inadequate. With the introduction of the PWDVA and notification of Swadhar shelter homes as SPs, it is all the more important that adequate number of such homes be constructed and quality of services is ensured.

Out of 28 states, only two states – Sikkim and Kerala – have provided some support to the SPs. Sikkim provides an honorarium of Rs. 2000 to each SP. The entire allocation of Rs. 2,00,000 in 2010-11 has been provided to pay this honorarium. Kerala provides Rs. 5,000 to appoint Legal Counsellors or Lawyers, and Rs. 10,000 per SP to extend medical assistance and psychiatric help to women.

In this regard, only limited information is shared about the details of budgetary allocation with the general public. While Delhi has a Plan scheme for the implementation of the PWDVA, the break-up

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for allocation is not available. The response received from Delhi mentions that, ‘the entire budget allocated is distributed among 10 District Officers for meeting contingent expenditure incurred by POs in the discharge of their official duties’. The break up for Haryana is also divided under two broad heads – ‘Other Expenditure’ and ‘Other Charges’, which does not reflect the specifics of the allocation.

4. Madhya Pradesh: *Usha Kiran Yojana*

Madhya Pradesh launched a scheme, namely, ‘*Usha Kiran Yojana*’ in 2008 for the implementation of the PWDVA. The response received from the state offers detailed explanation of the guidelines of the scheme. From the explanation (see Box), it appears that Madhya Pradesh is one state that has a full-fledged scheme for the implementation of the PWDVA.

### ‘*Usha Kiran Yojana*’ of Madhya Pradesh

Budget will be provided for running of those centres other than Nari Niketan and Swadhar homes for the following facilities:

1. Rent: Rs. 5,000 per month
2. Provision of shelter (including food, tea, milk): Rs. 1,200 (based on actual expenditure) per woman per month
3. Soap, oil and other miscellaneous: Rs. 100 per woman per month as cash
4. Counselling: Rs. 1,500 per month
5. Clothing: Rs. 1,000 per woman per year
6. Bedding (once every 3 years): Rs. 1,000 per woman
7. Beds (5 beds per centre), once every 5 years: Rs. 600
8. For children with women (4 women: 1 child): Rs. 1,000 per month
9. Budget for doctor’s visit in every centre: Rs. 500 per visits for total 52 visits every year.

Group discussions on the PWDVA in girls’ schools and colleges at the block level: Rs. 5,000

Officials at the block level have been given additional charge of POs. For the functioning of their offices, budget shall be provided for the following facilities:

1. Telephone/Internet
2. Domestic travel for women: Rs. 5,000 per office
3. Counselling at Block Office: A panel for counselling - Rs. 10,000 per office
4. Counselling at the Temporary Shelter: Rs. 18,000 per centre
5. Travel for PO – Rs. 5,000 per PO
6. Awareness generation about PWDVA:
   (a) Hoardings at the Block level: Rs. 3,000 per Block (Total 367 Blocks)
   (b) Wall paintings at village as well as Block level: Rs. 1,000 per village/Block
   (c) Awareness through electronic and print media at the State level: Rs. 4,000 – at least once in 3 months
Further, as far as the break-up is concerned, it is divided under four heads – Office Expenditure, Seminars/Workshops, Assistance Grant and Miscellaneous. Assistance Grant includes money provided to the POs for meeting travel expenses and creating awareness regarding the Act.

Table 4.4: Break-up of the Funds Allocated for *Usha Kiran Yojana* (in Rs.)

<table>
<thead>
<tr>
<th></th>
<th>2008-09</th>
<th>2009-10</th>
<th>2010-11 Allocation</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Allocation</td>
<td>Exp.</td>
<td>Allocation</td>
</tr>
<tr>
<td>Office Exp.</td>
<td>90,00,000</td>
<td>55,58,000</td>
<td>68,36,000</td>
</tr>
<tr>
<td>Seminar/Workshops etc.</td>
<td>30,00,000</td>
<td>20,40,000</td>
<td>35,25,000</td>
</tr>
<tr>
<td>Assistance Grant</td>
<td>60,72,020</td>
<td>1,70,000</td>
<td>60,36,000</td>
</tr>
<tr>
<td>Miscellaneous</td>
<td>91,38,000</td>
<td>31,08,000</td>
<td>86,03,000</td>
</tr>
</tbody>
</table>

Source: RTI

As Table 4.4 indicates, a component that shows very poor utilisation is Assistance Grant. Also, since 2008-09, the components of which budgets have been severely cut include Miscellaneous followed by Assistance Grant and Office Expenditure.

Therefore, although, on account of the detailed guidelines, the specific budgetary allocations seem quite comprehensive, the expenditure tells a different story. As captured in Table 4.1, Madhya Pradesh shows poor utilisation in both the years: 2008-09 and 2009-10. While the expenditure was 37.2 percent in 2008-09, it further declined to 34.2 percent.

**C. OVERVIEW**

What clearly follows from the above analysis is that while some states have initiated action with respect to providing resources for the implementation of the PWDVA several problems remain. There has been no allocation made for the specific components of the Act, and even when allocations have been made they have not been fully utilised. Worse still, there are many states that have not committed any resources for the PWDVA. They claim that the existing women welfare programmes will be sufficient to fulfill the provisions under the Act. Thus, the first and foremost step that needs to be taken is financial commitment by all the states for the PWDVA. While many states have initiated a State Plan Scheme, initiation of a separate budget head for this purpose would go a long way in committing resources for this crucial legislation.

Another important issue is the heads under which the allocation should be made. Here, the SC/ST Prevention of Atrocities Act, 1989 offers a good example. In this case, financial resources are provided to the state governments on a 50:50 basis and to UTs on 100 percent basis. Funds
are allocated for: (a) functioning and strengthening of SC/ST Protection Cell and Special Police Stations; (b) setting up and functioning of exclusive Special Courts; (c) relief and rehabilitation of atrocity victims; and (d) awareness generation.

It is only when separate budget under appropriate heads is allocated that the PWDVA can be effectively implemented.
Section III
The Litigation Process: Practices & Trends
This chapter tracks the implementation of the PWDVA by presenting data on the experience of the AP at the pre-litigation, litigation and post-litigation stages. It describes the various steps in each of these stages, the rules and procedures as laid out under the Act, and the actual experiences and practices emerging from the primary data collected.

A. PRE-LITIGATION

The pre-litigation stage involves the activities that take place prior to a domestic violence application being filed in the court, and initiation of the court proceedings.

Figure 4.1 presents a simplified flow chart of the basic steps in the pre-litigation stage as envisaged in the law.

These steps form the basis of the discussion in the following sub-sections. This part follows the journey of the woman from the time when she first seeks help till the matter reaches the court.
1. First Point of Contact: When do the Women Experiencing Violence Seek External Help and Whom do They Approach?

Women often seek external help after facing long periods of violence, usually when the violence becomes brutal or life threatening, or at the point of a crisis such as being thrown out of the house. The forms of violence may include repeated forced abortions, attempts to burn, brutal beating, denying money for children’s food expenses, and so on. Moreover, violence as a result of dowry demand underlies these experiences and resonates across interviews.

One day he just left me alone on the road and walked away. I went to the house but he did not let me in. I was pregnant at that time. I finally went to the police station and complained. Where would I go in that state?

Woman, 29 years, Delhi

Things have gone beyond limit. They were asking me to bring money from my parents… They have a big factory; even then, they are not satisfied. And, my father has nothing more than his job. How can I ask him to give me money?

Woman, 27 years, Jodhpur

The decision of whom to approach is guided by the action that women want to take. While women who want to lodge a complaint approach the police station, those who want to file a case in the court approach lawyers.

As indicated in Figure 4.2, a substantial number of women in the sample (38) approached the Police as the first point of contact. Thirteen women had accessed a lawyer, while six reported approaching a NGO. The site-specific data is presented in the table 4.5.

Three women reported that they had directly gone to the PO. All of them had received information about the PO from a known person who was aware of the Act. The quote below details this further -

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68 One woman from Delhi mentioned that she had read about the Act in the newspaper, and also received information about it from a lawyer.
2. Experience of Interaction with Police

Among the 38 women who had approached the Police, only five (3 in Maharashtra and 2 in Delhi) reported that they were directed to the PO and told about a ‘new law for violence’. Most of them had chanced upon an officer who knew about the PWDVA on one of their many visits to the police station, and were hence directed to the PO.

*Because my husband is in the Police, I went directly to the Police Commissioner. I had no idea about the laws. I met PSI madam in the Crime Branch. She told me that there is a law for women and asked me to go to the WCD department and meet the Sarwakshan Adhikari. She said he will fill the DIR form and then immediately the case will be filed in court. She said I will also get a government lawyer.*

*Woman, 38 years, Thane*
Most of the other women who approached the Police, did so repeatedly, and stated that their experience was negative. When women reach out for help, the nearest police station is the most familiar place to approach. However, often, the women were unable to register a complaint and met with insensitive behaviour. Police did not perceive intervening in the family as their responsibility and usually advise women to adjust and return home. Also, many were quick to judge the woman. Complaints of bribery and corruption also ran through these narratives, as is evident from the quote below.

After going to the lawyer we were asked to go to Gandhinagar police station. But those people did not register my complaint and asked me to go to Chamosamo police station because our area falls under that police station’s jurisdiction. There also they made us run around. We spent around 5,000 to 7,000 rupees. We gave them money to register our case there.

Woman, 22 years, Jaipur

Some women reported that initially the Police would call their husbands to threaten them and settle the matter, but brushed the women off on subsequent visits.

2.1 Views of the police: Knowledge of the PWDVA and action taken in cases of violence

The group discussions conducted with the police in Rajasthan and Maharashtra point to the gaps in knowledge and awareness of the PWDVA among most of the participants, though there are some state specific variations.

In comparison with Rajasthan, the Police in Maharashtra are better aware about the provisions of the Act. In Maharashtra, in all the discussions except one in rural Sangli, there were 1-2 officers in each of the police stations who had participated in trainings, and thus, had information on the PWDVA. However, this did not necessarily imply that they had shared this information with their colleagues. Among the few officers who had knowledge of the Act, most key provisions were understood. In Rajasthan, as mentioned earlier, and similar to the survey findings last year, the awareness and knowledge of the Act was much lower. Of the 11 police stations where discussion took place, 4 reported that they had not heard of the Act at all. Others stated that they knew nothing about the PO, even though they had some knowledge of the Act. A significant observation was that where circulars on the PWDVA were received, but no orientation given, information about the Act remained limited to knowledge of the name of the Act and the PO.

69 The same could not be conducted in Delhi due to administrative hurdles. With the transfer of the key officer, permissions had to be re-sought and were not forthcoming due to the engagement of the police in the Commonwealth Games.

70 The discussions took place at two mahila (women), five urban and four rural police stations.
In both states, the knowledge of the PWDVA among the few police personnel centred around the following points:

- Domestic violence cases have to go directly to the courts.
- Justice is speedy.
- The PWDVA is meant for ‘ordinary fights’ at home.
- Women get maintenance and residence orders.

Most personnel stated that the Police had no role to play in the PWDVA and they just needed to refer the women to the NGOs or court. There was confusion about whether or not Section 498 A IPC and domestic violence cases could be admitted simultaneously.

A significant trend across both the states is that even when there is knowledge of the Act, it does not appear to influence process adopted by the Police in cases of domestic violence. None of the participants in the discussion mentioned that they had referred cases to the POs. They, however, continued to refer cases to the women cell or known NGOs, as they did before. In all the discussions, police personnel placed emphasis on the need to counsel with the purpose of resolving the problems and sending the woman back home so that the families are restored. This was the first step of the process. After talking to the women, two courses are adopted. If the case cannot be settled then the women are either referred to an NGO or women police station. Otherwise, the husband and families are called to counsel and negotiate. If the case still does not get resolved and the woman insists, only then a complaint under Section 498 A IPC is filed.

Increased and comprehensive knowledge among the police is urgently required. POs too, in their narratives suggest that lack of awareness among police is a major barrier to women’s access to the law.

In all discussions in Maharashtra, the police mentioned a recent court ruling that advised them not to rush into filing cases, and explore all possibilities first.

The High Court has said that a case should be filed under 498 A after detailed investigations and inquiry so that there is no injustice and it is not misused.

Police, Sangli

At the same time, the High Court has recently asked us not to rush into filing a case under 498 A. It has asked us to first finish the full investigation and then if we feel, file the case.

Police, Mumbai
3. Access to PO

<table>
<thead>
<tr>
<th>Summary of functions of the PO in the pre-litigation stage, as described under the Act</th>
</tr>
</thead>
<tbody>
<tr>
<td>The PO is vested with the responsibility of facilitating the women’s access to the courts. (Rules 8 &amp; 9), PWDVR</td>
</tr>
<tr>
<td>• Assist AP in making a complaint under the Act and/or making application.</td>
</tr>
<tr>
<td>• Inform aggrieved woman of her rights.</td>
</tr>
<tr>
<td>• Make DIR and forward copies to the Magistrate, Police (can be done upon receipt of complaint, by women or any other).</td>
</tr>
<tr>
<td>• Assist the AP with the following: provision of legal aid, obtaining medical aid, all possible assistance to ensure victimisation does not happen.</td>
</tr>
<tr>
<td>• To invite applications from SPs and Counsellors, maintain records of support services &amp; all documents related to the matter.</td>
</tr>
<tr>
<td>• Prepare “Safety Plan” (Form V of the Rules).</td>
</tr>
<tr>
<td>• <strong>Take emergency action:</strong> If PO receives information of case of domestic violence through email/telephone etc., she shall reach the place of occurrence with Police immediately and record a DIR, and present it to the Magistrate for appropriate order, without any delay.</td>
</tr>
</tbody>
</table>

PO is rarely the first point of contact for the women at the pre-litigation stage and interaction of women with them is largely court directed.

The knowledge regarding the presence of a PO among women remains limited. This trend was corroborated by the data collected from the POs, most of whom reported that women come to them through the court, NGO and police referrals.

Only 2 POs, one each in Rajasthan and Maharashtra mentioned that the women directly came to them. A PO in Rajasthan stated that since she had been working in the area for a long time under the WCD department, the women knew of her and came to her directly.

In Delhi, there have been changing trends with regard to women’s access to POs. Only 2 POs reported being approached directly by the women last year, while most others mentioned that the women do not know about the existence or role of the POs, and therefore, go to the Police or NGOs. It’s only when their complaints are not resolved there, or counselling does not work that they approach the courts and hence, learn about the PO. Another reason mentioned by a lesser number of POs but significant nevertheless, is that as POs increasingly spend more time in the court due to a sharp increase in the overall number of cases, their ability to respond to women’s calls is severely compromised.

However, at the time of the interviews, in July, nearly half of the POs said that women had again started approaching them directly, a trend they attributed to the fact that their cellphone
numbers have been publicized widely in metro trains and other public spaces. While this move will invariably increase the number of women who access POs, it also raises concerns about the availability of the POs to respond to the women.

The POs in Delhi have a detailed understanding of their role, and the reasons to institute a separate cadre under the PWDVA. Most POs are vocal about the difficulties that women face at the hands of the Police, and are aware of the fact that they do not receive the type of hearing that they want with the Police. They expressed concern at the multiplicity of their tasks, and the lack of infrastructure, which detract them from doing their pre-litigation role of being available to the woman, particularly poor and uneducated women, thus leaving out some of the most marginalised women from using the law.

The POs who were approached by the women directly took the following steps – listened to the AP, and if she wanted to file a case, filled a DIR and referred her to legal aid, and if not, then referred her to a counsellor.

Under the law, the PO is required to refer the woman for counselling to a professional counsellor or a SP, if she so wishes. As mentioned earlier, women contact the PO primarily at the litigation stage, and thus, counselling will be explored later in this chapter. At the same time, in a handful of cases, there is a mention of pre-litigation counselling.

> When women approach us (directly) we ask her all the details. We tell the women about the Act and relief they can get under the Act. If we feel there are major problems then we suggest her to pursue the case. If there are no major problems, we try to resolve at our end. We counsel and talk to both the respondent and the claimant.

**PO, Delhi**

Clearly, when the PO referred to the term counseling, she did not mean professional counselling. She described it as talking or explaining to the parties with a view to settle the matter amicably and restore family life.

Thus, across the states, typically, women do not know about the PO at the pre-litigation stage. What emerges clearly is that the role of the PO and the pathways as laid out in the law are not being followed. This was identified as a trend in the earlier reports, and seems to be consolidating. The opportunities for the PO to support and guide the women, or coordinate between other stakeholders in the pre-litigation phase are limited, except maybe in Delhi. Across states, the dominant trend is that the PO enters the scene only when the PWDVA process is at the litigation stage, i.e. when the case is ongoing in court, and therefore, interactions with the PO are described in detail in the litigation phase.
Case Study: Protection Officer’s: Cornerstone in the PWDVA

Preeti (name changed) is a PO working in Delhi on contractual basis with no additional duties since three and a half years. She is providing assistance to the AP at all the three stages, i.e., pre-litigation, litigation and post-litigation. Earlier she used to only receive referred cases from the court, Police, and Delhi Commission of Women. Since the advertisement of the helpline number, she gets direct calls from women.

She performs several tasks including referring women who directly approach her to government legal aid, and counsellors. She also files applications of women in court, and fills DIR (direct and referred cases). Filing direct application in the court was not an easy task. Initially the Magistrate did not accept a direct application filed by the PO. She had adequate knowledge of the legal provisions of the Act and explained the same to the Magistrate. As a result of her effort, Magistrates have started accepting direct applications filed by the POs.

Most of the cases in her court are resolved through mediation. The Magistrate sends most of the cases to mediation centres in the court. She also undertakes any kind of investigation or enquiry directed by the Magistrate and submits a report. Based on these reports, the Magistrates have also passed ex-parte and interim orders.

This case study reflects the performance of the role of PO in a district of Delhi. However, this is an exception rather than the norm. The nature and working style of the Magistrate has a direct bearing on the role of POs.

4. Role of the Service Providers

Unfortunately, the role of the SP remains largely under utilised. Almost no effort has been made to publicise their role. Their involvement in the PWDVA processes is dependent on the courts of the particular state. In Rajasthan, the courts expect the SPs to take on proactive roles beyond their defined scope, while in the other two states, the courts remain largely ignorant of their role. In Maharashtra, the courts refuse to recognise DIRs filed by the SPs, while in Delhi, SPs have been identified by the WCD department, but not notified. Across the states, there is a lack of a system to issue and send notifications to the SPs under the Act. They have also not received any additional provisions – personnel or resources.

4.1 Interactions with Women

Six women from Maharashtra reported that NGOs were their first point of contact. Some of these NGOs were also SPs. Women largely report their interactions as being positive.

When I reached their office, they listened to me and then asked me what I wanted. She explained to me that in my situation, it might not be helpful to talk further to my husband. There is a law, under which
Another woman described how an NGO was in constant touch with her and supported her beyond the initial stage of filling of the DIR.

4.2 Counselling

SPs articulated strong views on the issue of counselling. They recognise the importance of counselling for women facing violence, however, there is considerable variation in the way the SPs view counselling. Most of them understood counselling as listening to the woman, and placing all the options before her. Only a couple of them used the language of informing the AP of her rights. A few others mentioned that it was intended to settle the matter and prevent it from going to the courts.

One of the SPs in Maharashtra emphasised that counselling also helps in building the confidence of the woman alongside preparing her for the litigation process. They felt that a direction should be issued to discourage POs from undertaking counselling. Further, it was suggested that the specific qualifications of the counsellor must be spelt out, and the woman should have the choice to refuse counselling. One of the SPs from Delhi mentioned that 90 percent of the cases they filed in court were being returned for compromise. Thus, according to them, there was some sort of counselling at each and every step, irrespective of whether the AP wanted it or not.

4.3 Filling of DIR

In Rajasthan the courts expect the SPs to fill in DIRs after investigating and hearing both the parties. Contempt proceedings are also instituted against them for the failure of tasks that the courts think they should be fulfilling. One of the SPs, however, reported that recently some Magistrates have refused to accept DIRs from them and insist that the women go to the PO.

In the other two states, Maharashtra and Delhi, the courts do not accept the DIRs submitted by the SPs. In Maharashtra, the TISS Special Cell has also been designated as additional POs in 16 districts. At the time of data collection, it was reported that not all of the Special Cells had started functioning in their dual capacity of SP and PO. Lack of separate budget and the temporary nature of their appointment were two primary reasons. One SP from Sangli working under the TISS Special Cell stated that since December 2009, one of the counsellors has been given the responsibility as a PO, and that their Cell was attached to the Sangli police

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For details, see chapter 3 at 30, 36.

Interview, Anjali Dave, TISS, Mumbai.
station. Therefore, unlike other SPs working in the state, they have been filling and submitting DIRs, but in the capacity of a PO. Interestingly, they stated that earlier the courts were not accepting DIRs from them since they were seen only as SPs, but it has changed after they were assigned a dual role. It was further stated that the added responsibility had not significantly altered the manner of handling cases of domestic violence.

“Every woman does not file a case under DV Act. Because she has quarreled with her husband, when she first comes, her need is to get shelter. She does not know anything. We tell her about the benefits of the different Acts after she comes here. ……Usually when a case comes to us directly, we first do counselling. If it does not work, then if the woman is willing to file a case in court, we file a case in court. We fill the DIR, then we serve the notices which we get from the court, and then take a follow-up of dates by meeting the lawyer and finally the implementation of orders is there.”

SP, Sangli

In Delhi, there is currently confusion regarding who is a registered SP. The DWCD wanted to reassess the applications for the post of SP, and as a result, many institutions are unaware of their current status. Here the SPs believe that filling a DIR is not their duty but that of the PO.

Across the three states, while the role of SPs in filling DIRs varies, the DIR continues to be perceived as a requirement for litigation and not as a record of violence in all of them.

B. LITIGATION

1. Initiating a Case and Reaching Courts

More than half (34) of the 61 women interviewed had ongoing cases in the courts when they decided to file a case under the PWDVA. As described in the previous section, women seek legal help either when the violence reaches a crisis point or all other options have been explored; i.e. they have already visited several agencies or undergone counselling.

Across the study states, lawyers are mostly filing applications to initiate legal proceedings under the PWDVA, which goes against the intent of the PWDVA to simplify and democratise women’s access to justice. This year, in Delhi, except three, all other POs reported that they no longer filed applications. The reason for this was that the Magistrates were reluctant to accept applications filed by them, as is evident from the quote below:

“Magistrates look for a detailed application with history. Petitions filed by lawyers are framed and molded in the language of the law. So cases
filed by PO will look weak in comparison to those filed by the other party using professional lawyers. I stopped filing cases because I don’t want them to be weak”

PO, Delhi

The POs who continue to file application describe their experiences as below.

“Normally I fill the DIR and women continue their case with their private lawyer. In other cases, I refer women to legal counsel. If a woman wants to file the case through me – generally those who are poor – then I file her application directly. We submit an application, DIR and affidavit to the court.”

PO, Delhi

2. Role of and Interactions with the PO in the Litigation Phase

<table>
<thead>
<tr>
<th>Role of PO during litigation: To do all acts, deeds and things under control and supervision of Magistrate:</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Apply to Magistrate for Orders under the Act, according to what the AP wants/needs.</td>
</tr>
<tr>
<td>• Liaise with all stakeholders, provide legal aid, and other referrals as necessary.</td>
</tr>
</tbody>
</table>

With direction of the court:

- Service of notice (Section 13)
- Functions under Rule 10:
  - Conduct home visit and make enquiry before grant of ex-parte interim order.
  - Conduct enquiry on assets, bank accounts or other documents.
  - Any other duty assigned by state govt. or court.

The role of the PO is equally important in the litigation phase, as the PO is envisaged as ‘an officer of the court’, who would support the court in undertaking several critical tasks that impact the orders.

2.1 Filling the domestic incidence report

The DIR is seen as mandatory for any domestic violence case to proceed in the court. In practice, the filling of DIRs is mostly done under the directions of the courts. When women meet the PO for this purpose, most POs spend considerable time in filling the form. POs across states reported that they asked the woman in detail about her experience, read out the options and recorded everything.

In Maharashtra, two interesting trends were revealed. Most of the POs in Mumbai who were CDPOs asked the ICDS supervisors under them to fill the DIR. It was also felt by some POs that
they should take consent of the AP in the presence of witnesses while filling in the DIR.

As a CDPO I listen to their case. After that I ask my supervisor to fill the DIR form.

PO, Mumbai

I personally fill the form for the illiterate women, but if she is literate then I show her the form, but first I tell them the importance of DIR. Then explain to them why it is necessary for them to fill that form, then with her consent I take their information and in their presence as well as presence of one witness, I assist them in filling the form.

PO, Thane

Some POs in Maharashtra and Delhi reported making extra copies of the DIR. This was not reported by any PO in Rajasthan. POs in Delhi make at least two copies, one for their own record and one for the woman.

While recording the DIR, there are certain additional procedures being adopted by the POs. A few POs reported filling the DIR after conducting an enquiry and with supporting documents. In Maharashtra, POs were confused about whether or not any supporting documents such as the proof or marriage should be submitted along with the DIR. One PO in Mumbai clarified that proof or evidence is not required while filing the case but is needed later during the proceedings in the court.

Marriage certificate and photographs of marriage are needed in court. While filling the DIR form, we don’t ask for any proofs. In the court, verification is important. Then they read the letter and accept the case. A report is sent to the Magistrate after each case is filed.

PO, Mumbai

In Delhi, two POs reported that the Magistrates had ordered them to conduct a home visit before filling in the DIR. In Rajasthan, a few women reported that the PO had visited their homes before filling the DIR. SPs in the state are required by the court to undertake investigations and find out all the facts before recording of the DIR.

2.2 Judging the woman: Unconvinced POs

In Rajasthan, several POs seemed to first assess the veracity of the woman’s account of violence before advising the woman about the PWDVA and whether or not she should fill a DIR. A few POs from Maharashtra also shared similar experiences.
First I make her sit and tell me the whole account patiently. Then when I feel that she has actually faced violence, I try and explain to her to agree to a compromise. I also talk to her marital family members. If I feel that the problem is not that much, then I advise her not to proceed with filling the DIR. If I feel that there is no scope for compromise, or the women is really facing brutal violence, then I inform her about the process under the PWDVA in detail and fill the DIR. We ensure that only after both the parties don’t reach a compromise that we fill the DIR.

PO, Jaipur

In another case, the PO believed that the woman who came to her for filling the DIR had not made enough efforts to adjust in the husband’s family. The PO advised her to go back and ask for ‘forgiveness’ from her husband. This indicates that the PO’s intervention to save the marriage at all costs is diametrically opposed to the spirit of the PWDVA. This once again points to the urgent need to provide ongoing training particularly on gender power imbalances, marriage as a social institution, and its impact on women.

2.3 DIR: What do women remember?

Fifty out of the 61 women remembered filling a ‘form’. But less than half of them knew what it is called. In fact, none of the women in the two sites in Rajasthan knew of a DIR by name. It seems to be referred to and known as the ‘Vishakha form.’

Table 4.6: Women Recollecting having Filled the Form and Knowing DIR by Name

<table>
<thead>
<tr>
<th></th>
<th>Recollected having filled a form (N=61)</th>
<th>Aware of DIR by name (N=61)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mumbai (n=12)</td>
<td>12</td>
<td>7</td>
</tr>
<tr>
<td>Thane (n=8)</td>
<td>8</td>
<td>3</td>
</tr>
<tr>
<td>Sangli (n=10)</td>
<td>10</td>
<td>6</td>
</tr>
<tr>
<td>Jaipur (n=11)</td>
<td>7</td>
<td>0</td>
</tr>
<tr>
<td>Jodhpur (n=10)</td>
<td>8</td>
<td>0</td>
</tr>
<tr>
<td>Delhi (n=10)</td>
<td>5</td>
<td>4</td>
</tr>
<tr>
<td>Total</td>
<td>50</td>
<td>20</td>
</tr>
</tbody>
</table>

Most women reported that the POs listened patiently to them, and asked them several details while filling the form. The women, by and large, seemed convinced that whatever they said had been recorded in the form. While most women were aware that their experience of violence was recorded in the form, a few reported that they were not clear about the kinds of reliefs pleaded for in their case, other than maintenance.
3. Counselling by the POs

There was some confusion about whether or not the POs should engage in counselling.

Out of the 60 POs, around half reported ‘counselling’ women who came to them. Of these, half were from Rajasthan as can be seen in Fig 4.3. The narratives indicate that this may be done whether or not the case is already going on in the court.

*My advice is that if the matter can be resolved at home, it should be done. One should not go to court.*

PO, Jaipur

The POs who do not undertake counselling said that they had specifically been asked in their training not to conduct any counselling for the women and that it was beyond their brief:

*No, we do not counsel the victimised woman, because it is not our responsibility. We do not have that right either.*

PO, Thane

Similarly, a PO from Sangli said that he referred the woman to a counselling centre if there was a court directive. Some narratives suggest that there is a distinction between ‘counselling’ to build a woman’s confidence and provide professional counselling. Even though many POs knew that they were not supposed to conduct counselling, only a few stated that they did not agree with this principle.

*A GR had come in which it is mentioned that PO should not do counselling. And I don’t agree with it. It’s not true that only a professional counsellor can do the counseling. There is no need of training.*

PO, Mumbai

As indicated by the figure, in Delhi, counselling by the POs is less common. POs stated that they referred the woman to qualified counsellors if needed. They also shared that by the time the women interact with them, most have already been counselled at the women’s cell. Another emerging trend is that the courts are directing the women to go for counselling to the mediation centre after the case is filed.

In Delhi the department representatives suggested making pre-litigation counselling mandatory as a strategy to reduce the number of DIRs that were being filed in the courts. POs have been instructed to refer women for counselling to the SPs or FCCs.
4. Interface of Courts and POs

Of the total POs interviewed in Maharashtra and Rajasthan, 40 percent had never gone to the court. They believed that their role was limited to filling the DIR, and were unlikely to be involved in other responsibilities vested in them. This trend is most prevalent in Rajasthan. Women too mentioned that after filling the DIR, they had had no further interaction with the PO. The few POs who were involved in the court proceedings reported that their interactions were largely dependent on the attitude of the individual Magistrate. A couple of them reported giving a summary of the case in front of the Judge, and educating the judges about the PWDVA.

_Some times the Magistrate does not know about this Act. I have personally given him the NGO booklet I had with me about the PWDVA._

_Male PO, Mumbai_

**Fig 4.3: No. of POs Reported Counselling Women**

- **PO report** - It is any report filed by the PO for whatever purpose directed by the court. In Delhi it appears to be a home visit, or ascertaining income of the respondent. In Maharashtra, it is also used to refer to the DIR and the application filed alongwith it in which the PO may add comments/observations, need for legal aid etc.

- Interviews with POs from Delhi & Maharashtra

Of the POs who are aware of the court processes, only a few reported on the importance accorded to a DIR. Though less than half (4 P0s) stated that the DIR was given importance, they stated that the DIR is a major consideration for granting orders, specially ex-parte or
interim orders, and in fact, the PO is instructed to conduct a home visit or an enquiry to ascertain the facts before filling the DIR in the court. All POs in Delhi also mentioned filling a PO report – which is used to refer to any report filed by the PO for whatever purpose directed by the court.

_Filling the DIR is the most important role of the PO. The Judge discusses with the PO about the DIR and details of violence inflicted on women._

PO, Delhi

In Delhi, the POs who stated that they are accorded importance by the courts, and their DIRs are used to give orders, also reported positive interactions with the Magistrates. Others, however, expressed frustration at their role, and the reluctance of the Magistrate to give orders. One of them felt that they were hardly different from a court clerk who is only directed to fill out papers and has no other role either before or after the court process. In other states too, some POs were critical of the court process. A common complaint was that they were not kept informed about the entire proceedings in the case. POs who were involved till the stage of the interim orders felt that they did not know about the final status of the case. POs also expressed their helplessness in expediting the process in the court.

_In these three months period, not a single case is finalised. I feel bad. I feel guilty that I cannot get justice for the woman. I feel very bad for not being able to do anything._

PO, Mumbai

The realisation of the PO’s role as ‘an officer of the court’ is dependent on the procedure that the Magistrate adopts, which may not always be in line with the provisions laid out in the Act. Interviews with key officials also highlighted the need to engage with the Judiciary on key aspects of implementation of the Act, as it significantly impacts the roles of the PO and the SPs.

5. _The Role of and Interactions with Lawyers in the PWDVA_

All POs believed that women needed to engage a lawyer for the case to proceed in the court. If the woman was not in a position to engage a private lawyer, then they either requested for a government lawyer by indicating it in their report to the court or referred her to the legal aid services depending on state specific procedure.

Nearly double the number of women had government lawyers representing them, as compared to those engaging private lawyers. Private lawyers were contacted mainly with the help of family members such as father, brother or sister, and the AP had to spend substantial money to retain their services. The high fee that women had to shell out for payment of service of lawyers was a recurrent theme in the women’s narratives.
Women accessed government lawyers either when they directly went to the court or referred by the SP or the PO to the Legal Aid Cell. Women’s experiences with these lawyers were largely troublesome, and held responsible for the delays in their cases. In many instances government lawyers refused to take up their cases or demanded money from them. Many women explained that this was self-defeating – if they could afford to pay the legal expenses, they would have approached a private lawyer instead of seeking legal aid. Women also reported that the lawyers took bribe from their husband’s family and kept postponing the date of hearing. Several women had gone through multiple lawyers.

_Initially I was given a government advocate. I met my advocate in the court room. He didn’t say much in the first hearing as he was hardly aware of anything. He did not say anything in my support. In the next hearing I was given a new advocate. The government advocate didn’t help me at all. I couldn’t have trusted him. I never had any interaction with the government advocate. Finally, I had to take support from a private advocate._

_Woman, 33 years, Delhi_

However, there was one woman who reported that the public prosecutor was supportive.

_The public prosecutor helped me a lot. She was going to resign. But I requested her not to resign till my case is finalised. She had sympathy for me. She understood my plight. She also has two children. She did not take a single rupee._

_Woman, 35 years, Mumbai_

POs in Delhi reported that the lawyers were misguiding the woman to further their own interests. This was reported by seven of the POs and five women. The analysis reveals that lawyers are seen as misguiding women by encouraging them to file multiple cases, preparing a weak petition, and exaggerating her case.

_Petition is usually an exaggerated application filed by advocate. a) The advocate files many cases that a woman doesn’t want. b) Many respondents are made party in the petition which the women don’t want._

_PO, Delhi_

_I tell a woman to be clear about the case and not be misguided by private lawyers. Private lawyers exaggerate a lot in filing a petition and add unnecessary points to make the case strong. This makes the case complicated and even difficult for the Magistrate._

_PO, Delhi_
It is obvious that the experience of woman with the lawyer is no different from when she files cases under any other law. With the Magistrate insisting on the presence of lawyers for PWDVA cases, there is a need to deliberate on how women can access justice easily, and without further harassment.

6. Women’s Experience of the Court Process

Women reported going to the court faithfully on every court date. The number of visits to the court ranged from 2 to 60 and the duration of the court cases ranged from a few months to five years. Fifty out of 61 women reported that their natal family was supportive during the court process.

Women complained about the repeated adjournments that were granted for various reasons. Absence of defendants, lawyers, and even Magistrates were cited as reasons for the constant delay.

*Dates were given but there has been no hearing so far because all the people are not present in court. Every time my husband bribes the lawyer and ensures that the dates are postponed. That is why there has not been a single hearing so far.*

*Woman, 38 years, Thane*

There were only four instances where the women stated that their experience at the courts was positive. All of them had obtained relief orders within a short span of time. One instance was that of a 53 year old woman from Jaipur who had received a maintenance order on the second hearing. Another woman from Mumbai reported that the Judge observed her waiting the whole day in court for the hearing, and was sensitive enough to take quick action.

In a few cases, there was a mixed response. Women felt satisfied that they had received orders, but were dissatisfied with the behaviour of the Magistrate.

*My husband is having a live-in relationship with another woman. I have told the Magistrate that I can provide evidence for that. The Magistrate does not take my matter seriously. She laughs.*

*Woman, 27 years, Delhi*

Many felt that they were unaware of the problems and realities of life. The amounts fixed for maintenance, if at all, were dismal. A woman shared:

*The Magistrate fixed Rs. 200 as the monthly maintenance. Can you imagine living on that amount? My daughter is also in school. I attached*
Some of the women’s dissatisfaction stemmed from the fact that they were not even aware that an order had been passed. While the most easily granted orders were that of maintenance, they were also the most difficult to enforce. Thus, if the woman received an amount for the first two months, but none thereafter, she felt that her problem has not been resolved.

Often while the case is ongoing in court, the realities in women’s lives are unchanged. Many women report that violence and harassment continue, and they are forced to lodge a complaint at the police station, and there is no real change in their situation. Lack of speedy justice colours their perception of the court processes.

7. Relief Granted under the Act

Of the 61 women interviewed, 22 have received some kind of relief orders as indicated in Fig 4.4. In Delhi, six women had received relief (interim) orders but they were waiting to receive a final order. In the other states, women were unable to share the details of the orders received. As indicated in the earlier section, many women were unaware that orders have been passed since the lawyers do not give them information.

In Delhi four POs stated that Magistrates are passing orders. Other POs felt that orders were not passed that easily and the Magistrates often keep sending women for mediation and enquiry in the hope that they will compromise.
Mostly, cases in my court are solved through mediation. Magistrates send most of the women to mediation centres. Orders are given in very few cases and mostly cases are referred for counselling. In my court, most of the cases are referred to mediation centres and are disposed through mediation.

PO, Delhi

A woman from Delhi shared that the Magistrate sent her twice for mediation. In the meanwhile, her husband was transferred, and then the Magistrate insisted that she should instead go for counselling with her father-in-law.

The interpretation of the Act by many Magistrates leaves a lot to be desired as is demonstrated by their reluctance to pass interim and ex-parte order, and adopt summary trial procedures for cases under the PWDVA.

C. POST-LITIGATION

The post-litigation phase suffers from a considerable lack of information and data gaps. A primary reason is that in a high proportion of cases, orders have not been granted. This is compounded by the lack of a cohesive system to record the status of the domestic violence cases. POs are the only stakeholder who are currently maintaining regular records. Statistics maintained by the court are not yet in the public domain. Police, too, do not maintain a database.

Almost all POs across Delhi, Maharashtra and Rajasthan reported that they had no information about the relief orders unless they were involved in the implementation of the order. In Delhi, only a couple of POs knew about the status of ongoing cases.

1. Enforcement: Key Agencies

In Delhi, POs play a crucial role in enforcement of the relief orders. However, none of the POs in Jodhpur and Jaipur reported being involved in enforcement of the court orders. Here, the role of Police is mentioned repeatedly in the implementation of orders. Twelve POs out of 30 reported being involved in the implementation of orders in Maharashtra. The table 4.7 depicts the involvement of the PO in the enforcement of the orders across three sites.

Some POs considered the enforcement of order to be the role of the Police:

*The woman doesn’t get protection the way she expects. We have experienced it many times that the order is received and still the woman is beaten. There is no use of the PO. In very few cases has the*
AP felt the advantage of receiving a PO. The orders remain on paper. The woman does not get protection. She has to stay there forcefully. She doesn’t get the Police protection she needs.

PO, Mumbai

Table 4.7: Number of P0s Involved in Enforcement of Court Order by Site

<table>
<thead>
<tr>
<th>Site</th>
<th>Enforced court order</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mumbai</td>
<td>3</td>
<td>10</td>
</tr>
<tr>
<td>Thane</td>
<td>4</td>
<td>10</td>
</tr>
<tr>
<td>Sangli</td>
<td>5</td>
<td>10</td>
</tr>
<tr>
<td>Jaipur</td>
<td>0</td>
<td>11</td>
</tr>
<tr>
<td>Jodhpur</td>
<td>0</td>
<td>10</td>
</tr>
<tr>
<td>Delhi</td>
<td>8</td>
<td>9</td>
</tr>
<tr>
<td>Total</td>
<td>12</td>
<td>60</td>
</tr>
</tbody>
</table>

2. Challenges: Enforcement of Relief Orders

Enforcement of the order is difficult and time consuming, and consequently, the P0s in Delhi and Maharashtra reported facing a lot of difficulty in enforcing orders. While there is comparatively more awareness than before, seeking help from the Police remains the most common difficulty reported by the P0s.

Some Police people are helpful and come with us immediately for order implementation while some police personnel make us wait for hours.

PO, Delhi

Sometimes, P0s have witnessed fights or other unpleasant situations at the site of the enforcement, and in one such incident, the P0 even faced a threat to her life.

When the respondent got to know that I am from court, he abused me and threatened to kill me. He ran after me with a sword.

PO, Delhi

P0s in Delhi stated that the residence order is most difficult to enforce.

Problems arise in implementing residence order. The respondent does not let the complainant enter the house. We don’t go without Police help in implementing residence orders. People don’t value us. With Police help at least people take the issue with due seriousness.

PO, Delhi
3. Follow Up – Compliance of Orders and Reporting of Breach

There is no mechanism to follow up on the enforcement of orders, unless reported by the woman or her advocate. Follow-up of the situation of the woman in post-litigation phase seemed to be left to the individual initiative of the PO. One PO out of 61 reported following up on the enforcement of orders.

_We follow up cases to ensure compliance. We talk to complainants in 10-15 days._

PO, Delhi

4. Breach

POs from Maharashtra and Rajasthan did not report many instances of breach. This also suggests that the POs were not aware about the instances of breach. Women in these states reported that the orders were not being followed up, and they had complained to the court, Police and the PO.

_When we come to know that the order is not followed, we bring this to the notice of the court. We do not know how court reacts to it. We take information of both the parties as per the court order. The GR provides that we have to conduct an enquiry. This should be done through a SP as we have no time._

PO, Mumbai

_Restrictions have been placed on my husband’s movements. He cannot come here (where my parents live) but he drinks and comes here often and creates nuisance. No, the Police do not do anything- I think they are hand in glove with him._

Woman, 27 years, Jodhpur

The breach that is reported to the court is generally of maintenance orders. In Delhi, five women reported either partial compliance or complete breach of the order. A substantial number of women from Maharashtra and Rajasthan had also reported non-implementation of the orders.

_I got residence and protection order. The order could not be enforced as my in-laws created hurdles for me each time. My advocate had filed an application for non-compliance of the order. Enforcement of the order is a real challenge._

Woman, 32 years, Delhi
Both women and the POs felt that maintenance orders are the most difficult to implement. The first hurdle is around fixing the amount for maintenance and the second is ensuring that the woman receives it regularly.

The case study below is a rare instance in which the Magistrate ensured enforcement of the maintenance order since the husband had a regular source of income. Innovative methods should be devised to ensure that women have a regular source of income to carry on with their lives.

**Case study: Magistrate – key to interpreting the PWDVA**

Premlata (name changed) is a 53 year old and lives in Jaipur. She completed her BA in Jaipur. She was married in 1984 and has two sons. She decided to seek external help after she and her children were thrown out from her marital home. Before filing of the domestic violence case, Premlata and her husband were given counselling at Mahila Thana. Her husband filed a divorce case and Premlata then decided to seek the help of a lawyer. The advocate informed her about the DV Act. Premlata’s journey of justice is very significant. Interestingly, while the PO and the SP are completely absent in her case, she received timely help from the Police and Advocate. The Magistrate also took swift action.

She filed a domestic violence case in 2006 through a private advocate. However, she faced a lot of difficulties with the slow procedures of the court as her case did not come up for hearing. She maintained her composure and was patient. She felt encouraged after the first hearing. The Magistrate heard her adequately in the first hearing and in the second hearing she was given residence and maintenance order. Her husband (works with railway department) did not comply with the court orders completely. He did not pay the monthly maintenance amount fixed by the Magistrate.

When she filed a complaint, the Magistrate understood her case, and passed very strict orders to the DRM (Senior Officer-Railway department). The Magistrate directed the DRM to deduct maintenance amount from Premlata’s husband’s salary and release it to Premlata. It has been five years since and she continues to receive monthly maintenance through the court.

The awareness about breach of orders is more prevalent amongst the POs in Delhi primarily because they attend the court regularly. Half of the POs interviewed in Delhi were aware of how a breach is established in the court. Three of the 10 POs in Delhi reported playing a significant role in the establishment of a breach in court.

Breach is established on the basis of proof. POs reported that the Magistrates ordered them to conduct specific enquiry. Breach has been established on the basis of the PO’s report in a few instances in Delhi.

*After the breach, the PO investigates and verifies breach of the order. Police is always present with POs. The PO is always present during all the proceedings of the breach order.*

PO, Delhi
Case study: Order enforcement remains key challenge for women seeking justice

Charu (name changed) lives in Delhi and has completed her education in B.Com from the Delhi University. She is 32 years old and has a small daughter. Charu was married in 2002 and worked for few months before her marriage. She approached the Police for help and women's cell for counselling before filling her case. She filed her case in 2007. She was given immediate enforcement orders (residence and maintenance) and her case was resolved in 2008. However, her legal battle is still ongoing as order compliance remains the biggest challenge till date.

Despite having a private advocate, her journey was not very smooth. The Magistrate without verifying details of the fraud Will submitted by her mother-in-law cancelled her residence order. The Magistrate passed a wrong order in sheer haste and carelessness. Charu along with her advocate appealed to the Additional District Judge and challenged the order of the Magistrate. The Additional District Judge issued an order in Charu's favour and directed the Magistrate to ensure compliance of the residence order. Ensuring compliance with the order, however, remains the most difficult task. Charu was able to stay in the residence only after the fifth order (of arrest) was issued by the Magistrate against the respondent. Charu’s advocate has been very helpful and supportive in guiding her. Charu received maintenance till the time her case was ongoing and after few months, her in-laws stopped giving her maintenance and also forced Charu to leave the house.

After one year, Charu is at the same position where she was before filing the case. She is still suffering; her problems are far from over. The everyday court battle seems to be never ending for her. Charu had filed another case in 2009. It is still ongoing. She doesn’t have much faith in Judiciary. She is not confident whether or not she will get relief orders or if the respondent would comply with them. Charu feels that the Magistrates have enough powers to take stringent action against non-compliance.

It’s been three years now and Charu’s case is still going on. She feels that some authority should be empowered and made responsible to oversee compliance of court orders as otherwise the Act is meaningless for the women.

Enforcement of orders is an area requiring specific discussion as the reliefs granted by court become meaningless, unless they are enforced. The Police have limited knowledge regarding their role in the Act. The tracking of the enforcement itself is challenging, though it is significant to understand the impact of the law in changing the lives of the women facing violence.

D. KEY FINDINGS AND CONCLUSIONS

The promise of fast relief is the major attraction of this law for its users. While the procedures and practices under the law are solidifying, these are more often that not divergent from the written letter of the law.
Some of the main conclusions are:

- Access to the PO in the pre-litigation phase, and their involvement in court processes as envisaged by the law, with the exception of Delhi, remains limited. There is a need for a dedicated cadre of POs that would be sensitive to the women, and guide and support them through the pre-litigation process. Women have little knowledge of the existence of the PO. They interact with them, mostly at the court’s direction for filling of the DIR. However, due to the recent effort of publicising contact information of the POs, women are increasingly approaching them directly in Delhi.

- DIR continues to be seen as a tool for initiating legal proceeding under the PWDVA, and not as a record of history of violence. They are largely being recorded at the litigation stage, upon directions of the court.

- Police remains the first point of contact for more than half of the women. Only a few police personnel who had received training had knowledge of the key provisions of the Act but they too were unclear about their specific roles. Further, they had not shared the information with their peers at the police station.

- ‘Counselling’ of women in the pre-litigation stage is undertaken several times by different stakeholders, though only a few women get professional counselling support. For the Police, the intent of counselling is to restore the family and prevent the cases from going to court. Nearly half of the POs reported ‘counselling’ women. Of these, half were from Rajasthan. The POs who do not undertake counselling have clarity that this is outside the purview of their role, and if required, they refer the women to trained counsellors. Delhi has made pre-litigation counselling mandatory as a strategy to reduce the case load.

- The role and responsibilities of SPs are not clearly recognised. There is considerable variation across the states. While in Rajasthan, the courts expect SPs to fill in DIRs after investigating and hearing both the parties, in the other two states, Maharashtra and Delhi, the courts do not accept the DIRs submitted by the SPs. In Maharashtra, however, SPs appointed under the TISS Special Cell have also been functioning as POs. Therefore, unlike other SPs working in the state, these special SPs are also filling DIRs.

- Procedures and practices adopted during litigation are largely dependent on the individual Magistrates’ interpretation of the law.

- Lawyer remains the key stakeholder for the PWDVA. Women approach private lawyers directly and legal aid services through the POs or SPs. However, mostly, their experience with the lawyers was negative. It was marked by delays, corruption, and frequent change of lawyers.
Court directed mediation is emerging as a significant practice in Delhi. This trend needs careful examination. Unfortunately, there are no systems to track the outcomes of such cases currently as after they are referred for mediation, there is no record of the conclusion of the case.

The Magistrates fail to recognise the elements of speedy litigation processes and civil reliefs as set out by the PWDVA. Apart from the involvement of lawyers, most of the Magistrates insist on detailed arguments, cross examination, and presence of both the parties, which leads to delays.

Enforcement of orders and reporting of breach continue to be a challenge. Majority of the POs, with a few exceptions in Delhi, are unaware of the final fate of most cases. Currently, the POs and the Police receive no information, unless the court orders specify their role in enforcement. Non-compliance of the maintenance order is a major concern. Mostly, the women report breach to the court through their lawyers and it is usually established through the PO’s enquiry report.
Section IV
Order & Judgments of the Higher Judiciary
Chapter 6

ANALYSIS OF ORDERS OF THE MAGISTRATES AND SESSIONS COURTS

The PWDVA, 2005, as detailed in the preceding sections of this report, establishes a multi-agency response system to ensure that women facing domestic violence are able to effectively access the law. While it is true that a number of external factors play a role in enabling access to the reliefs, it is ultimately the Judge who determines the nature of reliefs granted and the efficaciousness of such reliefs. Under the Act, it is the Magistrate who has been empowered to adjudicate upon claims, determine rights of the parties, and grant suitable relief to the complainant. For doing this, the court takes into consideration: the provisions of the Act, legal principles and precedents set by the superior courts, and the overall facts and circumstances of each case. In this context, an analysis of the court orders provides evidence of how the law is developing on the ground, its actual impact, and the nature of relief being granted. This Chapter undertakes a comparative analysis of the orders passed under the PWDVA by the Magistrates and Sessions Courts.

A. OBJECTIVES OF THE ANALYSIS

The primary objectives for the analysis of orders can be summarised as given below:

- To map the reliefs granted by the courts
- To understand the procedure adopted by the courts
- To map the development of substantive law by the courts

B. FINDINGS OF ORDER ANALYSIS

This year, for the purpose of analysis, LCWRI has examined orders from seven High Courts namely, Delhi, Bombay, Himachal Pradesh, Andhra Pradesh, Guwahati, Chhattisgarh and Jharkhand for the time period of April 2009 – March 2010. Please refer to Table 5.1 for the number of orders that have been received and analysed. To discern the trends and patterns, a representative number of orders have been analysed.
The total number of orders given in Table 5.1 include Magistrate’s Court Orders, Appeals and Revisions decided by the Sessions Court, Settlements recorded in the Orders, and Orders passed under Section 31 of the PWDVA. Please see the table given below for the break-up of the orders examined.

Table 5.1: Break-up of the Number of Orders Received and Analysed for 2009-10

<table>
<thead>
<tr>
<th>High Court</th>
<th>States covered</th>
<th>Number of orders received</th>
<th>Number of orders analysed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Delhi</td>
<td>Delhi</td>
<td>233</td>
<td>233</td>
</tr>
<tr>
<td>Bombay</td>
<td>Maharashtra &amp; Goa*</td>
<td>3114</td>
<td>2114</td>
</tr>
<tr>
<td>Himachal Pradesh</td>
<td>Himachal Pradesh</td>
<td>507</td>
<td>507</td>
</tr>
<tr>
<td>Andhra Pradesh</td>
<td>Andhra Pradesh</td>
<td>844</td>
<td>522</td>
</tr>
<tr>
<td>Chhattisgarh</td>
<td>Chhattisgarh</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Jharkhand</td>
<td>Jharkhand</td>
<td>11</td>
<td>11</td>
</tr>
<tr>
<td>Guwahati</td>
<td>Assam</td>
<td>96</td>
<td>96</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>4815</strong></td>
<td><strong>3493</strong></td>
<td></td>
</tr>
</tbody>
</table>

*Henceforth in the report, orders from Maharashtra would include Maharashtra and Goa as they have been combined for the purpose of order analysis.

Table 5.2: Break-up of the Kinds of Orders Examined from Each State

<table>
<thead>
<tr>
<th>State</th>
<th>No. of Magistrate’s Court orders</th>
<th>No. of Appellate Court orders (includes appeals and revisions)</th>
<th>No. of settled cases</th>
<th>No. of orders passed under Sec. 31</th>
</tr>
</thead>
<tbody>
<tr>
<td>Delhi</td>
<td>163 (69.9%)</td>
<td>67 (27.5%)</td>
<td>Nil</td>
<td>3</td>
</tr>
<tr>
<td>Maharashtra</td>
<td>1427 (67.5%)</td>
<td>144 (6.8%)</td>
<td>485 (22.9%)</td>
<td>8</td>
</tr>
<tr>
<td>Himachal Pradesh</td>
<td>117 (34.9%)</td>
<td>21 (4.1%)</td>
<td>306 (60.4%)</td>
<td>3</td>
</tr>
<tr>
<td>Andhra Pradesh</td>
<td>335 (64.2%)</td>
<td>79 (15.1%)</td>
<td>105 (20.1%)</td>
<td>3</td>
</tr>
<tr>
<td>Chhattisgarh</td>
<td>6 (73.3%)</td>
<td>2</td>
<td>2</td>
<td>Nil</td>
</tr>
<tr>
<td>Jharkhand</td>
<td>6 (80%)</td>
<td>2</td>
<td>3</td>
<td>Nil</td>
</tr>
<tr>
<td>Assam</td>
<td>37 (38.5%)</td>
<td>22 (22.9%)</td>
<td>15 (15.6%)</td>
<td>Nil</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>2091 (59.9%)</td>
<td>337 (9.6%)</td>
<td>916 (26.2%)</td>
<td>17</td>
</tr>
</tbody>
</table>

For the purpose of this analysis, all the applications withdrawn by the AP, once the respondent has been summoned, have been categorised as a settlement. Mostly, the reason for the withdrawal is a mutual arrangement, which is arrived at between the parties.
In order to achieve the above-mentioned objectives, the orders have been broken down into key indicators to facilitate analysis.

### Categorisation of the Indicators

This year, the indicators for analysis have been broadly classified into settlement or compromise cases, the authority effecting these settlements and the nature of settlement, who is accessing the court and against whom, patterns of violence, reliefs granted by the courts and the rationale, breach, appeals and reasons for denial of reliefs.

### 1. Settlement/Compromise Cases

LCWRI has been tracking settlements and compromises of applications filed under the PWDVA for the past three years. While, in the first year, Himachal Pradesh had reported a high number of settlements, last year it was Gujarat. As such, the PWDVA provides for a settlement through counselling of both the parties by a qualified counsellor. Based on the counselling session, the terms of settlement are fixed. However, the settlements taking place are not strictly adhering to the tenets of the law.

During this year, in more than one-fourth of all the orders examined, some sort of settlement or compromise was arrived at between the parties. Interestingly, among all the orders received from Delhi, not a single case has been settled, either through the court or “out of court.” Amongst the other states, Himachal Pradesh has recorded the highest (60 percent of the total orders for Himachal Pradesh examined) number of cases settled, compromised, and withdrawn by the AP or “not pressed”. It is followed by Andhra Pradesh (20 percent), Assam (15.6 percent), and Maharashtra (12 percent).

In this section, we are looking at different bodies that are effecting this settlement and their involvement in the judicial process.

This section will examine the following aspects:
- Which authority is effecting the settlement?
- What is the nature of settlements being arrived at?

#### 1.1 Which authority is effecting the settlement?

- A very intriguing finding that came to light in this year’s analysis is the involvement of redressal mechanisms other than the PO, SP or the Police in domestic violence cases. In

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*Since the orders analysed use the terms settlement and compromises interchangeably, the two have also been used interchangeably for the purpose of this report.*
three states, the panchayats have been playing a key role in the conciliation proceedings either before the case is initiated in the courts or thereafter. These include the Nyaya Panchayat in Himachal Pradesh, the Gram Panchayat in Andhra Pradesh, and the Gram Nyalaya in Maharashtra. Perhaps, it reinforces the fact that women approach the courts only as a last resort. In Andhra Pradesh a total of 13 cases were decided by the Panchayat. In Maharashtra, one case was settled by the Gram Nyalaya, however, the orders do not provide the full terms of the settlement.

**Awards passed by the Lok Adalats**

The following are excerpts of the different types of compromise arrived at in different states.

1. The respondent agreed to take back the petitioner and undertook not to harass, torture or beat the petitioner, and agreed to look after the welfare of the petitioners. The respondent had agreed that in the event of the failure to maintain the petitioners, he would pay an amount of Rs. 1500 p.m. to each of the petitioners towards maintenance. The main petitioner on behalf of her minor son and herself agreed to the said terms and conditions. The case was filed by the AP on behalf of her child and herself. – Order from Andhra Pradesh, LAC No. 857/2009.

2. Respondent No. 2 shall deposit Rs. 3000 in the SB account of the applicant; respondent shall deposit a sum of Rs. 1 lakh only in the name of the respondent and his daughter by way of deposit. The complainant withdraws the present complaint in view of the above terms of compromise. – Order from Maharashtra, Cri Case No. 1/OA/PWDV/09/B.

3. The applicant stated that the matter has been compromised with respondent No. 1 and she has taken back her articles present in the matrimonial house and that she was willing to accept the maintenance @ Rs.3,500/-p.m. offered by the respondent. – Order from Himachal Pradesh, Case No. 173-I-09

- In the previous years, it was noted that the courts transferred several cases to the Alternate Dispute Resolution mechanisms like the Lok Adalats. In continuation of this practice, in 2009-10, compromise and settlement were initiated in 12 cases by the Lok Nyalayas in Maharashtra, and 14 cases by the Lok Adalats in Andhra Pradesh upon the directions of the court. However, despite the fact that the awards passed by Lok Adalats have as much force as the decree of a civil court,75 the terms of settlement have been recorded in very few orders. Therefore, the terms of settlements arrived at by the Lok Adalats remain unclear. In Andhra Pradesh, for instance, the actual terms of settlement have been recorded in the order passed by the Lok Adalat in only eight instances. What is even more interesting is that five of these orders reflect mutual consent for divorce settlements, with the respondent agreeing to pay a fixed sum of alimony and settlement amount to the petitioner. Nothing has been mentioned about the case filed under the PWDVA or the reliefs claimed therein.

- At the same time, while examining these settlements, it is also important to ascertain who initiates the process for compromise at the Lok Adalat. On the issue of counselling,
the PWDVA mandates that such procedures can be initiated only at the wishes of the AP. Nonetheless, an analysis of orders indicates that such settlements have been effected as a routine procedure rather than at the wishes of the AP.

- In Maharashtra, 10.7 percent cases have been compromised, but, in general, the orders fail to identify the agency or the person responsible for bringing about the settlement or compromise. In a mere eight cases have the terms of settlement been mentioned in the order. In two cases, a “senior advocate” was appointed as the mediator. Similarly, last year, in one of the cases the court directed senior lawyers to assist the court.

- Finally, except for Assam, in all the other states, the highest number of dismissal through compromise has been of cases withdrawn by the AP, not pressed or dismissed because the AP did not come to the court for many consecutive hearings. Maharashtra has 248 such cases; Himachal Pradesh has 159 cases, 73 cases in Andhra Pradesh, and 5 cases in Assam. In all such cases, there are no reasons provided for the withdrawal by the AP. The AP has simply stated that the case has been compromised “out of court” and therefore, wanted to withdraw the same. The orders, usually, do not elaborate further.

1.2 Terms of settlement and compromises

Since several cases have been settled and compromised, a mapping of the kinds of settlement and compromises recorded in the courts would clarify the negotiations and agreements between the parties.

- Reconciliation between the parties whereby they returned to live with each other is the most common form of settlement mentioned in the orders. The exact elements of such reconciliation or undertaking or assurance given by the respondent or the AP are not listed in the order. It can perhaps be said that the parties made no such assurance to each other.

- The second most common form of settlement is where the respondent agrees to pay a certain amount as maintenance to the AP, which is regarded as a term of settlement between the parties. The amount of maintenance ranges from Rs. 500/ to Rs. 7000/ based upon the capacity of the respondent to pay. Interestingly, in one case in Himachal Pradesh, the “respondent agreed to pay maintenance to his capacity to the AP and her children”. The very nature of such an agreement, which fails to mention the exact amount of maintenance, may lessen the effectiveness of such an award or settlement term.

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76 Rule 13, PWDVR, 2006.
77 Case No. 23/3 of 2009, Himachal Pradesh.
• Another common term of settlement includes an assurance by the respondent that he would stop the violence or give an undertaking to that effect. It is interesting that the terms also contain assurances from the AP. The following is an excerpt of the assurance given by the AP in a case in which the respondent had agreed to pay maintenance of Rs. 1500/ and costs of education, food, clothing etc.

“The applicant will not meet her friends and relatives except with the consent of the respondent. The applicant has also undertaken that she will look after her children and husband and will not do any business without the consent of the husband.”

• The other common form of settlement and compromise is a mutual consent divorce, in which the respondent usually agrees for a final settlement amount as the divorce settlement and the case under PWDVA is withdrawn.

### Attitude of the courts on settlement and compromises

• “Taking into consideration the material on record and the provisions of the law and observations of the higher courts, in my opinion, instead of outrightly rejecting application only because when asked, one of the contesting parties does not want reunion*, it is proper to refer the matter for conciliation, and the provision in that respect is made in the statute. No doubt, the court has to see that whether there is element of settlement; but in matrimonial disputes it is expected that all efforts for settlement of matrimonial disputes should be made. The object is that as far as possible, marital ties are not broken in the hit of anger.” – Order from Maharashtra, Criminal Appeal No. 4/201

* In this particular case it was the AP who did not want reunion or conciliation.

• In this case, the Magistrate felt that there was difference of opinion on trivial issues. Parties had agreed to reside together. He stated, "What can be better end than this?" As a matter of caution, the PO was directed to visit the shared household fortnightly, submit a monthly report to the court to track reconciliation measures, act as a conciliator, and manage contingencies. – Order from Maharashtra, MA Criminal App No. 12/2009

### 1.3 The case study of Himachal Pradesh

At this juncture, Himachal Pradesh has been separately considered, due to the presence of Nyaya Panchayats in the state that also deal with the PWDVA cases.

#### 1.3.1 Role played by the Nyaya Panchayats in the PWDVA cases

• In 29 cases in Himachal Pradesh, the AP first approached the Gram Panchayat and the members suggested some measures for reconciliation. It was only when this intervention

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28 Case No. 99-1-09, Himachal Pradesh.
failed and the respondent continued inflicting violence that the women finally approached the courts. It was also found that when the AP went to the police station for assistance, the Police would send the women to the panchayats and not to the PO as provided under the PWDVA. Some courts have concluded on the basis of the deposition of the panchayat members or witnesses at the panchayat proceedings that there was domestic violence. Please refer to the text box for an example.

Links between the proceedings at Gram Panchayat and the Court

From the admitted facts of the pradhan of Gram Panchayat, it was admitted that she was beaten and she sustained injuries, and no maintenance was paid by the respondent, and in the complaint which was sent by him to the police station, the respondent admitted in the police station he committed a mistake and he will not repeat it in future, and will also pay the maintenance to the petitioner. Also, no receipt was produced to show that maintenance was paid to the applicant. Consumption of liquor, threatening the applicant (his wife), and not paying maintenance is covered under verbal, emotional and economic abuse. Hence, relief granted. – Order from Himachal Pradesh 56/3 of 2008

• Surprisingly, 48 percent of the settled cases have been dismissed because of a compromise between the parties without any information on how the compromise was reached. Unfortunately, only 48 orders describe the terms of settlement, and in most of the cases, the courts seem to be summarily dismissing the applications without examining the terms and conditions. In eight orders, the courts have dismissed the applications based on the undertaking given by the respondent to the court. The PWDVA states that an undertaking can be made to the counsellor during the counselling session, and that the counsellor would assist the parties in arriving at a settlement.

• Twelve orders specifically stated that the terms of settlement were arrived at in the Lok Adalats. A very interesting finding this year is that the Magistrates are referring the parties to the Lok Adalats only when “there is scope of conciliation.” What is even more interesting is that, 11.1 percent of all the orders where the parties failed to reach a compromise, the proceedings in the court continued, “only after the courts have satisfied that conciliation has actually failed”. Since the courts have recorded in their orders that the conciliation proceedings failed, it can be assumed that in these cases the parties were referred to the Lok Adalats or the Nyaya Panchayats. It appears that instead of the AP, it is the courts that are deciding whether such cases should be referred to the Lok Adalats or other alternate dispute mechanisms. Conciliation appears to be first resort of not just the women but

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also the courts. This would necessarily lead one to question whether these conciliation proceedings are in fact for the benefit of the AP who has filed the case.

### Good practice from Himachal Pradesh

In one of the cases in Himachal Pradesh, the parties had mutually compromised the matter. As per the compromise terms, the respondent had stated that he was ready and willing to pay an amount of Rs.1,500/- p.m. to the petitioner as maintenance from the date of filing of the petition. The AP had agreed to the respondent’s terms and the court, instead of dismissing the application as withdrawn, directed the respondent to pay the monthly maintenance and also sent a copy of the order to the SHO and PO to ensure compliance with the order of maintenance. - Comp No. 99-I-09.

### 2. Proceedings at Trial/Magistrate Court

This section will examine the nature of applications being filed at the trial court, mainly before the Magistrates, and the way in which the courts are dealing with such applications of domestic violence.

#### 2.1 Access to the court

##### 2.1.1 Who is accessing the court and against whom?

This section will examine the following categories:
- Who is accessing the court and against whom?
- How is the AP accessing the court?

The protection granted by the PWDVA is not confined to matrimonial relationships and goes beyond a wife claiming reliefs against her husband and in-laws. Section 2(f) has expanded the scope of relationships that would be covered by the law to include relationships in the natal family, and relationships forged by marriage. LCWRI has been examining the trend of APs approaching the courts in the past four years.

**Married women**

The trend of married women being the primary users of the law has continued from the first year of implementation of the PWDVA.

At the very least, in Maharashtra and Delhi, a few women who are not married are filing applications. However, in the rest of the states, except for one or two isolated cases, only married women have been filing the cases under the PWDVA.
Widows

Apart from married women, widows have also been filing cases against the family of the deceased husband. In all the states, widows have been filing cases either against their husbands or the in-laws.

Incidentally, there are no cases filed in Assam by the widows. A possible reason could be the matriarchal system prevalent in Assam and the North-eastern states.

Mother filing against her son

The instances of mothers filing against their sons do seem to be on the increase. In Maharashtra, 21, and in Andhra Pradesh, 8 cases have been filed by the mothers against their sons. The marital status of the women in these cases is a combination of married women or widows. Interestingly, in most of these cases, the courts are restraining the sons from dispossessing the AP from the shared household or from alienating the property. In Assam, there is only one case filed against the son by his mother.

Divorced Women

In the previous report, there were some interesting cases of divorced women moving against their former husbands. Again, this year, similar cases were filed in the four states of Delhi, Maharashtra, Himachal Pradesh and Assam. In Delhi, there were three such cases of divorced women filing a case against their former husbands. Among them, two of the applications were dismissed against the former husbands and in the third, maintenance was granted. The first case, which was an application for custody, was dismissed because the mutual consent divorce decree had dealt with the custody of the child. In the second case, the parties had been living separately since 1985, for more than twenty years and hence, the court did not grant any reliefs. Similarly, in Maharashtra, Himachal Pradesh, and Andhra Pradesh, the number of divorced women filing for relief is 42, 8 and 3 each. Although one would expect that the courts discuss the terms of the divorce settlement, no such attempt seems to have been made by the court.

Single Women

Maharashtra appears to be the only state where unmarried or single women are filing cases against the members of their natal family. Around eight such cases have been filed against the father and brother of the AP. One of these cases was compromised when the father and brother gave an undertaking that they would stop harassing the AP.

Relationships in the Nature of Marriage

A very unique aspect of the PWDVA is that it has expanded the scope of relationships that are covered by the law. The law has gone a step further from the existing laws at that time in including “relationships in the nature of marriage” under the definition of domestic
relationship. Flowing from this, in Maharashtra, seven applications have been filed by women against their live-in partners. While two of these cases were compromised, in one such case, the respondent gave an “undertaking in the court that he accepted the applicant as his wife and also his daughter as his own. He will register his marriage and change her name by giving his name to her. He will not commit any physical, mental and economic violence.” In one instance, the court dismissed the case because the AP could not establish a domestic relationship between the parties. In the remaining cases, the court granted maintenance in all and a right of residence and protection orders in two each. In Delhi there was one case in which the court granted maintenance and compensation to the woman in a live-in relationship against her partner. An interesting trend is that the courts are looking at the “overall facts and circumstances” of the case and only then deciding on the grant of reliefs.

**Some attitudes of the judges on the issue of live-in relationship**

The courts are showing progressive attitudes in such cases. The fact that they are not going into the antecedents, and the nature and history of the relationship indicates an acceptance that women in these relationships also need protection from violence. A Court in Delhi has stated the following: “The very fact that the respondent had denied the relation with complainant by itself constitutes an act of Domestic Violence.” - CC No. 32/4.

The consistent trend of married women being the primary users of the law is probably a reflection of the PWDVA being seen as a law that addresses marital relationships only. Perhaps it indicates that the awareness and knowledge of the law has not reached the women.

**Women as respondents**

Among all the states, in only Delhi and Assam, the courts were dismissing applications against women respondents. In Delhi, in 7.3 percent of all the orders examined, female respondents were deleted from the array of respondents. The Delhi High Court, in Varsha Kapoor v. UOI, WP (Crl.) No. 638 of 2010 (discussed in Chapter 7) has held that the PWDVA allows for female respondents. Since this settles the law in Delhi, the lower courts should not delete women as respondents in the coming years. In Assam also, female respondents were deleted from the array of respondents and the courts there are relying upon Ajay Kant v. Alka Sharma, 2007 (4) RCR (Cri) 930.

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Section 2 (f), PWDVA, 2005.
Misc Criminal Case No. 37/2009.
2.2 Violence alleged

This section will examine the following aspects:

- Is there a pattern of violence?
- How has the court dealt with allegations of sexual abuse?
- Interpretation of violence by the courts

2.2.1 Is there a pattern of violence?

Typical case – A profile

Since married women are primary users of the law, a typical case of married woman observed across the states is provided here. The AP is a married woman, living in her matrimonial home, which is a shared household, along with the relatives of her husband. The AP is harassed by the respondents. The violence alleged includes harassment for dowry, beating, forcing her to perform all the housework, removal of dowry and stridhan articles, verbal abuse, and throwing her out of the shared household. If the couple is living independently then the husband usually moves out of the house abandoning the AP. The most commonly sought relief by the AP is maintenance for the children and herself, and a right to reside in the shared household.

While trying to understand if a pattern of violence exists, we have to work with the limitation that the orders are not very detailed or explicit on the kinds of abuses alleged. At most, the orders reflect only those kinds of abuses, which the judges think to be important, and have a bearing on the final relief.

Similar to the previous years, the predominant form of abuse seems to be a combination of different forms of abuse. It is a matter of concern that in Delhi, when the women complain of domestic violence, the Police have been registering a case under “breach of peace”.83 Presumably, this is to ensure that an FIR is not registered and an investigation is not initiated.

Definition of violence cuts across religions

It is settled law that even in Mohammedans, second marriage amounts to cruelty and the wife is justified in living separately under such circumstances. Further, solemnisation of the second marriage when the complainant was pregnant is a grave form of mental cruelty. It has been held in Begum Subani @ Saira Banu and another v. A.M. Abdul Gafoor, AIR 1987 SC 1103 that if the husband solemnises a second marriage or takes a mistress, the first wife is entitled to claim maintenance and separate residence, and the fact that the husband can marry again under personal law is immaterial. – Order from Maharashtra, CC No. 465/6/07

2.2.2 How has the court dealt with allegations of sexual abuse?

- In Delhi, sexual violence has been alleged in 10 instances and two out of ten involve sexual assault by the members of the family other than the husband. These acts are offences under IPC, 1860 and yet no step was taken by the Magistrates to ensure that an investigation is initiated. In two other cases, it was alleged that the mother-in-law forcefully stopped the AP from having an intimate encounter with her husband. The remaining cases were instances involving forced sexual activity by the husband against his wife including “forcible sexual intercourse” and “forcing the AP to watch pornography.”

- In Maharashtra, in 7.3 percent of the orders examined, sexual abuse was alleged. As described by the women, the range of violence varies from forcible sexual intercourse, to lack of any physical intimacy, and in some cases, to their husbands being “habituated to homo sex”.84

- In Andhra Pradesh, there were 20 instances where the AP alleged sexual violence. Similar to Delhi and Himachal Pradesh, in Andhra Pradesh, the abuses are a combination of forcible sexual intercourse to sexual assault by the members of the family. Also, there was one case in Andhra Pradesh where the main allegation was that the respondent was a homosexual, and in three cases the sexual abuse alleged was that the marriage was not consummated. It is intriguing that the alleged abuse in these cases is in effect a reversal of the concept of marital rape.

It is unfortunate that in none of the orders have the courts discussed the sexual violence alleged, while granting the relief. Since the allegation of abuses is a combination, and not restricted to sexual violence, it is difficult to make claims regarding the attitude of judges towards the same. Nevertheless, the lack of discussion may in itself point to the reluctance of the judges to take serious notice of sexual violence.

84 This expression has been used in some of the court orders examined.

**Domestic violence and HIV**

While discussing the pattern of violence, it is important to examine two cases from Maharashtra and Andhra Pradesh dealing with HIV. In Maharashtra, one of the major forms of violence alleged by the AP was that she was blamed for the respondent contracting HIV. In the case in Andhra Pradesh, the abuse alleged was that “the respondent had HIV.” Interestingly, the court has provided relief in both the cases.
2.2.3 Interpretation of meaning of violence by the courts

The meaning of violence has been one of the key aspects, which the courts in all the states have been discussing. Amongst all the substantive provisions, Section 3 of the PWDVA appears to be the most developed in the lower courts.

One of the most common observations of the court is that the lack of witnesses for domestic abuse is not surprising, given that the violence occurs within the four walls of the house. Hence, the courts are looking at a prima facie finding of violence through the reports of the PO and surrounding circumstances of the case. This is a very good practice of the courts and in this context, the courts have opined that, “to show domestic violence, AP need not show a series of acts/omissions; one single act/omission is sufficient to attract the provisions of the Act.”

All the courts have held that baseless allegation about the character of the AP would constitute violence, and in fact, points towards the kind of violence that the AP has been facing.

The courts have also accepted economic abuse as a major form of violence and are periodically taking into consideration the financial implications on the AP. Instances of the respondents refusing to pay maintenance, or not paying the school fee for the children, or alienating property in which the AP has a share, have been accepted by the courts as a form of abuse. Please refer to the text box for an example.

**Interpretation of economic abuse by a court in Delhi**

There is no denying the fact that complainant being the wife is an "aggrieved person" within the meaning of Sec. 2(a) of the Act. The explanation (iv) (b) of "the Act" defined "economic abuse". On a plain and simple reading of the words, it can be seen that if an immovable property is sold or alienated wherein the AP has an interest or entitlement to use by virtue of domestic relationship or which may be reasonably required by the AP, it would amount to economic abuse. Explanation (iv) (c) further provides that an act of prohibition or restriction in having continued access to resources or facilities which the AP is entitled to use or to enjoy by virtue of domestic relationship including access to shared household, would also be an "economic abuse. - Criminal Appeal No. 03/09

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85 CC No. 1430/10, New Delhi.
2.4 Reliefs Granted

This section will examine the following aspects:

- Whether the courts are passing ex-parte orders?
- What is the predominant trend in passing interim orders?
- What is the predominant relief finally granted by the court?
- A mapping of the trends with respect to the rationale for granting the relief.

LCWRI has consistently argued for the grant of interim and/or ex-parte reliefs by the courts. In previous years, the low numbers of ex-parte and ad interim orders obtained have not been very encouraging. The PWDVA provides for the grant of ex-parte relief, if the application prima facie discloses domestic violence.\(^{86}\) Interim orders assume significance in light of the consistent problem that the courts have been unable to pass final orders within the time period stipulated.\(^{87}\)

2.4.1 Ex-parte orders

- With increased awareness about the law, Delhi witnessed a commensurate increase in the numbers of ex-parte/ad interim orders granted from 6.9 percent in the previous year to 14.2 percent this year. In Maharashtra too, the number of ex-parte/ad interim orders has increased by 10.6 percent from last year.

- In Himachal Pradesh, 4.2 percent of the orders examined, and 14.4 percent in Andhra Pradesh were either ex-parte or ad interim. In Assam, a total of 11.5 percent orders were passed ex-parte or ad interim. Interestingly, three of the orders provided for the deletion of the female respondents relying upon *Ajay Kant v. Alka Sharma*,\(^{88}\) wherein it was held that female relatives cannot be made respondents under the law.

- The reluctance of the courts in passing ex-parte orders appears to arise from the need to “hear the other side” before granting any relief. Although the courts agree that whenever there is an immediate need the Magistrate should use his discretion and pass the necessary ex-parte orders, nevertheless, ascertaining whether or not the situation demands immediate relief is left to the subjective opinion of each individual judge. The Kerala High Court has extensively discussed ex-parte orders in *Dr. Preceline George v. State of Kerala*,\(^{89}\) which also provides several guidelines. The impact of this judgment, if any, can only be seen next year in the state of Kerala.

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\(^{86}\) Section 23(2), PWDVA, 2005.

\(^{87}\) The PWDVA was enacted to ensure immediate relief to the women and hence it provides for a time limit of two months within which the final order should be passed.

\(^{88}\) 2008 Crl. LJ 264.

\(^{89}\) 2010 (1) KLT 454.
2.4.2 Interim orders

Similar to the last year, interim orders have been granted, wherever the need for such an order was established. Mostly, interim maintenance orders have been granted, followed by residence order in some states and protection order in others.

- In 35.2 percent of the orders examined in Delhi, the courts have passed interim orders. A break-up of these would give us a fair idea of the kind of interim orders passed in Delhi. Among these interim orders, 68.3 percent of the orders are for interim maintenance. In 15.9 percent, the court has passed interim residence order. In 8.5 percent of orders, the court has ordered rent for alternate accommodation.

- In Maharashtra in 28 percent of all the orders, the courts have passed interim orders. A break-up of this interim relief indicates that the highest number or 86.5 percent is of maintenance orders. In 14 cases, residence orders have been passed. In about 49 cases, rent for alternate accommodation has been granted, while in another eight instances, the respondent was restrained from alienating the shared household.

- In Andhra Pradesh, in only 9.9 percent of cases, interim orders were passed. Among these, 82.7 percent were orders granting maintenance. In Assam, in only five cases, the

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**Guidelines by the High Court of Kerala on the grant of ex parte orders**

Having examined the submissions and provisions of the PWDVA, the court provided following guidelines on the above issues:

1. Notice under Section 12 of the Act shall be served in Form VII and in accordance with Section 13 and Rule 12.
2. The notice to be served on the respondent shall be accompanied by a copy of application filed under Sections 12 and 23, if any.
3. Although the Magistrate can pass an interim order under Section 23(1) ex-parte, such order could be passed only after service of notice as provided under Rule 12(3) of the Rules. An ex-parte ad interim order can, however, be passed without notice, as provided under Section 23(2) of the Act.
4. Where an ex-parte ad interim order is passed, a final interim order under Section 23(1) is to be passed with or without modification of the ad interim order, after granting an opportunity to the respondent to object the claim and on hearing both the parties.
5. If on service of notice, the respondent fails to appear, Magistrate is to pass a final ex-parte interim order under Section 23(1) with or without modification of the ad interim order.
6. Magistrates shall bestow care and caution in granting ad interim ex-parte order under Section 23(2). Such relief is to be granted only if urgent orders are warranted on the facts and circumstances of the case and delay would defeat the purpose or where an interim orders is absolutely necessary either to protect the aggrieved person or to prevent any domestic violence or to preserve the then existing position.
court granted interim relief. Amongst these, three were orders of maintenance, one was a protection order and one was an order restraining the respondent from dispossessing the AP from the shared household. A possible reason for not granting interim relief could be that the courts are passing final orders either before or within the time period stipulated in the Act. However, since most of the orders do not provide us with the date of filing of the application, it cannot be concluded with certainty.

<table>
<thead>
<tr>
<th>Promising practice - Order from Maharashtra</th>
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</thead>
<tbody>
<tr>
<td>In two instances in Maharashtra, the respondents were ordered to execute a bond with sureties for the prevention of commission of domestic violence as an interim relief.</td>
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Therefore, while granting interim relief, the courts are primarily looking at two things, namely:

- Whether the parties have lived together or are living together, i.e. whether the domestic relationship in the shared household is established?

- Whether a prima facie finding of domestic violence can be arrived at?

Within Delhi, the DIR submitted by the PO is held to be sufficient to arrive at a prima facie finding of the domestic violence. This could also explain the higher number of interim orders in Delhi when compared with the other states.

Maintenance orders remain the most commonly granted relief at the final stage. One of the reasons is that maintenance is also the relief most commonly sought by the AP. In *Dilip Bhattacharjee @ Raghu Bhattacharjee, Son of Late Naresh Bhattacharjee v. The State of Bihar and Ors*,90 the Bihar High Court examined Section 23 of the Act and reached the conclusion that the power to grant interim orders has been provided to ensure protection from domestic violence.

<table>
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<tr>
<th>Dilip Bhattacharjee @ Raghu Bhattacharjee, Son of Late Naresh Bhattacharjee v. The State of Bihar and Ors, CrWJC No. 664 of 2008</th>
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<td>On a perusal of the facts of the case and the order passed by the trial court, the High Court observed that the lower court not only assumed jurisdiction and treated the matter as a maintenance case but also granted maintenance on a retrospective basis. In support of the trial court order, it was contended that “once a Court has power to entertain a complaint and law envisages interim orders</td>
</tr>
</tbody>
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90 Cr.WJC No. 664 of 2008.
It is also worthwhile to note the reluctance to issue interim protection orders. The most common reason for denying protection order is that, the parties are already living separately, i.e. the AP is living at her matrimonial home and the respondent is living elsewhere, and hence, there is no violence at that time. Consequently, there is no need for a protection order to stop the violence. This rationale is also used for denying several other reliefs to the women.

2.4.3 Final Reliefs and the Rationale

The trend noticed in the last three years of granting maintenance orders has continued. As discussed previously, the familiarity of the courts with Section 125 CrPC has resulted in such orders, and the same principles are being applied in granting the maintenance orders.

In more than half of the orders of all the states, the court has granted maintenance orders.91 As has been explained previously, the amount of maintenance has been an issue for all the women approaching the courts.

Rationale for arriving at the amount of maintenance

In most cases where the income of the parties is in dispute, the courts arrive at the amount of maintenance by taking recourse to the Minimum Wages Act, 1948 and deciding the minimum wages of the respondent. Interestingly, the amount decided after looking at the Minimum Wages Act, 1848 varies with each judge. After deciding upon the salary of the respondent, the said salary is divided into as many parts as the total number of dependents of the respondent. The AP is then awarded her share of salary. Although it is an innovative way of deciding the dispute on the amount of maintenance, the amount decided upon is inadequate. It appears that the courts are leaving behind the “standard of living” test to decide maintenance and are taking recourse of new measures.

An interesting finding this year was the increase in the number of compensation orders granted by the courts in Delhi (5.6 percent) and Maharashtra (8.1 percent). However, in the orders, there is no mention of the reason for granting compensation or of the rationale used to arrive at the amount of compensation. At this time, existing legal principles on compensation may provide

91 In Delhi 61.4 percent, and in Maharashtra 53.1 percent of the orders provide for maintenance.
guidance to the judges in granting compensation orders. In both Delhi and Maharashtra, the compensation orders are being granted in small clusters, at the discretion of certain individual judges, rather than in any systematic manner. It appears that some of the Magistrates are of the opinion that the trauma caused to the AP due to domestic violence is compensation worthy.

Promising practice from Delhi

In 4.3 percent of the orders examined, the courts have granted litigation expenses to the AP as part of the monetary relief, despite the specific mention of “litigation expenses” under Section 20 of the PWDVA. This is a positive development but again it is a matter of practice of individual judges.

2.4.4 Dispossession of the Woman from the Shared Household v. Right to Reside

The right to reside has been described as the heart and soul of the law. Often, in India, domestic violence results in the dispossession of a woman from the shared household, forcing her into dependence on her natal family, which may or may not support her. Most women continue to live in violent relationships out of a fear of dispossession. In this context, LCWRI undertook an analysis of allegation of dispossession of a woman from the shared household, and the consequential relief that the courts have granted, in order to emphasise the significance of the right to reside and residence orders. However, the findings, which were the same across states, were surprising if not alarming.

• In the states where dispossession is alleged, maintenance appears to be the most commonly granted relief to the AP. In Delhi, in 29.6 percent of all the orders examined, the AP has alleged dispossession in one form or another. A unique aspect of Delhi is that dispossession has not only been through physically throwing her out or abandoning her but also by refusing to pay the rent and bills for utilities, which resulted in the landlord throwing out the AP for non-payment of rent. In other cases, the AP was sent to her relatives for a visit, and in the meanwhile, the respondent would pack up his bags, lock the house, and inform the landlord that he was leaving. On her return, the AP would be asked by the landlord to leave. Among these cases, in only 34.8 percent of the cases where dispossession was alleged, a right of residence was granted to the AP. A good trend is that some judges have passed orders restoring the women into the shared household. In 20.3 percent of such cases, rent for an alternate accommodation was granted. In 46.4 percent of these cases, the courts have surprisingly granted maintenance. Only in five cases has the court denied all reliefs.

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92 Section 17, PWDVA, 2005.
• In 30.3 percent of all the orders examined in Maharashtra, there was an allegation of dispossession. The language used to describe dispossession in the orders included “she was forced to move out”, “the respondent threw her out”, “the respondent did not let her enter the house” etc. Similar to the situation in Delhi, in 47 percent of cases where there was any allegation of desertion, maintenance was granted. In only 9.7 percent of the cases where desertion was alleged, residence order under Section 19 of the Act was passed. And, in a mere 1.6 percent cases, the court provided rent for alternate accommodation.

• Amongst all the orders analysed in Himachal Pradesh, dispossession was alleged in about 14.4 percent of them. And in 36.1 percent of the cases where dispossession was alleged, the court granted maintenance. While in 13.8 percent of such cases, residence order was passed, in only 22.2 percent of such orders, the court has granted rent for alternate accommodation.

• It is interesting to note that in all the cases of allegation of dispossession, maintenance has been more easily granted than a residence order. Perhaps, the familiarity of the judges with the concept of maintenance while dealing with cases under Section 125 CrPC93 has had an impact on all of these cases. But then again in many of these cases, the need of the hour is the restoration of the AP into the shared household if she has already been thrown out or any other form of residence order provided in Section 19 of the Act.

2.4.5 Right to Reside and Impact of Batra v. Batra94

The right to reside guaranteed under Sections 17 and 19 of the PWDVA constitutes one of the most significant features of the law. The Supreme Court, in Batra v. Batra,95 discussed this provision and reduced the scope of this right by holding that the shared household would mean a house owned or tenanted by the husband, or which is the joint family property in which the husband has a share. Hence, the right of residence of the wife would not extend to a house which is owned by the in-laws, irrespective of whether it is her matrimonial home. The court also clarified that the claim for alternate accommodation can be made only against the husband. This judgment has affected the right of residence of married women and of widows. LCWRI has been tracking the impact of this judgment on the rights of women in the lower courts since the judgment to assess its impact.

The reliance on the Supreme Court judgment has increased this year in Delhi and Maharashtra. Last year, there was an almost equal division of the orders relying on the judgment, and the orders distinguishing facts of the case at hand from that of the judgment. However, during this year, in Delhi, the judgment was cited in 12 instances and in 10 of these, the courts

93 Section 125, CrPC, 1973.
95 Ibid.
have relied upon the *Batra v. Batra* judgment and refused reliefs. Similarly, in Maharashtra, the courts have relied upon the *Batra v. Batra* judgment in 12 cases and distinguished facts in only three of them. In Andhra Pradesh, in all the eight cases where the *Batra v. Batra* judgment was referred to by the courts, reliance was placed upon the judgment and the right of residence was denied.

A similar trend of denying reliefs based upon the *Batra v. Batra* judgment can be seen in other states as well. In Andhra Pradesh, in all the eight cases where the Batra judgment was referred, reliance was placed upon the judgment and right of residence was denied. In Himachal Pradesh, in three cases, the judgment was relied upon and in two instances, the facts were distinguished.

In all the instances where the courts relied upon the judgment, three specific reliefs were denied to the women.

- First, the AP was denied a right to reside in the shared household. A “shared household” was understood to mean a house belonging to or taken on rent by the husband, or a house which belongs to the joint family of which husband is a member. Hence, when the mother or father-in-law owned the house, it was held that the AP has no right in the household. In most of the cases, the AP was living in the shared household and was dispossessed. There were one or two isolated cases, where the AP claimed a right of residence in the house of her in-laws, when she had not resided there. The courts rightly stated that she could claim the right of residence only where she has lived with her husband.

- Second, rent for alternate accommodation was denied. The rationale denying relief was that an alternate accommodation could be claimed only against the husband.

- Third, in an erroneous interpretation of the judgment, the courts also removed the mother-in-law from the array of respondents. The rationale was that no case lay against the mother-in-law of the AP. This was done without going into the merits of the case or enquiring as to whether there was any other claim against the mother-in-law.

Last year, it was observed that the courts had distinguished the facts of the case from the judgment. Many residence orders were granted through this process. However, there are very few such cases this year and there is no cogent reason for the sudden shift in the attitudes of the courts. Perhaps the only way to explain this would be if the judges have changed from last year. However, there is no definitive method of verifying this theory.

2.4.6 Interpretation of the Law by the Courts – Some Positive Trends

It has been discussed previously that maintenance has been the most commonly granted relief by the courts. A common rationale provided by the courts for granting maintenance is
that it is the moral and social responsibility of the husband to maintain his wife. Wherever personal laws are discussed, the judge would quote the particular law and conclude that the husband is liable to maintain the wife and children. Perhaps this could be one of the reasons for the high number of maintenance orders.

“The perusal of the various provisions of the Act indicates that this legislation is beneficial and benevolent in nature; therefore, its provisions ought to be interpreted with kindness and compassion. This Act can also be said to be curative and declaratory in nature and does not in any manner, tend to affect or take away the substantive rights of the respondent. The Court has further held that there is barely one section, i.e. Section 31 which provides penalty for breach of protection order by the respondent. This section cannot by any stretch of imagination be termed as penal in nature. Instead, this provision appears to have been culled out to compel the respondent to respect and obey the court orders.”96

This statement in Delhi courts sums up the attitude of many of the judges towards the law.

A word has to be mentioned regarding the way the law has been cited by the judges as being beneficial to women. Although there are very few orders, which specifically state the beneficial nature of the legislation, there are cases where the judges have incorrectly held that the law is applicable to domestic help as well. Perhaps some caution is advisable wherever the courts are referring to the statement of objects and reasons without reading through the provisions.

2.5 Procedure followed by the courts vis-a-vis the stakeholders under the law

In this section, the role played by these two key stakeholders in the judicial process has been examined. Since the orders are not very detailed or exhaustive on the roles played by the different stakeholders, it is difficult to conclusively comment on their performance. At most, it can indicate the way forward in terms of future studies. In general, the role of the PO has been a combination of different duties including service of notice, ensuring compliance of court orders, submitting a DIR, and compiling reports.

2.5.1 Role of the PO during trial

The Magistrates in all the states are using the terms DIR and Home Visit Reports interchangeably. However, the purpose of these two reports is different under the law. While the DIR is a record

96 Criminal Appeal No. 11 of 2009.
of the violence and can be used as evidence in any of the future cases, Home Visit Report is a court directed report for a specific purpose to investigate certain issues to aid the court. As a consequence of this confusion, there are instances where the PO is expected to make an investigation before filling the DIR and the DIR appears to have replaced the Home Visit Report.

Report of the PO – An excerpt from an order in Maharashtra

Therefore, this clearly shows that the PO without going to the facts of the case and without making any inquiry with the AP submitted the DIR. The AP also admitted during cross-examination that neither any person visited her nor she visited anyone. This clearly shows that the PO submitted DIR without making any inquiry with the AP and therefore, DIR is not reliable and helpful to the AP to establish her cause. – Criminal Misc App No. 129/2009

- In Delhi, which has appointed independent POs, in 30.5 percent of all the orders, there was a mention of the PO and the role she has played during the course of the proceedings. In almost all the cases, there is some kind of report that is being asked from the PO. Some cases do mention that the DIR has been filed. In most cases, at least in Delhi, a report from the PO involves a visit to the home or any other inquiry performed on the instructions of the Magistrate. Interestingly, in one case, the report of the PO was discarded because the AP disputed it. The Magistrate then ordered the Station House Officer (SHO) to make an inquiry and it was found upon such an inquiry that the concerns expressed by the AP were valid. The Magistrate then gave a warning to the PO and asked them to be more careful in the future. In 14.5 percent of the total orders examined, the report from the PO has been necessarily relied upon by the Magistrate. Sometimes the report is described as a home visit report, but in most places there is no clarity on whether they are DIRs or home visit reports.

- For the first time in three cases, the PO has also filed a site plan and the areas where the AP was residing had been marked and highlighted. However, in all the other states, the report of the PO is mentioned in a cursory manner, more as an afterthought, rather than a reliable document.

- The Andhra Pradesh High Court has also issued a circular that all the PWDVA cases would be tried on a fixed day in a week or fortnight so as to enable POs to attend courts and assist the Magistrates. In this context, one would expect the role of the PO to be substantial and visible. Nevertheless in Andhra Pradesh also, the POs rarely feature in the

For details, see chapter 3 at 32.
Supra note 9.
court orders, i.e., in only 8.6 percent of the total orders. A similar situation is found in the other states where the role of the PO combines different duties, but there is no reliance placed upon the PO by the courts.

2.5.2 Role of SP during trial

It is very interesting to note that there has been no mention of the SP in all the orders that have been examined, except for in Himachal Pradesh. In four orders, a reference to the SPs is made. In all the four orders, the Magistrate had referred both the parties to the SP for a session of individual and joint counselling.

The absence of any role of the SP in the orders reinforces the reports LCWRI has received in the past years. As detailed in the previous chapter, it has been reported by the NGO representatives that the SP’s role has been restricted to the pre-litigation stage in almost all the states.

3. Breach of Orders

This section is going to examine:
- Whether breach of order is being reported?
- How are the courts trying the breach proceedings?
- Are there any trends with respect to proceedings under breach?

Under the PWDVA, breach of a protection order is a cognizable and non-bailable offence and is punishable with imprisonment of either description for a term, which may extend to one year or with fine, which may extend to Rs. 20,000 or both. Although the number of cases where the Magistrates have tried breach is very low, there is an attempt here to gather some preliminary trends on the breach of protection orders. Assam, Chhattisgarh and Jharkhand have been excluded in this part of the study because breach has not been reported in any of their orders examined for this year.

3.1 Whether breach of orders is being reported?

In all the states, breach has been reported in very few cases. In Delhi, the AP in three instances has preferred an application under Section 31 of the Act. In Maharashtra, Himachal Pradesh and Andhra Pradesh, there has been an application for breach in only eight, three and two cases respectively. Therefore, given the total number of orders analysed, the number of reported breach cases is extremely low.

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99 For details, see chapter 3 at 35, 36.
100 Section 32, PWDVA, 2005.
101 Section 31, PWDVA, 2005.
3.2 How are the courts trying breach proceedings?

In all the states, the courts are not confining breach proceedings to protection orders but taking cognisance of breach of all the orders. Although one cannot be sure whether such an approach would hold ground if the respondent prefers an appeal on the decision of the breach proceedings, it has resulted in respondents executing orders especially maintenance orders. Since proceedings under Section 125 CrPC\textsuperscript{102} are very lengthy and take up a lot of time and energy, proceedings under breach might be a much quicker and easier method to ensure execution of the order of the Magistrate.

- In Delhi, in only one case did the PO raise the issue of non-compliance of the order and thereafter, the court asked the SHO to verify compliance of the order. The AP was granted a right of protection to her dowry articles. In the second case it was the AP herself who had filed a case under breach of protection order. Again it was not a breach of protection order but that of a residence order. The Metropolitan Magistrate called for the SHO’s report. The SHO reported that the respondent had intentionally shifted to some undisclosed location. Children also could not be located. The Metropolitan Magistrate concluded that the same amounts to breach of protection order, and directed the SHO to register an FIR against the respondent and investigate the same. The third instance was that of an appeal filed by the respondent challenging the order where he was directed to pay a sum of Rs. 3000/- as interim maintenance, and the AP was allowed to enter and reside in the shared household. The AP had filed an application under Section 31 for non-compliance, which was dismissed but the respondent was taken into custody in proceedings under execution of the order for non-payment of maintenance. The appeal filed by the respondent was dismissed.

- Interestingly, in Maharashtra also, there is only one case where the breach was that of a protection order. In two cases, the alleged breach has been of custody orders, while in the other three of residence orders. In case of the breach of protection order, the respondent was convicted for the offence punishable under Section 31(1) of the PWDVA, and directed to pay either a fine of Rs. 10,000/- or undergo simple imprisonment for 15 days.

- In Himachal Pradesh, there were three instances of applications filed under Section 31 and all the three were breach of maintenance orders. One of the cases was compromised and one was dismissed as the respondent started paying the maintenance after the application under Section 31 was filed.

- In Andhra Pradesh, in two cases, the breach complained of was a violation of the maintenance order. In one of these cases, the respondent gave an undertaking that he would pay the arrears of maintenance and hence, he was freed from judicial custody.

\textsuperscript{102} Section 125, CrPC, 1973.
and in the other case the respondent was directed to pay arrears of maintenance. Interestingly in the third case, alleged breach was of a protection order and the AP first reported the breach to the Police and then a written complaint was given to the PO, who in turn forwarded the same to the Magistrate. Interestingly in this case, the court held that the trial court has to frame charges and conduct an enquiry as per Section 31(2&3), the PWDVA and without framing charges and conducting trial, the person who breached the order cannot be punished. The court further correctly went on to state, “There is no provision in the DV Act empowering the Magistrate to direct the PO to make enquiries and direct him to submit fact finding report and punish the respondent for violation of the protection orders.”

- The courts in all states are taking cognisance of breach of any order under Section 31, and not restricting themselves to the breach of protection order.

Interestingly, whenever there is a breach of protection order, the courts appear to be framing charges and trying the case under the procedure laid down in CrPC for a cognizable and non-bailable offence. However, when the breach complained of is of any other order, the courts adopt a different approach, despite taking cognisance of the same. Mostly, the very fact that the AP has moved the court for breach acts as a threat whereby the respondent would much rather enforce the orders than explain to the courts the reasons for non-implementation.

It is also interesting to note that in all the states, the courts are taking cognisance of the breach of maintenance order and ordering the respondent to pay arrears of maintenance instead of framing of charges under breach of order.

4. Appeals

This section will examine:
- Who prefers the appeals?
- How are appeals preferred and decided upon?

Appeals under the PWDVA should be preferred in the Court of Session within 30 days from the date on which the order is served on either party. Appeals have been examined as a separate category of orders because by their very nature, they are different from the order of the Magistrate’s Court. Amongst all the orders analysed, 9.6 percent were appellate court orders, which include appeals and revisions.

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104 Section 29, PWDVA, 2005.
4.1 Who prefers the appeal?

- In all the states, except for Assam, the appeals preferred by the respondent are higher than the appeals from the AP. In Assam, they are almost equal in number.

- In Delhi about 27.5 percent of the orders examined are appeals. Amongst these, the appeals preferred by the respondents are higher at 71.8 percent than the appeals preferred by the AP.

- In Maharashtra, very few of the orders examined were appeals, i.e. 6.8 percent. Among these, the respondents preferred more than three-fourths of the appeals.

- In Andhra Pradesh, only 15.1 percent of the cases examined were appeals. Among these, 77.2 percent were appeals by the respondents. The unique aspect in the state of Andhra Pradesh is that the appeals against final orders are higher in number than the appeals from interim orders.

4.2 How are appeals preferred and decided upon?

- The difference between the states arises when we analyse the reasons for preferring the appeal. In Delhi and Maharashtra, the appeals from interim orders are higher than the appeals from final orders. In Andhra Pradesh, Himachal Pradesh and Assam, the appeals from final orders are higher than the appeals from interim orders. This is also a reflection of the number of interim orders being passed in each state. The number of interim orders passed in Delhi and Maharashtra is substantially higher than that in the other three states. A necessary corollary of the same is that appeals from interim orders are also much higher in these states.

- Similar to the finding in the last year, in Delhi and Maharashtra, higher appeals are preferred from the interim orders. An analysis of appeals preferred by the respondents indicates that more than half of them are challenging an order of maintenance or payment of rent for alternate accommodation. Interestingly, these appeals are either dismissed or the respondent is ordered to deposit/pay the arrears before looking into the merits of the appeal. Analysis of appeals preferred by the AP shows that most of them are challenging the order of dismissal of their application. The Appellate Court has been remanding these cases back to the trial court only when there is a procedural infirmity in the order.

- In Andhra Pradesh and Himachal Pradesh, the appeals from final orders are much higher than the appeals from interim orders. About 54.4 percent of all the orders are appeals from final order in Andhra Pradesh and only 36.3 percent of the orders appeals from interim
orders. In Himachal Pradesh, the higher number of appeals is from final orders, i.e. around 80.9 percent and only four are from interim order.

- A promising practice, which deserves special mention, is that the courts are directing the respondents to pay the arrears of maintenance amount before entertaining the appeals on merits. Some of the testimonies of women reported in the M&E last year indicated that the reliefs the women were able to obtain were defeated when the respondent appealed against the decision, and stopped paying maintenance. This new practice of the Appellate Courts should discourage many respondents from preferring an appeal merely as a tactic to prevent implementation of the order of the lower court. Perhaps we can see the results of such practices in the coming years.

Another important point that needs to be noted is the number of women approaching the Appellate Courts for the enhancement of maintenance amount granted by the lower courts is especially high in Maharashtra. Perhaps this indicates that women are unhappy about the maintenance that is being granted to them.

5. Grounds for Denying Relief

“The intention behind the legislature is to protect a woman from domestic violence. It does not intend to provide a weapon in the hand of the woman through which she can make her husband obey her commands or to act in servile manner.” – Statement by a Court in Himachal Pradesh

Since the enactment of the law, one of the strongest criticisms of the law is regarding the “women misusing the law.” In order to understand the meaning of misuse, LCWRI has been tracking statements by the courts regarding misuse of the law and the courts’ perception of misuse.

In all the states, it appears that the courts are stating that the women are misusing the law in three situations:

- When courts come to the conclusion, that the dispute between the parties is relating to property and the AP has filed the case to restrain the respondents from alienating or acquiring a right in the property.

- The second situation is when the AP has not been able to establish domestic violence.

- Thirdly, where the AP has filed the case against all the relatives of the respondent, when the latter have not lived in the shared household with the AP.

105 Supra note 9.
C. OVERVIEW OF THE KEY FINDINGS

- There is reliance on the DIR and the report of the PO, particularly in Delhi.

- There is utilisation of the office of the PO in breach proceedings.

- The courts are taking a purposive approach while interpreting the law.

- There is a greater recognition of sexual abuse by the court.

- The number of compromises under the PWDVA has increased in the states, except in Delhi. However, it must be underscored that the increase in compromises is not reflective of a nationwide trend but only of those states that formed a part of order analysis this year.

- Compensation orders under the PWDVA have increased.

- In the states of Delhi and Maharashtra, there has been an increase in the number of interim and ex- parte orders from the last year.

- Courts are also taking cognisance of the breach of all orders, and are not restricting themselves to the breach of protection orders.

Grounds for denying the relief

- The case was a misuse by the AP in filing claim about a said property and trying it unsuccessfully to get the opposite party under the ambit of the act and abusing the process of law. – Order from Himachal Pradesh

- The court remarked on the fact that she had not provided any substantial evidence regarding the domestic violence she was subjected to. The court concluded that she seems to have filed a complaint simply to take advantage of the said law. The court also remarked that the applicant had not come before the court with clean hands. – Maharashtra, MA No. 408/2009

- No doubt there may be cases where the provisions of the Act are subjected to abuse by roping in all the members of the family who may have no concern with the matrimonial disputes between the husband and wife. It shall be open to the trial court in such cases to direct the deletion of such parties. This however, has to be done after examining the allegations and the counter allegations on merits. – Delhi Criminal Revision No. 356/10
Since its enactment in 2005, a rich body of jurisprudence has developed around the PWDVA. As the number of cases filed under the Act before the trial courts have increased, the issues of law agitated before the High Courts across the country have not only seen a corresponding increase but their variety has further shaped and strengthened the law.

Departing from the approach undertaken in the previous M&E Reports, this year, the judgments have been analysed under the following issue-based categories:

- Whether the PWDVA is a substantive law or is only remedial in nature
- Women as Respondents under the Act
- Right to reside and interpretation of “shared household” in view of Batra v. Batra
- Reliefs under the Act and development of the law
- Retrospective operation of the PWDVA
- Procedures, mechanisms and enforcement of the Act
- Grounds on which relief is being denied

The above categories have been further sub-divided into specific issues that have shaped and influenced the law. The category “challenge to constitutionality of the law” which formed part of the analyses in previous years has not been included as the issue was not argued as the primary contention in any of the cases before the higher judiciary. In so far as the constitutionality of specific provisions of the Act was challenged, they have been addressed as part of the discussion under the above-mentioned three categories. Perhaps the reason for absence of any judgment on the issue is that it has been conclusively decided by the High Courts in Dennison Paurraj and Ors v. Union of India & Ors, and Aruna Parmod Shah v. UOI.

107 Writ Petition (Crl.) 425/2008.
Between September 2009 and August 2010, a total of 40 judgments have been passed by the various High Courts across the country. During this period, the Supreme Court has passed no judgment relating to the Act. Out of the total number of reported judgments, 23 judgments had been passed till August 2010 with a total of 17 judgments from September 2009 to December 2009. The latter number is significant given that in the Third M&E Report, only 19 judgments between November 2008 and August 2009 were reported.

In the interest of brevity, selected judgments under each of the above categories are being presented in this chapter. Although each judgment passed by the High Courts has aided in clarifying, expanding and interpreting provisions of the Act, the judgments selected for examination are those which touch upon issues that have been frequently raised before the various courts or provide clarity on fundamental provisions of the law.

A. WHETHER THE PWDVA IS A SUBSTANTIVE LAW OR IS IT ONLY REMEDIAL IN NATURE

The Statement of Objects & Reasons of the PWDVA states that keeping in view the rights guaranteed under Articles 14, 15 and 21 of the Constitution of India, the PWDVA has been enacted to provide for a remedy under civil law. It also acknowledges that the existing civil law did not contain any remedy against domestic violence. From this reading, one reaches the conclusion that the Act was intended to be a substantive law providing for remedies where none existed before. However, given that reliefs such as maintenance, custody and compensation under the Act are already available under the existing civil and family laws with a well-developed jurisprudence, the issue that arises is whether the PWDVA is truly a substantive law or is only remedial in nature.

By and large, the judgments recognise the rights guaranteed and reliefs provided under the Act. Substantive legal issues relating to coverage of the law, and the scope of the right to reside guaranteed under the Act have in fact, been the subject of detailed scrutiny by the courts. This is likely to get further clarified in the years to come. A review of the judgments indicates an emerging pattern where the courts are distinguishing those cases where this approach of applying the Act as a substantive law is to be departed from.

A judgment in point is *Sanjay Bhardwaj and Ors. v. The State and Anr.*, where the husband filed a petition before the Delhi High Court challenging the order of maintenance granted by the trial court. It was argued that the husband had lost his employment and source of income, and therefore, the Appellate Court was wrong in upholding the order of maintenance on the ground that since the husband had been earning well earlier, he was liable to maintain the wife.

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The Court clearly observed that the PWDVA does not create any additional right in favour of the wife regarding maintenance. It only enables the Magistrate to pass a maintenance order as per the rights available under existing laws. Referring to the right of maintenance under Section 125 CrPC and other personal laws, the court pointed out that no law provides that a husband has to maintain a wife, living separately from him, irrespective of the fact whether he earns or not. Emphasis was also given to the fact that the parties in this case were both equally qualified and were in the past gainfully employed. Under these circumstances, the court held that awarding maintenance to the wife without any prima facie proof of his employment is contrary to the provisions of the law.

In a second judgment in *Rachana Kathuria v. Ramesh Kathuria*, the issue before the Delhi High Court was whether an application under the PWDVA could be filed seeking enhancement of the maintenance awarded under Section 125 CrPC. The trial court in this case, however, dismissed the petitioner's application on the ground that the remedy lies with the concerned court, which can modify the existing maintenance order.

Upholding the dismissal of the application under the PWDVA, the court held that under the Act, a Magistrate has the power to grant maintenance and monetary reliefs on an interim basis in a fast track manner only in those cases where the woman has not exercised her right of maintenance either to the Civil Court or under Section 125 CrPC. If the woman has already moved the court and her right to maintenance has been adjudicated upon by a competent court, she will have to move the same court for any enhancement of maintenance already granted.

The above judgments clearly seem to indicate that at least with regard to maintenance, the courts are interpreting Section 20(1)(d) of the PWDVA as providing an additional remedy in law.

Under Section 20(1)(d) of the Act, it is specifically provided that the Magistrate may grant maintenance to the AP, including an order under or in addition to an order of maintenance under Section 125 CrPC or any other law. Hence, Section 20(1)(d) of the Act creates a specific right to maintenance, over and above that which is provided under the existing legal provisions. This fact was clearly upheld by the judgment of Chhattisgarh High Court in *Rajesh Kurre v. Safurbai & Ors*, wherein the court stated that a maintenance order is an independent remedy under the PWDVA, and is in addition to any other remedy available to the AP.

It may be possible to identify certain preliminary trends regarding the substantive use of the PWDVA to uphold rights and provide reliefs to women.

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111 This judgment has been examined in detail in the Third M&E Report.
The Act creates a substantive right of protection from domestic violence. Hence, every woman who is covered under the Act would be entitled to a protection order. Where domestic violence or threat of the same is proved, a woman may be able to claim this right irrespective of whether she is, at the time of seeking relief, residing in the shared household or has been forced to live separately.

Where the woman is married, reliefs of maintenance, custody and compensation are granted, unless a remedy under other existing laws has already been exercised.

Where the aggrieved woman is divorced, she may be best advised to seek reliefs under personal laws, particularly where the issue is that of maintenance, custody and residence. Divorced women may, however, be entitled to a protection order and compensation depending upon the facts of the case.

A married woman living in a nuclear family arrangement in the shared household is entitled to residence orders under Section 19 read with Section 17 of the Act. The judgment of the Hon’ble Supreme Court in *Batra v. Batra*\(^\text{112}\) has no applicability in such cases.

If a woman is living in the shared household in a joint family arrangement, then the right to reside guaranteed under the PWDVA would be determined by her personal law. This issue has been detailed in the section below.

**B. WOMEN AS RESPONDENTS UNDER THE ACT**

In examining this issue, which has been a source of debate since the first year of implementation, it becomes necessary to go back to the nature and scope of the Act. The PWDVA, for the first time, goes beyond cruelty in matrimonial relationships and provides for reliefs against violence occurring in the natal family as well as protects women who are in “relationships in the nature of marriage”. It does so by providing definitions of “domestic relationship”, “shared household” and “aggrieved person” which cover a broad spectrum of relationships.

Similarly, the PWDVA also extends its coverage to various forms of living arrangements or patterns. This is in recognition of the fact that while in nuclear families, an individual perpetrator of violence can be identified, in joint families\(^\text{113}\), more than one member is often the perpetrator or at the very least, is complicit in perpetrating domestic violence. In this context, the issue of whether female relatives of the husband or male partner can be respondents under the Act must be examined.

\(^{112}\) Supra note 3.

\(^{113}\) Section 2(f) of the PWDVA, 2005 specifically defines “domestic relationship” to include family members living together as a joint family.
From an examination of the judgments delivered this year, it appears that this reality has been well recognised by the higher judiciary while interpreting the proviso to Section 2(q) of the PWDVA. The courts have also used innovative grounds or in some cases, reiterated reasoning already provided by other High Courts to give a broad interpretation of “relative of husband or male partner”.

1. Female Relatives can be Respondents

1.1 Proviso as an exception

In Jaydipsinh Prabhatsinh Jhala and Ors. v. State of Gujarat and Ors.\(^{114}\), the Gujarat High Court took note of several provisions under the Act, including the Statement of Objects and Reasons and held that female relatives can be made respondents under proviso to Section 2(q) of the Act.

In this case, two petitions filed against the proceedings in the lower courts was combined and heard together, in view of the fact that both related to the question of whether women can be respondents under the proviso to Section 2(q) of the PWDVA. The application under the PWDVA, in both cases, was filed by the daughter-in-law against the husband and other in-laws, including against female relatives of the husband.

In its judgment, the court also examined the law relating to interpretation of a ‘proviso’ and concluded that it was well settled that the proviso ordinarily would provide for an exception to the main clause in a statutory provision. The court then referred to the proviso under Section 2(q) and clarified that in an ordinary case, an aggrieved woman can file an application against any adult male with whom she has a domestic relationship but where she is a wife or female in a relationship in the nature of marriage, she can also file against a female relative of her husband or male partner.

The reasoning provided by Madhya Pradesh High Court in Ajay Kant v. Alka Sharma\(^{115}\) was countered by emphasising that the word ‘complaint’ in the proviso did not only refer to a criminal complaint filed on the breach of a protection order under Section 31. It was observed that unless a protection order is passed against the female relative, the question of making her a respondent only for the purposes of a complaint under Section 31 would not arise.

Reference was also made to the proviso to Section 19(1), which has been invoked by other High Courts in the past to uphold the same. The court in this case, went further in specifically referring to the Statement of Objects and Reasons of the Act which clearly states *inter alia* that whereas the Bill enables the wife or the female living in a relationship in the nature of marriage to file a complaint under the proposed enactment against any relative of the husband or the

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\(^{114}\) (2010) 51 GLR 635.

\(^{115}\) Supra note 89.
male partner, it does not enable any female relative of the husband or the male partner to file a complaint against the wife or the female partner. The court held this to be an unequivocal statement of the legislative intent that female relatives of the husband or male partner are covered under proviso to Section 2(q) of the Act.

1.2 Emphasis on “any relative”

This question was again raised in a petition filed under Section 482 CrPC before the Madras High Court in *S. Meenavathi v. Senthumarai Selvi, Minor Ramasivam and Minor Harinarayani*[^16^], in which it was contended by the mother-in-law that the trial court had admitted an application filed by her daughter-in-law against herself and her son. The trial court had further passed an interim order upholding the aggrieved woman’s right of residence in the shared household. Aggrieved by this order, this petition was filed contending that proviso to Section 2(q) does not cover female relatives of the husband.

In this case, the court referred to the proviso to Section 2(q) and the intent of the legislature. The court placed reliance on its own judgment wherein it was held that since the Statement of Objects and Reasons of the PWDVA explains that an aggrieved woman can file against any relative of her husband or male partner and since the word “any” applies to all categories or classes of persons, the proviso covers the adult female persons of the family.

The judgment of a Division bench of the Madras High Court in *R. Nivendran and Ors. v. Nivashini Mohan @ M. Nivashini*[^17^] has settled the issue of whether female relatives of the husband/male partner can be made respondents for courts within its jurisdiction.

In this case, a petition was filed seeking to quash the proceedings initiated by the aggrieved wife against the husband and other relatives under the PWDVA. The court used the same argument as provided by the courts in the judgments discussed above. It referred to the intention of legislature as evidenced from the use of the expression “any relative” in the Statement of Objects and Reasons. The Court also observed that while the main provision under Section 2(q) of the Act uses the word male but in referring to a relative, the word “male” is not used. Drawing from this, it concluded that if it is the intention of the legislature that “relative” mentioned in the proviso can only be a “male” relative, it would have mentioned so, but it is absent. Reference was also made to the provisions under the Act, including proviso to Section 19(1), which protects female respondents from being dispossessed from the shared household.

The court went on to examine the meaning of “relative” under Section 498 A IPC and for this purpose, reference is made to the Supreme Court’s judgment in *U. Suvetha v. State by Inspector of Police and Anr.*[^18^]. The Supreme Court had held that in the absence of any statutory

[^17^]: Supra note 1.
definition, the term "relative" must be assigned a meaning, as it is commonly understood. Therefore, the court held that "respondent" under Section 2(q) of the Act includes a female relative of the husband or the male partner.

This is an important judgment in view of the approach that the court adopts to the issue, its sensitivity and understanding of the intent of the law. Being a Division Bench judgment, which considered the issue on a direction from the Chief Justice of the High Court, this judgment not only settles the issue with regard to all courts within the jurisdiction of the Madras High Court but would also receive serious consideration of the other High Courts before whom this issue is agitated.

2. A Comprehensive Interpretation

In Varsha Kapoor v. Union of India & Ors., not only was the interpretation of proviso to Section 2(q) an issue but also its constitutional validity.

A writ petition was filed by the mother-in-law of the AP before the Delhi High Court contending that female relatives cannot be impleaded under the Act. The facts of the case were that before the trial court, the daughter-in-law had sought reliefs under the PWDVA, alleging various forms of abuse against the husband and other relatives of the husband. The trial court admitted the application and issued notice to the parties, upon which this petition was filed.

In the writ petition, it was argued by the petitioner that the expression “a relative” in the proviso would only mean an “adult male person”, since the Preamble to the PWDVA clearly provides that the law has been enacted to provide redressal to women against domestic violence, and as such cannot be used against women. It was also contended that the proviso cannot expand or limit the scope of the main provision for which reliance was placed on the judgment of the Supreme Court in Dwarka Prasad v. Dwarka Das Saraf. In the alternate, it was further argued, if relative is interpreted to include female relatives, the same would not pass the test of reasonable classification under Articles 14 and 15 of the Constitution.

To begin with, the court noted the purpose and intent of the law. Reference was also made to the judgment of the Delhi High Court in Aruna Parmod Shah v. UOI, in which the court upheld the constitutionality of the Act and dismissed the contention that the gender-specific nature of the law was arbitrary.

The court examined the definition of an AP as well as the provisions under Sections 12, 19 and 31 of the Act, which were held to provide redress to the AP. Having read the afore-

119 Supra note 2.
120 (1976) 11 SCC 128.
121 Supra note 107.
mentioned provisions together, the court reached the conclusion that a petition can be filed against a woman in cases covered under proviso to Section 2(q). At the same time, the court acknowledged that there are gaps in the manner in which the provision has been drafted. Having noted that, however, the court clearly stated that it becomes the duty of the court to give correct interpretation to such a provision, having regard to the purpose sought to be achieved by enacting a particular legislation, which is a principle laid down by the Supreme Court.

In view of the above, the court sought to segregate the definition of “respondent” under Section 2(q) into two independent and mutually exclusive parts:

- It was held that where the AP is in a domestic relationship with the other person, such person has to be an adult male person, as per the main provision. Using this provision, any woman, irrespective of her marital status, may seek reliefs under the Act against an adult male person.

- The applicability of the proviso, however, is limited in nature as it applied only to cases where the AP is married or in a relationship in the nature of marriage. Only with regard to such a limited and specific class of persons, the definition of “respondent” has been widened to include a relative of husband or male partner. The court reasoned that it is common knowledge that family members of the husband may also join in treating the wife with cruelty, and such family members would invariably include women. Further, it was pointed out that leaving female relatives out of the scope of the PWDVA would mean that the husband or male relatives would ensure that the violence is perpetrated by the female relatives thereby frustrating the object of the law.

The court also referred to the provisions of the Act such as Sections 19, 21 and 31, from which a clear inference in this regard can be drawn.

The court dismissed the argument relating to the constitutional validity of the interpretation and observed that the wider scope of rights given to married women to claim reliefs under the Act against both male and female relatives must be understood in view of the fact that the PWDVA was enacted to provide a civil remedy in addition to the criminal provision of Section 498 A IPC.

This judgment of the Delhi High Court is a landmark for the manner in which it defined the scope of the rights of a married woman as well as for clearly upholding the constitutional validity of Section 2(q). It is hoped that the legal position upheld in this judgment would aid in developing a uniform and gender sensitive understanding of the law.
3. Female Relatives cannot be Respondents

While some degree of consensus may be emerging among several High Courts that female relatives of the husband/male partner can be made respondents, the judgment of Karnataka High Court in *Sri. Amruth Kumar, S/o Rajgopal and Smt. Anandamma, W/o Amruth Kumar v. Smt. Chithra Shetty, W/o B.A. Raghavendra & State of Karnataka*¹, on the other hand, advanced a problematic reasoning to quash proceedings against the mother-in-law.

In this case, the father-in-law and mother-in-law sought quashing of the proceedings under the PWDVA, which was initiated by their daughter-in-law against themselves and their son. The parties were referred to the Lok Adalat for settlement but on failure of this process, the Magistrate issued summons.

It was contended by the applicants that the claim for reliefs under the PWDVA could only be sustained against the husband and not the in-laws. The court examined the definition of ‘domestic relationship’ and emphasised the fact that it requires a relationship between two persons, falling under any of the categories enumerated under Section 2(d). With regard to the definition of ‘respondent’ under the Act, the court stated that the proviso is in the nature of option to the AP to file complaint against the relative of husband or male partner with whom she has a domestic relationship. The court went on to cite various provisions of the Act to opine that these refer only to the respondent and except Section 19(1)(c), none of them refer to the relative of the husband/male relative. Therefore, the court held that only in those cases where the specific provision in the Act expressly mentions that relief can be sought against both the respondent and any other person/relative (for instance, under Sections 17 and 19 of the Act), can a relative be made a respondent. The court went on to clarify that for the purposes of all other provisions of the Act, the expression ‘respondent’ is confined only to the adult male person.

On the issue of whether female relatives are also covered under the proviso, the court held that the right given to the AP to file complaint under the proviso does not include the woman relative, as otherwise it would defeat the very object of the Act.

The above interpretation of the definition of ‘respondent’ by the court is against the very language and intention of the law. In doing so, the relevance of the entire proviso to Section 2(q) is defeated.

Although the court did not dismiss the proceedings against the father-in-law, the court seems to have given an interpretation to the proviso that is inconsistent with the plain meaning of

¹ 2010 (1) KCCR 459.
the provisions of the Act. It is submitted that if it were not the intention of the legislature to make the relative of the husband or male partner equally liable under the Act, a specific proviso to this effect would not have been included in the definition of “respondent” under Section 2(q) of the Act. Further, as evidenced by the growing number of decisions by the High Courts reiterating that female relatives can be made respondents, the order quashing the proceedings against the mother-in-law seems not to have taken into account the intent of the law and various provisions of the Act which support the view to the contrary.

In Tehmina Qureshi v. Shazia Qureshi, the Madhya Pradesh High Court used the argument that since the main provision of Section 2(q) does not refer to respondent as any adult member but uses the word “male” to qualify it, the expression “a relative” in the proviso must also be considered not to include female relatives of the husband or male partner and held that an application under the PWDVA cannot be filed against a female relative of the husband.

In pronouncing this judgment, the court has clearly based its decision on a few cases such as Ajay Kant v. Smt. Alka Sharma that were decided in the initial years of implementation of the Act. Although the ground invoked by the applicants in this case continues to be used by parties, the High Court ought to have examined the issue in detail in view of the increasing number of judgments taking a contrary view.

In the final analysis, although the question of whether women can be respondents continues to draw differing conclusions from the courts, it is encouraging to note that some High Courts are providing a conclusive decision on the same.

From the analysis of orders, the discernible trend is that the female relatives of the husband are being made respondents. A perusal of the orders passed by the trial courts in Delhi and Assam, however, shows that the Magistrates in these two states have not taken note of the developments since the judgment of the Allahabad High Court in Ajay Kant v. Mrs. Alka Sharma. In Delhi, in 7.3 percent of the orders, female respondents were deleted from the array of respondents. The judgment of the Delhi High Court in Varsha Kapoor v. UOI should apply as the law henceforth, and the next year’s analysis should provide us with a different trend from Delhi.

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130 M. Cr. C. No. 3312 of 2009.
C. RIGHT TO RESIDE AND INTERPRETATION OF “SHARED HOUSEHOLD” IN VIEW OF BATRA V. BATRA

In Batra v. Batra, the issue of right to reside and the definition of the “shared household” under the PWDVA was raised before the Supreme Court. In examining the issue, the court sought to limit the scope of the right to reside and held that a wife would be entitled to claim residence only in a property that is owned by the husband or where it is a joint family property. It would not extend to a property which is owned by the in-laws, irrespective of whether it is her matrimonial home. The principles laid down by this judgment have significantly affected the rights of married women and widows. In view of the fact that Batra v. Batra is settled law on the issue, there is a need to critically examine what this means for the right to reside as envisaged under the Act. More importantly, since the judgment only considered and adjudicated upon the limited issue of the wife’s right of residence in a situation where the husband no longer resided in the matrimonial home, the broader issue of under what circumstances women can claim this right under the PWDVA remains contentious.

In the absence of any other judgment by the Apex Court examining the broader contours of this issue, it is the judgments passed by various High Courts, which are determining the scope of right to reside under the Act. An example is the judgment of the Delhi High Court in Vijay Verma v. State N.C.T. of Delhi and Anr., which although dealt with the issue of denial of the right to reside on the reasoning that it cannot be used to settle property disputes, but also defined the scope of “shared household” under the Act in a gender-sensitive manner.

In this case, the petitioner filed an application before the trial court seeking an immediate right to reside and police protection against her brother and his wife. She contended that being a permanent resident of US, when she came to India, she was not allowed to enter the premises of her parental house by the brother and his wife. On the other hand, the brother argued that the premises were owned by his father and himself, and upon the death of the latter, the share devolved upon the grandson under a will. Further it was argued that the petitioner had already received consideration for her share in the property.

In order to arrive at a conclusion, the court examined the definition of ‘domestic relationship’ under the Act and held that ‘at any point of time’ means where an AP has been continuously living in the shared household as a matter of right but for some reason the AP has to leave the house temporarily, and when she returns, she is not allowed to enjoy her right to live in the property. Irrespective of whether such a right survives in the present, a person cannot claim the property as her shared household.

125 Supra note 3.
The court went on to clarify the scope of this right by stating that where a family member leaves the house to establish his own shared household separately and establishes her own household, she cannot claim a right to reside under the PWDVA on the basis of a “domestic relationship”. If such a person has a coparcenary or inheritance right in the property, such right must be claimed through a civil suit and not under the PWDVA.

In this case, therefore, the court clearly recognised and specifically excluded instances where the aggrieved woman may have either temporarily left the household or had been forced out. In such cases, the right of residence on the basis of a domestic relationship would continue. While the court sought to distinguish between acts of violence committed even when the person is living separately and stated that in such cases, the recourse lies in the IPC and other criminal laws, it is important that this reasoning of the court be read in conjunction with the fact that the court categorically upheld the *de jure* right of a woman to reside in the shared household. Any other interpretation has the danger of denying the right of residence under the PWDVA to all those women who are clearly in a domestic relationship but may not be residing in the shared household, but are subjected to various forms of violence, including threat of physical abuse.

Through an analysis of these High Court judgments along with drawing from the trends emerging from orders passed by the lower judiciary, an attempt has been made to understand the situations in which *Batra v. Batra* is applicable and those where exceptions have been carved out. These principles may be categorised as follows:

- Where the house is the self-owned property of the in-laws and the husband does not reside there on the date of filing the application under the Act, the ratio laid down in *Batra v. Batra* becomes applicable in toto. In such cases, it appears that the permissive right that may have been claimed by the wife had the husband been residing therein also comes to an end. This principle laid down by the Supreme Court has been followed by various High Courts. Before examining the effect of the *Batra v. Batra* judgment, it must be clarified that before this, a wife’s right of residence in the matrimonial home was recognised as part of her right of maintenance. In the landmark judgment of *B. P. Achala Anand v. Appi Reddy*\(^{127}\), the Supreme Court had clearly upheld this right of residence in the matrimonial home. Hence, the argument in the *Batra v. Batra* judgment that the wife’s right is only permissive in nature is based on a narrow interpretation of the law and to the extent that it ignores precedent, is *per incuriam*.

In a recent judgment of the Delhi High Court in *Master Ryan through its mother Mrs. Ridhima Juneja v. P. N. Juneja and Sons*\(^{128}\), the court restricted the scope of an interim order for not

\(^{127}\) AIR 2005 SC 986.
disturbing peaceful possession passed in favour of the wife to mean constructive possession only. It was held that since she was already staying outside the house, which was the self-owned property of the in-laws, a right to re-enter the house could not be claimed. The facts of this case are that after marriage and the birth of their son, the parties had been residing together in the self-owned property of the in-laws. The husband was employed by the Hindu Undivided Family (HUF). As a result of alleged cruelty, the wife was forced to leave the shared household along with her son following which she filed an application under the PWDVA seeking reliefs of residence and compensation among others. While compensation was granted, the trial court refused to grant residence order for restoring her to the shared household, based on the judgment in Batra v. Batra. However, an interim order directing that possession should not be disturbed was passed in her favour, which was used by her to re-enter the premises. In arriving at a conclusion against the wife, the court did not take into account the fact that the husband was employed by the HUF and it was claimed that he had been disowned only after the application was filed by the wife. Further, the husband was said to be staying with a friend on a temporary basis. Hence, from the facts it may be concluded that there was an attempt to deny the wife her legitimate entitlements. The judgment clearly demonstrates the manner in which Batra v. Batra can be abused to deny women their legitimate entitlements.

- Where the property is self-owned by the in-laws and the husband continues to reside in the same household, as per Batra v. Batra, only a permissive right of residence can be claimed.

This issue was raised in Sardar Malkiat Singh v. Kanwaljit Kaur and Ors,129 where the issue before the Delhi High Court was whether the daughter-in-law could claim a right of residence in the shared household solely owned by the father-in-law, when she had allegedly deserted her husband. It was contended that during his absence, the daughter-in-law took forceful possession of a portion of the property and thereafter, filed a suit for permanent injunction. The petitioner filed a suit for possession, recovery of damages and permanent injunction. The lower court decided the issue in favour of the daughter-in-law. On the other hand, the petitioner relied on the judgment in Batra v. Batra to argue that since the issue of ownership was not in doubt, the daughter-in-law could not claim a right of residence in the property. In its judgment, the court made a detailed reference to the Supreme Court’s judgment and examined the scope of the right to reside guaranteed under Section 17 of the PWDVA. It held that the law by now is well settled that the wife has no right of residence in a house held by the father-in-law and/or the mother-in-law. Further, that no right can be vested in the daughter-in-law to stay indefinitely in the said house by claiming right of residence. It was held that at best, the possession of the respondent during the subsistence of her marriage with the appellant’s son could be said to be permissive in nature.

• Where the property belongs to the joint family, and the husband has a share or interest, the wife has an unassailable right to claim residence under the Act. The Supreme Court has reiterated this position in *Batra v. Batra*.

• Where the property is in the joint name of husband and the in-laws, the wife has a right to reside. In *Jyotsana Sharda v. Gaurav Sharda*,130 this issue was decided in the affirmative by the Delhi High Court.

In this case, aggrieved by the orders of the trial and appellate courts granting maintenance to the child and dismissing the wife’s claim for maintenance and residence, both the parties filed revision petitions before the Delhi High Court. The husband was aggrieved by the amount of maintenance awarded to the child. On appeal, contention of both the parties was dismissed.

On the issue of residence order, the husband argued that the wife does not have any right to stay in an accommodation, which is owned by the mother-in-law. The property in question was in the joint name of the husband and his mother, although the wife argued that the entire sale consideration was paid by the husband. The court rejected the contention of the husband and held that since it was established that the property was jointly owned by the husband and mother-in-law and it was her matrimonial home before the dispute began, it is her shared household and she has a right to reside therein.

Regarding the revision petition filed by the husband against the maintenance order in favour of the child, the court held that since it is only an interim arrangement to prevent destitution of the child, it could not be considered at par with an order affecting the rights of the parties.

• Where property was owned by the husband but has subsequently been transferred in the name of the in-laws, with the intention to deny the wife’s rights, it may be possible to claim a right of residence. Although this issue was raised and decided in only one case, *P. Babu Venkatesh & Ors. v. Rani*,131 in 2008, the recognition of the vulnerability that a married woman may face by the Madras High Court ought to guide other courts in the future. The decision on the issue of right to reside is crucial as the court recognised the fact that this ground can be misused by the husband to defeat the wife’s right in the shared household.

• Where the husband has a right, title or interest in the property, for the purposes of Section 17 of the PWDVA, it is immaterial whether the parties have cohabited in the said property. In such cases, by virtue of being a wife, the aggrieved woman has a de jure right of residence in the shared household. This legal principle upholding the right of a wife

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130 *Criminal Revision Petition Nos. 132 and 133/2009.*

131 *MANU/TN/0612/2008.*
has been iterated by the Madras High Court in the landmark case of Vandana v. Jayanthi Krishnamachari and Anr., a judgment which has been discussed in detail in the Second M&E Report.

- In case of a widow, where the husband owned the property or had a share, title or interest in it, the right of residence can be claimed. However, in Ashish Bhowmick et Anr. v. Tapasi Bhowmick & Anr., the Calcutta High Court laid down that where the relationship between the widow and the husband’s family is acrimonious, and the parties are residing in the same house, an alternate accommodation may be the most suitable relief.

- Where the property is a government accommodation provided to the husband, who has deserted the aggrieved woman, the reliefs claimed may include:
  
a. Right of residence in the house which was her matrimonial home before the parties started residing in the government accommodation, where deemed feasible;
  
b. Where no such matrimonial home exists, the husband can be asked to arrange for an alternate accommodation; or
  
c. The husband is to provide rent for alternate accommodation.

The above set of reliefs was provided to the wife by the trial court in the case of Mrs. Savita Bhanot v. Lt. Col. V.D. Bhanot. Since the contention before the High Court related to retrospective operation of the PWDVA, this case has been discussed in detailed later in the chapter.

D. RELIEFS UNDER THE ACT AND DEVELOPMENT OF THE LAW

The civil reliefs of protection, maintenance and other monetary entitlements, residence, compensation and temporary custody are at the heart of this law’s attempt to provide redress to women facing violence within the home. From the first year, the predominant trend has been that maintenance orders are granted as a matter of course. The analysis of orders (Chapter 6) this year reflects this continuing trend, with 61.4 percent of orders in Delhi, and 53.1 percent in Maharashtra being maintenance orders. This can be attributed to the Magistrates being used to granting maintenance under Section 125 CrPC. However, the aspect of maintenance order that appears to be agitated in appeal and before the higher judiciary is that of quantum of maintenance.

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132 (2007) 6 MLJ 205 (Mad).
133 C.R. R. No. 10 of 2009.
1. Maintenance as a Relief under the PWDVA

1.1 Quantum of Maintenance

In *R. Ramu v. Smt. Leelavathi*, the Karnataka High Court upheld the quantum of maintenance granted by clearly stating that the wife and children are entitled to some sustenance and the assertion of the husband that he is earning an amount, which is not sufficient to provide maintenance, cannot be accepted.

In this case, the husband challenged the order of the Sessions Court modifying an earlier trial court order and granting the wife and his two children, maintenance of Rs. 3000/- and Rs. 2000/- per child under the PWDVA. The contention was that since the petitioner does not earn more than Rs. 6000/- and the wife is already receiving income from a property, the quantum of maintenance granted was excessive. After hearing the contentions of the parties, the court noted that the right of maintenance of the wife and children are established. On the question of justness of quantum, the court relied on the fact that the husband had failed to produce any documents to show that the wife has any earnings. As such, it was held that the findings of the lower courts regarding the maintenance amount must be upheld.

In contrast, in the combined hearing of the cases of *Amit Khanna v. Priyanka Khanna & Ors* and *Priyanka Khanna v. State*, the Delhi High Court rejected the rationale advanced by the Appellate Court in enhancing the quantum of maintenance and house rent payable by the husband and reduced the maintenance awarded.

The Appellate Court, in this case, enhanced the maintenance amount based on the fact that the husband was a man of status and owner of vast movable and immovable properties, and it was a matter of common knowledge that parties generally conceal their actual income. The husband challenged this order.

The issue that arose in this case was whether the quantum of maintenance granted was based on a rational consideration of the income of the husband. The Delhi High Court observed that allegations made by the spouses about the vast movable and immovable properties of other must be substantiated by some sort of documentary evidence. This would be relevant even for passing an interim order under the Act. It further stated that the properties existing in the name of sister-in-law, mother or father cannot be considered to be the property of the spouse, and is not indicative of their status. Since the parties had a divorce proceeding pending between them and interim maintenance had been awarded therein, the court also held that the amount granted under Section 20 of the PWDVA would be adjustable to that in the divorce proceeding.

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135 2010 (1) Kar LJ 376.
The effect of this order is that after adjusting the reduced maintenance and rent with the maintenance under divorce proceedings, the wife would not get any maintenance under the PWDVA. In the absence of clear factual details regarding the nature of ownership of the ‘vast movable and immovable properties’ belonging to the husband’s family, it is not possible to arrive at an understanding as to the justness and accuracy of the judgment.

Although in view of the limited factual details, the High Court has reiterated an accepted legal principle, its reasoning that evidence of vast property owned by immediate family does not create a presumption in favour of the husband having a similar standard of living does not hold good in every case. Further, the court also disregarded the issue raised by the Appellate Court that parties generally conceal their actual income and do not show their real income in the Income Tax Returns.

1.2 Impact of Wife’s Employment Status on Maintenance

An issue relating to maintenance, in which conflicting verdicts have been given, is whether a wife is entitled to maintenance when she may be gainfully employed or qualified to seek employment. In Chaturbhuj v. Sita Bai¹³⁷ in deciding whether a wife with some income is entitled to claim maintenance under Section 125 CrPC, the Supreme Court has held that the test to decide maintenance amount for a woman who has been deserted should be based on whether she can maintain herself the way she did while staying with her husband. Referring to the observation of the court in Bhagwan v. Kamla Devi¹³⁸ that the wife should be in a position to maintain a standard of living that is consistent with the status of the family, the Supreme Court upheld the right of maintenance of a wife who has separate income of her own.

Further, the settled principle in determining maintenance under existing laws is that it is the earning capacity of the husband, irrespective of whether he actually has the means or not, which is relevant to reach the conclusion that there is sufficient means to maintain the wife. The onus then shifts onto the husband, to prove that he does not have sufficient means to provide the maintenance. It is in the context of the above position of law that the right of maintenance under the PWDVA must be examined.

In Sanjay Bhardwaj and Ors. v. The State and Anr.,¹³⁹ the issue that arose was whether the trial court should have granted maintenance to the wife in view of the fact that the husband had lost his employment and had no current source of income, and that the wife was similarly qualified to seek employment. The significance of this judgment lies in the fact that the husband had, in the petition before the Delhi High Court, assailed the reasoning that maintenance is to be determined by the earning capacity and not the present income of the husband.

¹³⁷ Appeal (Crl.) 1627 of 2007.
¹³⁸ AIR 1975 SC 83.
The court pointed out that no law provides that a husband has to maintain a wife, living separately from him, irrespective of the fact whether he earns or not. Emphasis was also given to the fact that the parties in this case were both equally qualified. Under these circumstances, the court held that awarding maintenance to the wife without any prima facie proof of his employment is contrary to the provisions of the law. It rejected the reasoning of the Appellate Court that since the husband had been earning well earlier, he was capable of finding gainful employment and therefore, was liable to maintain the wife.

An analysis of this judgment shows that the reasoning of the court of first appeal which took into account the fact that the husband used to earn handsomely in his previous employment, must be appreciated. In doing so, the Appellate Court accurately linked maintenance with the husband’s earnings in the near past. This rationale, in fact, acts as an appropriate check against instances where a husband may temporarily resign from his job to deny the wife’s right to maintenance. By rejecting this rationale, on the other hand, the High Court may have created a problematic precedent defeating a wife's right of maintenance under the Act by leaving employment, as a temporary measure.

What is of greater concern is that the court referred to the constitutional guarantee of equality between the sexes to state that a similarly qualified but unemployed husband and wife cannot be treated differently. This judgment provides an example of using the equality argument to deny the legitimate entitlements of a wife. It also ignores the reality that very often, women leave their employment after marriage and may require significant re-skilling before finding suitable employment and income that is equal to the husband’s, even if they are similarly qualified.

As mentioned earlier, the court also observed that the PWDVA does not create any additional right of maintenance in favour of the wife. Another judgment in which a similar point of law was discussed is *Rachana Kathuria v. Ramesh Kathuria*,¹⁴⁰ which has been discussed earlier in the Chapter.

1.3 Maintenance and the Second Wife

Finally, another issue relevant to a wife’s right of maintenance is with regard to the entitlement of a second wife. In the current period of analysis, although no judgment on this issue has been passed under the PWDVA, the Bombay High Court in *Sau. Manda R. Thaore, W/o Sh. Ramaji Ghanshyam Thaore v. Sh. Ramaji Ghanshyam Thaore*¹⁴¹ discussed it in the context of Section 125 CrPC.

¹⁴⁰ Supra note 109.
In this case, the issue raised was whether the petitioner, who was by the respondent’s own admission living with him as his second wife, could be entitled to maintenance under Section 125 CrPC in view of the fact that no divorce had been obtained from the first wife.

After taking note of the husband’s own admission that the petitioner is his wife and that she was cheated by the respondent who established a sexual relationship and started living with her, the court held that she is not entitled to maintenance under Section 125 CrPC in view of the settled legal position that a second wife cannot claim maintenance under this provision. Recognising the vulnerability of the woman and the fact that the court is unable to help in such unfortunate instances, it was suggested that this is an appropriate case for the petitioner to take recourse to the PWDVA. It also awarded compensatory costs to her, explicitly stating that this would help her in pursuing proceedings under the PWDVA.

Although the judgment was passed keeping in view the settled law relating to Section 125 CrPC, reference to the right of maintenance under the PWDVA is significant as it indicates an acknowledgment by the court that the PWDVA addresses such situations where the woman is admittedly vulnerable but has no recourse to legal remedies under other existing laws.142

1.4 Compensation Order

In the current period of analysis, the issue of compensation was not raised as a contention before any of the High Courts. However, a look at the findings from analysis of orders passed during the same period provides some understanding of the manner in which courts are interpreting the right of compensation under the PWDVA. The analysis of orders shows that there has been an increase in the number of compensation orders granted by the trial courts, both in Delhi and Maharashtra. In about 5.6 percent of the cases in Delhi, compensation was granted while this number stood at 8.1 percent of the orders examined in Maharashtra.

What is interesting, however, is that in these orders, courts do not provide any reason for granting the order. Moreover, the rationale used to arrive at the amount of compensation is not provided either. Based on these findings and in the absence of any higher court judgment on the issue, no discernible trend in the development of the law relating to compensation can

142 At the time of going to print, the scope of the right of maintenance of women in “relationship in the nature of marriage” under the PWDVA has been severely curtailed by the Supreme Court in its judgment in D Veluswamy v. D Patchaiammal (delivered on 21.10.2010). The Court has defined “relationship in the nature of marriage” using the common law principles to the effect that:
(a) The couple must hold themselves out to society as being akin to spouses.
(b) They must be of legal age to marry.
(c) They must be otherwise qualified to enter into a legal marriage, including being unmarried.
(d) They must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time.

However, in doing so, the court sought to discuss sexual mores and the amoral nature of “live-in relationships” by referring to how in “feudal society, sexual relationship between man and woman outside marriage was totally taboo and regarded with disgust and horror…”
be found. It is hoped that in the coming years, the courts would be more and more inclined to grant compensation as a matter of right and as a necessary consequence of the mental injury and trauma faced by women in a situation of domestic violence.

1.5 Custody Order

Although the previous years have seen judgments being passed by High Courts on the issue of custody, no such case reached the courts in the current period of analysis. The orders passed by trial courts also do not provide any substantial picture on the issue although from a perusal of such orders, the inference that can be drawn for fewer cases on custody is that in a majority of cases, the children are already in custody of the mother. Hence, the issue primarily relates to that of visitation rights of the father, which is usually granted by the courts unless there are allegations of abuse on the children. As mentioned in Chapter 6, in two cases of breach of order under Section 31 of the Act, the order violated by the respondent was that of temporary custody. In one of these cases however, the order was complied with, immediately after an application under Section 31 had been filed.

E. RETROSPECTIVE OPERATION AND CONTINUING VIOLENCE

The question of whether the PWDVA has retrospective operation is squarely situated within the understanding of nature of domestic violence, which is not an isolated act of violence but forms part of a pattern of abuse that may, at the same time, be physical, emotional, economic and sexual. It must be noted that the debate regarding retrospectivity of the law arises because of its quasi-criminal nature.

In determining this issue therefore, courts have very often relied upon the intent of the law, the definition of domestic violence therein and the general legal principles relating to retrospectivity.

In *Mrs. Savita Bhanot v. Lt. Col. V.D. Bhanot*, the Delhi High Court considered whether an application under the PWDVA was maintainable where the allegation was with regard to domestic violence, including being forced out of the shared household, which took place before the Act came into force.

In the proceedings filed by the petitioner against her husband before the trial court, it was alleged that she was forced to leave her shared household in 2005. The wife sought a residence order to allow her to live in her permanent matrimonial home since the shared household was a government accommodation. The wife appealed against the order passed by the Magistrate, which was dismissed on the ground that the cause of action arose before the Act came into force.

43 Supra note 134.
On the issue of retrospective operation of the law, the Court made a clear distinction between a criminal law and a law such as the PWDVA where the issue of criminal penalty arises only on violation of the court orders. Based on this, it was concluded that the dates on which the acts of domestic violence were committed has absolutely no bearing on the matter. Similarly, it is absolutely immaterial whether the 'aggrieved person' was living with the respondent, on the date of the commission of the offence, or not. The use of the words 'is or has been in a domestic relationship' in the definition of AP under the Act was cited as further substantiation of the fact that the parties need not have lived together on the date of coming into force of the Act in order to seek reliefs. The court further held that this does not amount to breach of Article 20(1) of the Constitution.

The court addressed the decision in *Shyamlal and Ors. v. Kantabai* by pointing out that Section 23 of the Act does not provide for punishment to the respondent for commission of domestic violence but merely allows the court to pass an interim order in favour of the petitioner. In the instant case, the court held that since the criminal penalty under the PWDVA is passed only on violation of an interim order, which is only possible once the Act comes into force, the question of retrospective operation of the law cannot arise. Hence, it was decided that a petition under the PWDVA is maintainable irrespective of whether the acts of domestic violence were committed before the Act came into force or the aggrieved person was not living with the respondent at the time of its coming into force.

What is particularly significant about this judgment is that the court sought to undertake a constitutional analysis of the issue of retrospective operation based on the principle of equality enshrined therein. Using the framework of reasonable classification, the court observed that there could be no reasonable classification based upon an intelligible differentia between the women who are living with the respondent on the date of coming into force of the Act or who are subjected to domestic violence after coming into force of the Act. A similar principle was applied in case of women who are living with the respondent in the same shared household on the date of its coming into force and those who have been forced to leave the shared household but were still in a domestic relationship. Demonstrating sensitivity to the vulnerabilities faced by women, it was held that not only would denial of the right to claim under the PWDVA would be a violation of the constitutional guarantee of equality but would also allow the respondent to take advantage of his own wrong, and deny such women the benefit of the provisions of the Act.

Another judgment which raised the issue of continuing violence and retrospectivity is that of *Kishor, S/o Shrirampant Kale v. Sou. Shalini, W/o Kishor Kale, Master Shantnu S/o Kishor Kale and State of Maharashtra, through P.S.O. Rajapeth Police Station*.

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144 II (2009) DMC 787.
145 2010 (112) Bom LR 1398.
The issue before the Bombay High Court was whether an application under the PWDVA, which was filed 15 years after the parties started living separately and where they had very little communication, could be considered to be maintainable.

On examination of the contentions of both parties and provisions of the Act, the High Court held that since there has been no contact or communication between the parties for 15 years and no proximity of an act of domestic violence to the date of filing application under the Act could be shown, the case against the husband is not maintainable and would constitute an abuse of the process of law. The court relied on the fact that since the husband was already paying the amount of maintenance granted under Section 125 CrPC, the APs could make a demand for enhancement and on any deprivation, prohibition or restriction upon such demand under Section 125 CrPC and not under this Act.

This judgment of the Bombay High Court was clearly based on the particular facts of the case and cannot be taken as laying down a principle of law or adjudicating upon a specific provision of the PWDVA. However, in so far as the court based its conclusion on the fact that because there was no communication or contact between the parties, no proximate act of domestic violence could be alleged, it must be mentioned that the fact of desertion continued. As was rightly contended by the APs, desertion itself is a form of economic abuse under the Act. Hence, irrespective of any communication or contact, the fact of continued desertion is sufficient to invoke the provisions of this Act.

F. PROCEDURES, MECHANISMS AND ENFORCEMENT OF THE ACT

Based only on the number of judgments delivered by the higher judiciary, it appears that issues relating to procedures, statutory mechanisms and enforcement have been litigated less than in the previous years. However, the findings from order analysis show that there continues to be very little uniformity in the procedures being used by the trial courts across the country, thereby leading to the inference that the relatively small number of judgments this year is not indicative of a broader trend. Some issues relating to procedure, however, continue to be litigated.

1. Procedures under the PWDVA: Technicalities Cannot Defeat Substantive Law

1.1 Nature of the law

The question of whether the PWDVA is primarily a criminal law in view of Section 28(1) of the Act, for instance, was raised in the case of Jaydipsinh Prabhatsinh Jhala and Ors. v. State of Gujarat and Ors., superseded by the statement of objects and reasons 146 which has already been discussed in this Chapter. The Gujarat High Court dismissed the contention of the applicants by referring to the Statement of Objects

146 Supra note 114.
Reasons. In referring to Section 28,\textsuperscript{147} it was held that while sub-section (1) provides for criminal procedure, sub-section (2) empowers the Magistrate to deviate from strict procedural requirements in the interest of justice. Given this, it cannot be said that the Magistrate is strictly bound to proceed with the trial once summon is issued as in a criminal trial, and cannot in the interest of justice, recall the summons issued or delete certain respondents. At the same time, however, the court went on to advise restraint and due care to any trial court which seeks to exercise its discretionary power under Section 28(2) of the Act.

The judgment is premised on the recognition that procedural rigidity must not be allowed to defeat the substantive right of a woman under the law, a principle which has been reiterated by the higher judiciary in a large number of cases where procedural questions have been raised since the PWDVA came into force.

1.2 Delay in filing appeals

In \textit{Jyotsana Sharda v. Gaurav Sharda},\textsuperscript{148} the Delhi High Court reiterated that an approach, which defeats the substantive rights of the party, must not be adopted.

Considering the question of rejection of the wife’s appeal by the Sessions Court on the ground that it was time barred, it was stated that courts must not ignore the merits of an appeal on flimsy technicalities. The only consideration that needs to be taken note of in such cases is whether the reason given for such delay is genuine.

1.3 Territorial jurisdiction

In \textit{Manish Tandon and Ors. v. State and Anr.},\textsuperscript{149} the question before the Delhi High Court was whether the court could exercise its inherent powers to quash proceedings under the PWDVA. The territorial jurisdiction of the trial court in Delhi was assailed in view of the fact that the cause of action arose in Uttar Pradesh. The petitioners referred to various judgments under the PWDVA, including \textit{Batra v. Batra},\textsuperscript{150} to support their contention.

On an examination of the contentions of the parties, the court held that from a perusal of Section 27 of the Act,\textsuperscript{151} it is clear that the court in the place where the respondent resides or carries on business or is employed has territorial jurisdiction to entertain the case. As such, since it was an admitted fact that the aggrieved wife was employed in Delhi, courts in Delhi would be entitled to extend their territorial jurisdiction in the matter.

\textsuperscript{147} Section 28, PWDVA, 2005.
\textsuperscript{148} Supra note 130.
\textsuperscript{149} Crl. M.C. No. 1784/2009.
\textsuperscript{150} Supra note 3.
\textsuperscript{151} Section 27, PWDVA, 2005.
The other issue that was taken up for examination by the court was the circumstances under which the inherent power of the High Court should be invoked. It held that while exercising the powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section, though wide, has to be exercised sparingly, carefully and with caution, and only when such exercise is justified by the tests, which were noted as (i) to give effect to an order under [the Code], (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice.

As regards territorial jurisdiction, the court undertook a gender sensitive approach and clarified that women have been vested with the option to approach any court under Section 27 of the Act, so that they may opt for the place which best suited their convenience, comfort and accessibility.

The interpretation of the expression ‘temporary residence or employment’ under Section 27 of the PWDVA was again taken up by the Delhi High Court in Sharat Kumar Pandey v. Mamta Pandey.\textsuperscript{152}. In this case too, it was the contention of the petitioner that the AP had for the purpose of filing the application under the Act, set up temporary residence in Delhi.

In answering this strictly procedural question, the court looked into the object and purpose of the law. It pointed out that the place where the cause of action arose and where the respondent is located are the most appropriate places for filing an application as, in such cases, the Magistrate would be able to give directions to the various implementing agencies such as Police, PO and other support services to provide assistance. Having said this, the court recognised that under the circumstances of domestic violence, the aggrieved woman might take up temporary residence.

The court also undertook a detailed examination of how residence is ordinarily defined and in this context, what is “temporary residence”. It held that temporary residence, as envisaged under the Act, is such residence where an AP is compelled to take shelter or compelled to take job or do some business, in view of domestic violence perpetuated, wherein she was forced to leave the matrimonial home. Elaborating on this, it was noted that such residence should not be fleeting in nature and should continue from the time of filing the application under the Act till the disposal of the petition.

\section{2. Guidelines Relating to Procedures under the Act}

\subsection*{2.1 On General Procedure to be followed}

One of the cases where the High Court provided guidelines to the trial courts regarding procedure is Mrs. Jovita Olga Ignessa Mascarenhas e Coutinho v. Mr. Rajan Maria Coutinho and State of Goa through Chief Secretary.\textsuperscript{153}

\textsuperscript{152} Crl. M.C. No. 4044 of 2009.

\textsuperscript{153} Criminal Writ Petition No. 30 of 2010.
In this case, the AP whose marriage was alleged to have been annulled by the Patriarchal Tribunal for the Archdiocese of Goa and Daman, filed a petition against the lower courts' orders dismissing the claim for maintenance, residence and other reliefs under the Act.

It was directed by the High Court that Magistrates should enquire from the parties regarding the nature of reliefs sought and frame issues on the basis of the same. Such a step would not be opposed to any procedural law and would facilitate a decision to be taken by the court. It further cautioned the courts that failure to follow such a procedure may lead to the prayer for specific reliefs going unnoticed.

In fact, what is also interesting is that the judgment provides a picture of how applications are being filed under the PWDVA in Goa. The court observed that although in cases of this nature where there are no pleadings as such and the applications are filed in the prescribed form by ticking the reliefs sought, it would be desirable that the court after hearing both the parties frames issues on the basis of the reliefs sought by the petitioner, so that each can meet the case of the other and avoid such orders of remand. The court therefore, remanded the case back to the Magistrate for consideration.

Not only this, the High Court also examined the manner in which the Sessions Judge had interpreted the scope of the definition of domestic violence under the Act. Critiquing the failure of the lower courts to fully understand the broad nature of the definition of domestic violence under the Act, it stated that the Act could not be termed as new legislation. It has been in force for almost five years now. Thus, the Magistrates would do well in case they try to understand the concept of domestic violence, as defined under Section 3 of the Act, rather than go by the ordinary concept of violence.

This judgment of the Bombay High Court at Goa is significant for on the one hand, it provides guidelines to the lower courts on how issues should be framed and evidentiary details collected before passing an order under the Act, and on the other, the court’s reiteration of the need to understand the broad nature of abuse contemplated under the definition of domestic violence demonstrates its gender sensitivity and understanding of the law.

3. On Service of Notice, Interim & Ex-parte Orders

The explanatory role of the higher judiciary with regard to procedural issues under the Act was further evident in the case of Dr. Preceline George v. State of Kerala.154

Before the Kerala High Court, the procedural issues to be decided were: a) whether an ex-parte order under Section 23(1) could be passed in favour of AP, without notice to the other party;

154 Supra note 89.
and b) whether along with a notice issued in an application filed under Section 12 or 23(2), copy of the application is to be enclosed.

It was contended that there is no uniform practice being followed by the trial courts; in many instances, courts were not fulfilling the requirements under Section 12 and interim orders under Section 23(2) were being passed without enclosing copy of the application along with the order or the notice. Moreover, notice was not issued in the appropriate format as prescribed under the Act. Ex-parte orders were also being passed without sending notice. In this context, it was urged that directions needed to be provided by the High Court to ensure uniformity of practice.

With regard to service of notice, the court observed that from a reading of Rule 12(1) and Form VII, it is clear that service should be in the prescribed format, which is Form VII. It was held that although Rule 12(2)(c) provides an option to the courts to ensure service of notice as per the CPC or CrPC, in view of the fact that the PWDVA is intended as a civil remedy, service of notice must be in the manner provided under the CPC.

On the issue of ex-parte orders, the court held that when Section 23(2) specifically provides that on a prima facie satisfaction as to the commission of domestic violence, the Magistrate may grant an ex-parte order on the basis of affidavit as prescribed, it cannot be disputed that an ex-parte order can be passed without notice to the respondent(s). The court went on to provide guidelines on the above issues, which are detailed in chapter 6 of this report.

The guidelines provided by the court would aid in ensuring some uniformity of practice in the lower judiciary. Through these guidelines, the court has also sought to address the due process concerns relating to procedural discretion that has been given to a Magistrate under the Act. However, the conclusion of the court that the service of notice under the Act must be in accordance with CPC does not appear to be based on accurate considerations. As provided under Rule 12(2)(c), the intent of the legislature was clearly to give an option to the courts to use either the CPC or the CrPC, in view of the requirements of the particular case.

In *Dilip Bhattacharjee @ Raghu Bhattacharjee, Son of Late Naresh Bhattacharjee v. The State of Bihar & Ors.*,\(^{155}\) the Patna High Court also considered when an interim order should be granted. The specific question related to whether an interim order of maintenance under the PWDVA could be granted where a beneficial interest from the self-owned property of the petitioner’s father was already being paid to his paternal uncle and aunt.

\(^{155}\) *Cr WJC No. 664 of 2008.*
In this case, an application under the PWDVA seeking maintenance was filed by the paternal aunt and wife of his paternal uncle, which was granted by the trial court. It was noted that the parties were living in the shared household.

On a perusal of the facts of the case and the order passed by the trial court, the High Court critiqued the fact that the lower court not only assumed jurisdiction and treated the matter as a maintenance case but also granted maintenance on a retrospective basis. In support of the trial court order, it was contended that “once a court has power to entertain a complaint and law envisages interim orders, then the Court has all powers to pass any interim order in the matter.” Rejecting this contention as too broad, the High Court examined Section 23 of the Act and reached the conclusion that the power to grant interim orders has been provided to ensure protection from domestic violence. It is not an order for interim maintenance that is contemplated under this provision. It is therefore, clearly beyond the jurisdiction of the court under the PWDVA to try the matter, which is a partition suit, as a case for maintenance. As such, the order of the lower court was set aside.

In this case, therefore, the High Court appears to have undertaken a detailed scrutiny of the facts of the case and appreciated the fact that in the absence of specific evidence of domestic violence, seeking reliefs under the Act constituted an abuse of the process of law. It also sought to clarify that any interim order under the PWDVA must be passed keeping in view the need for urgent and immediate protection from domestic violence.

4. Breach of Orders

The issue of breach of an order under Section 31 of the PWDVA was raised before the Bombay High Court in Mrs. Pramodini Vijay Fernandes v. Vijay Fernandes. What is interesting about this case is that the breach alleged herein related to an order of the Family Court. Hence, the question was whether Family Courts could try an offence of breach under Section 31 of the Act.

After having examined the provisions under the PWDVA and the Family Courts Act, 1984 the court held that breach of an order passed under the Act is required to be tried by the court, which passed the order. While in ordinary course it would be the Magistrate’s court, where the order is however, passed by a civil court or a Family Court, “such Court, which passed the order, would be not only entitled but obliged to try the offence of breach of its own order.”

The issue was further complicated by the consideration of whether charges could be framed in accordance with Section 31(3) of the Act. Responding to the contention that a Family Court cannot levy any penalty, the court referred to existing legal principles, which empower any judicial body with all other incidental and ancillary powers that are necessary to make the

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156 Writ Petition No. 5252 of 2009.
express grant of the statutory powers fully effective. Not only this, the court pointed out that any other finding would render the provision of Section 26 and the order passed by any court other than the Magistrate redundant, as there would be no way of enforcing such an order.

The court also noted that the Family Court has the power to use its contempt jurisdiction as well as inherent powers under the CPC to try breach of orders. In sum, therefore, the following recourse would be open to a Family Court:

- Exercise its inherent power under Section 151 CPC and try the breach by framing charges under Section 31 & 32 of PWDVA; or

- Proceed under Order 39 Rule 2A CPC and try the case for disobedience or breach of its order

The significance of this judgment cannot be overestimated. The Bombay High Court used existing legal principles to ensure that the rights of a woman seeking reliefs under the Act are not defeated before any court with express jurisdiction. Moreover, the judgment seems to reflect what is increasingly being reiterated by courts in dealing with this Act; that strict procedural requirements must not be allowed to defeat substantive law and that the courts must find innovative ways of enforcing the rights guaranteed under this law.

**G. GROUNDS TO DENY RELIEF**

If there is one issue, which has come to increasingly occupy centre stage in any debate on women-specific laws, it is the alleged “misuse” of such laws by vengeful women. In view of the intended and sometimes unintended detrimental impact of this debate on affirmative action measures such as the PWDVA, it is essential to deconstruct this myth of “misuse” and understand what reasons are given by the courts to deny relief to the women.

1. Denial of the Right to Reside to Settle Property Disputes

i. In the case of *Vijay Verma v. State N.C.T. of Delhi and Anr.* as detailed earlier in the chapter, the right to reside in the parental house was claimed by the AP against her brother and his wife. Although she was a permanent resident of US, the contention was that she was not allowed to enter the premises of the parental house when she came to India.

Having examined the contentions of the parties and the evidence on record, the court held that a right to reside on the basis of a “domestic relationship” cannot be claimed in the family property by any member who had left to establish her own shared household. If such a person has a coparcenary or inheritance right in the property, such right must be claimed through a civil suit and

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157 *Supra* note 126.
not under the PWDVA. The court clearly held that in the instant case, the attempt was to settle a property dispute as an issue of residence under the PWDVA, which is an abuse of its provisions.

Hence, by identifying the issue as a property dispute and pointing out that the recourse lies in civil court, the court gave an appropriate note of caution against any future abuse of the right to reside, which is the most significant right guaranteed under this Act.

ii. In *Dilip Bhattacharjee @ Raghu Bhattacharjee, Son of Late Naresh Bhattacharjee v. The State of Bihar & Ors.*, the Patna High Court recognised and rejected a similar attempt by the paternal uncle and aunt of the petitioner to obtain rights in the property by using Sections 17 and 19 of the Act.

2. Denial Of Maintenance to Wife and Children

iii. In *R. Ramu v. Smt. Leelavathi*, the Kerala High Court refuted the attempt of the husband to deny maintenance to his wife and children on the ground that she has an income of her own. The argument of separate income or earning capacity has been resorted to in a number of cases, not only under the PWDVA but also under Section 125 CrPC. Denial of relief on this ground is in contravention of the settled legal principles relating to maintenance.

3. Denying Relief on the Principle of Retrospective Operation

iv. The Delhi High Court in *Mrs. Savita Bhanot v. Lt. Col. V.D. Bhanot* clearly held that the argument of retrospective operation cannot be advanced to deny reliefs to a woman under the PWDVA. It was clarified that neither the dates on which the act of violence was committed nor the fact that parties were not living together when the Act came into force is relevant for the purposes of granting reliefs.

From a reading of the judgment, it is clear that the court based its decision on the principle of continuing violence and the fact that the PWDVA is not a criminal law.

There are three specific grounds on which reliefs have been denied to the women.

However, the one aspect that appears to be clear is that “misuse” of the PWDVA is not limited to one specific gender or class or section of the society. Men may be as much responsible for abusing its provisions and other principles of the law as women are. Moreover, as reiterated in the previous M&E Reports, cases of “misuse” of the law are greatly outnumbered by cases where women need urgent and immediate protection from domestic violence. Violence within the home is a reality and the ground of “misuse” cannot be used to deny reliefs to women.

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Supra note 155.
Supra note 135.
Supra note 134.
H. OVERVIEW OF THE FINDINGS

There is a significant change in the approach of the courts towards the substantive provisions of law. As the courts are becoming more and more familiar with the provisions of the law, they are able to situate the law in the general framework of existing laws. The judgment of Kerala High Court in Dr. Preceline George v. State of Kerala,\textsuperscript{161} for instance, shows how the courts are undertaking a detailed examination of the nature and intent of the law while laying down guidelines on procedural issues, such as passing of ex-parte orders.

This difference in the approach of the higher judiciary is strikingly evident on the issue of whether women can be respondents under the Act. In at least four judgments out of a total of six where the issue was contended this year, different High Courts have correctly decided that women can be made respondents. In 2 such judgments, the Delhi High Court and the Madras High Court have referred to the divergent views on the issue in earlier cases and attempted to resolve these differences.

In several judgments, the Constitutional guarantee of equality is being invoked to interpret the law, which is a healthy trend. Courts are beginning to recognise the vulnerability of woman based on sex and interpreting the provisions of the law to give relief to address the vulnerability.

On the issue of procedures, the courts are more and more cognisant of the fact that rigidity of procedures must not be allowed to defeat the substantive rights of women under the Act. At the same time, the higher judiciary has also taken note of the need to provide guidelines to ensure uniformity of practice in conducting proceedings under the PWDVA.

The question of whether female relatives of the husband or male partner can be made respondents under the Act continues to be agitated. In keeping with the spirit of the Act and recognition of the existence of the joint family pattern of living, it is being upheld that the object of the Act was to enable applications to be filed against the relatives of the husbands, male or female. The decision of the Supreme Court is awaited.

The grounds for denial of relief are getting clearer.

The fact that several of the disputes under the Act are related to property posed a challenge for the judges. They are unable to see that the denial of access to necessary services is a form of violence and hence, such disputes over access to property are being caricatured as pure property disputes and relief is denied on that ground alone without looking at the underlying denial of rights of a woman in domestic relationships.

\textsuperscript{161} Supra note 89.
There are major problems with the interpretation of the proviso to Section 12 of the Act, wherein the courts have held that the report of a PO is a pre-condition for granting an order, and no ex-parte orders are being passed until the PO’s report is submitted. This can defeat the very object of an ex-parte order intended to prevent an injury in an urgent situation. Such an interpretation would lead to P0s becoming gateways under the Act, preventing direct access to court rather than facilitating the same. This section therefore, requires urgent amendment to ensure direct access to court rather than introducing a filter.
Section V
Recommendations
A. PRACTICE DIRECTIONS TO BE ISSUED BY THE APPROPRIATE AUTHORITIES

One of the primary observations has been the wide variation observed in the different states as far as the practices under the PWDVA are concerned. Therefore, if the Secretary, MWCD with immediate effect issues practice directions, it can go a long way in standardising the state-wide practices under the PWDVA. Such directions should *inter alia* include:

1. **Role of the POs**

The pre and post litigation role of the POs must be outlined in the guidelines. It must be clearly stated that these will be in accordance with the Act. Guidance should be provided on the method of recording the DIR; the nature of the documentation that is required to be annexed to the DIR; and assisting the woman in approaching the Police, SPs, MFs and SHs.

It must be clarified that at the stage of recording DIRs, a home visit is not required since the data is recorded primarily on the basis of the statement of the woman and relevant documentary evidence. Further it should be specified that the PO should not enter into mediation or counselling with the woman, and if the woman so desires, she should be referred to a SP for the same.

If, however, the woman indicates that she wants to move the court, a DIR must be recorded without delay. In this context, it must be clarified that a PO cannot refuse to record a DIR and instead divert the woman to counselling or mediation, and the failure to record a DIR would result in disciplinary action against the PO.

If the woman needs assistance in filing an application under Section 12 of the Act, the PO must proceed to draft the application and refer her to a legal aid lawyer.

By way of issuing practice directions, the High Courts should clarify the role that is expected of the POs, SPs, State Legal Aid Lawyers, MFs and SHs so that all of them may be better utilised by the courts in discharge of their functions.
2. Directions on Record Keeping

A record of every visit of a woman who comes to the PO or the SP, similar to a diary entry made in a police station, should be maintained so that it indicates the date, time and purpose of visit.

As discussed earlier, if the woman does not want mediation or counselling, the record must indicate whether or not a reference has been made. The reference must be made in writing in duplicate, with one copy each for the SP and the woman.

The SP to whom the reference is made must keep a corresponding record of the visit and the name of the person who referred the woman. Thereafter, the SP should maintain a complete record of the steps taken to mediate or counsel, which can be adduced in court at any time as evidence and may assist the woman in getting a protection order.

The judicial officers should be provided with a list of POs, SPs, SHs, MFs and State Legal Aid Lawyers comprising of their contact details for effective coordination.

The Ministry of Health and Family Welfare (MoHFW) should issue practice directions to all the state run, and Municipal Corporation hospitals for its MFs to intervene in domestic violence cases, fill in the DIR, and send a copy to the POs so that they can take appropriate action.

The WCD should issue directions to all the states to ensure that the records maintained under the mandatory reporting system of the POs, SPs, MFs and SHs to the nodal agencies is uniform across states.

3. Role of the Police

Certain practice directions should be issued by the Director General of Police of each state. It must be made clear that the Police are to inform the woman of her rights under the Act. It should be further clarified that the POs are public servants, and therefore, the Police are bound to give assistance to them in the discharge of their public duties.

All the practice directions regarding the role of the POs, SPs and Police must be disseminated among the judiciary for their consideration while dealing with cases under the PWDVA.

B. BUDGETARY ALLOCATIONS

1. Funds should be Provided by the Central Government

While it is important for the State Governments to make allocations, it is imperative that some support is provided by the central government. A policy can be successful only when
it takes into account the local needs. Therefore, on the lines of the Flexible Pool under the National Rural Health Mission (NRHM), the Union Ministry of Women and Child Development could provide funds to the states. This would enable the states to draw up plans as per their requirements. It must be noted that the funds by the central government would be to supplement and not substitute the funds provided by the states. The MWCD, being the nodal agency, must also monitor the allocations made under the Flexible Pool.

2. The Allocations for the PWDVA should be Made Under the Following Heads

- Functioning of POs including their salaries, support staff, infrastructure, training, domestic travel, stationery, and contingency. As noted, most of the POs have been appointed on a contractual basis. This can be considered only a first step since effective service delivery will require permanent appointments.

- Training and capacity building of all stakeholders such as the Police, Medical Officers and Judiciary.

- Public Awareness Generation: As noted in the Mid-Term Appraisal of the Eleventh Five Year Plan, one of the factors impeding effective implementation of the Act is lack of information.

- Data collection and M&E

C. JUDICIAL ORDERS

1. Develop a System for Tracking Judicial Orders

A clear and consistent tracking system of judicial orders and making them accessible must be put in place. All orders that are passed under the Act must be digitised and put up on the official website, which would enable M&E of the implementation of the Act.

2. Certain Guidelines should be Issued by the Supreme Court

The Supreme Court must lay down clear guidelines on the basis of which maintenance should be awarded. While drafting these guidelines, the contributions made by the woman as a homemaker, and the other non-monetary contributions to the relationship should be considered.

Since the enforcement of orders is difficult, guidelines should be issued for incorporating mechanisms within the orders to enforce them. The provisions of Section 125(3) CrPC that for
every breach of order, the Magistrate should issue warrant for levying the amount due in the manner provided for levying fines, and may sentence the defaulting party to a minimum of one month imprisonment, should be incorporated.

3. The Practice of Opening of Bank Accounts

Banks must be conveniently located in the premises of the court. Once an order for maintenance is passed, an account must be opened in the name of the woman in the bank, and all payments must be made in that bank account. This will avoid unnecessary disputes over the amount that was paid.

D. SUGGESTED AMENDMENTS TO THE ACT

The following priority amendments to the PWDVA must be immediately considered by the government:

1. Deletion of the Proviso to Section 12 of the PWDVA

The High Court of Bombay has made a PO report mandatory for granting an interim order. This has been the cause of many delays and refusal to grant interim order by the Magistrates and other lower courts, even if a DIR from the SP is in place. This proviso should not be used as a reason to refuse interim orders under the PWDVA.

Hence, the proviso to Section 12 must be deleted, and it should be left to the discretion of the judge to decide whether or not to ask for a PO report at that stage. This Amendment has been suggested to ensure that the Magistrate cannot refuse an application for the sole reason that the DIR has not been recorded or attached. Since the PWDVA is a welfare legislation, procedure cannot defeat the substance. This has been upheld by many High Courts. In Milan Kumar Singh & Anr. v. State of UP & Anr., the High Court of Uttar Pradesh dismissed the contention that an application could not be filed directly before the Magistrate without first approaching the PO and recording a DIR. The court stated that the DIR is to be recorded only if the Magistrate or the parties require the assistance of the PO. Again in Nand Kishore v. Kavita & Anr., the court held that it is not necessary in each and every case to obtain a report from the PO or the SP to decide an application for interim relief. It was further explained that if on the basis of the record available before the court, it is in a position to arrive at a just and proper conclusion, it should proceed and decide the matter accordingly.

163 2007 Cri LJ 4742.
The Amendment reiterates the reasoning provided by High Courts, and is in keeping with the spirit of the legislation to ensure procedure does not defeat substance.

2. **Section 31 of the Act has to be Amended to include Breach of All Orders.**

Penalty for breach cannot be restricted only to protection orders as this was not the intent of the law. The findings of the M&E undertaken by LCWRI in the past four years have tracked a trend wherein the most commonly granted orders are maintenance and residence orders. Thus, there is a clear need to give equal importance to enforcing all the reliefs. It has been seen in various courts that the Magistrates are taking cognisance of breach of orders other than protection orders, especially if it relates to a breach of residence order. The following Amendment ensures that this positive practice is being reflected in the law so as to ensure uniform interpretation of the Act.

After amendment, Section 31 of the PWDVA should read as:

“Penalty for breach of any order by respondent- (1) A breach of any order passed under Sections 18, 19, 20, 21, 22 and 23 of the Act, by the respondent shall be an offence under this Act and shall be punishable with imprisonment of either description for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both”.

3. **Insertion of a Provision to include M&E of the Law**

Since the enactment of the PWDVA, it is only the civil society which has undertaken the M&E of the Act from time to time. LCWRI has consistently monitored the implementation of the Act for the last four years. However, it is imperative that a permanent M&E system is put in place by the government to assess the implementation of the Act.

After Section 11(d), the following to be added as Section 11(e) and Section 11(f):

**Section 11 (e):** There shall be a Central Registry of all orders passed under the Act.

**Section 11 (f):** An M&E system is put in place and annual M&E is conducted, the reports of which shall be published and given wide publicity. The said report shall contain the following:

(i) The number of interim and final orders passed in the state by Magistrates
(ii) The number of appeals filed and decided district-wise
(iii) The number of POs appointed in each state, with their qualifications and designations
(iv) The number of SPs appointed
(v) The number of MFs designated under the Act
(vi) The number of SHs designated under the Act
(vii) The budget allocated for the implementation of the Act
(viii) A report of the efforts made to train judges, POs, SPs, Police and MFs
(ix) The said report should also indicate the efforts at disseminating information about this Act and the awareness building measures adopted by the states.

4. Amendment of Section 29: Appeals

Appeals can always result in considerable delays. However, in the case of domestic violence, given its urgent nature, speedy remedies are highly desirable. The analysis of orders conducted by the Lawyers Collective shows that appeals from interim orders is one of the most important reasons for the delay in disposal of cases. The proposed amendment seeks to address this by restricting appeals to final orders only. This has been done keeping in mind Section 19 of the Family Courts Act, 1984, which states that appeal shall not be allowed from interim orders.

Following the same principle in the proposed amendment, appeals are allowed only from final orders to ensure timely disposal of cases. Since the PWDVA cases can be called as matters relating to family, we can restrict appeals from interim orders.

The proviso has been added to ensure that appeals are not filed by the respondent only to stall the payment of maintenance. The proviso states that during the period of the appeal, the respondent has to pay the maintenance that he would have otherwise paid to the AP. The Industrial Disputes Act, 1947, provides a similar provision where arrears of salary etc. would have to be paid in case of preferring an appeal. The proposed amendment ensures that the respondent does not defer the payment of maintenance by filing an appeal.

After amendment, Section 29 would read as:
“(1) There shall lie an appeal from every order, not being an interim order under the Act, to the Court of Session within thirty days from the date on which the order made by the Magistrate is served on the aggrieved person or the respondent, as the case may be, whichever is later.

Provided, where in any case a Court, the Court awards maintenance and the respondent prefers an appeal or revision against such an order, the respondent shall be liable to pay such Aggrieved Person, during the period of pendency of such proceedings in the higher, full maintenance he would have to pay if he had not preferred an appeal.

(2) Except as aforesaid, no appeal or revision shall lie to any Court from any order under the Act.”
The PWDVA is intended to give effect to the Constitutional guarantees of equality for women and non-discrimination based on sex. It is grounded within the framework of CEDAW, which outlaws direct and indirect discrimination against women. No one can dispute that all human beings have a right to live with dignity and freedom from fear of violation of their bodily integrity, hence, the need for such a law, which addressed gender-based discrimination. The passage of a law does not automatically guarantee that it will be implemented. The perspectives and conviction of all the implementers need to be moulded to appreciate the intent of the law, before effective and concrete changes can be seen. The more progressive and “different” a law, the greater is the learning curve to imbibe new ways of thinking and doing. While recognising the frustratingly slow pace of normative changes, the M&E efforts doggedly continue to map, track and analyse trend and practice that evolve. These then must be evaluated to ascertain whether the direction of implementation is in line with and responsive to the core ethos as defined by the law.

This report presents the story of implementation from the viewpoint of the stakeholders involved in the implementation and the users of the law. The promise of fast relief is the major attraction of this law for its users. While the procedures and practices under the law are solidifying, these are more often that not divergent from the written letter of the Act.

As mentioned earlier, if the analysis points to gaps in implementation, this mapping must inform the sharpening of advocacy, for it is not enough for the state machinery to do something, it must also do the correct thing. Along with demands of sensitisation and budget allocation, a focused discourse must define specific demands around some of the key questions that are recurrent through the annual M&E efforts.

Firstly, how is access of women to the law going to be enhanced? This is clearly linked to delineating the role of the PO. There are several options and models emerging that need to be studied. One emerging model is that of Haryana, where the PO is housed in a separate room within the police station. Is that helping access? Further, is it facilitating the multi-response? How is this impacting the litigation role of the PO? The other model that has been cited over the years is that of Andhra Pradesh, wherein additional staff has been recruited to fulfill the role of the PO. This is closer to the concept of a “Protection Office” that was discussed in last year’s report, and is a possible solution to the multiplicity of demands placed on the PO. Whether this is indeed ironing out hurdles of access to the courts needs a focused study.
It is clear that the POs in Delhi score over the others in their understanding, and involvement in the court processes. However, the move to publicise their numbers will be important to track. Will it place additional burden on the POs given the lack of infrastructure? Perhaps plugging in independent charge POs within the existing WCD system in more meaningful ways can be explored. Each of these models has its advantages and disadvantages but since there is insufficient information, it is not possible to sift out best practices.

Secondly, the litigation process must be carefully analysed. As lawyers remain firmly entrenched in the process, it must be debated whether this is acceptable or not. There is a need to strengthen legal aid for the women. Legal aid lawyers are not seen as competent or interested and the women are set up for failure. Several questions need to be discussed – Is it possible to litigate without lawyers? What are the alternatives? If lawyers must stay, then perhaps a special panel of committed lawyers could be recognised and entrusted to provide legal help to the women under this law. Given the importance of the Magistrates, a discussion with them may provide further guidance. As long as the Magistrates insist on the procedural niceties, speedy relief for the victims of domestic violence is not possible. Special courts for women should not be created on criterion such as women judges, but on other parameters such as sensitivity and a track record of good judgments.

Thirdly, the role of other stakeholders too needs more debate. The engagement of the Police with the law continues to be a complex issue. Enforcement is one key area where it is felt that Police collaboration is a must. SPs can be critical and support the multi-response role of the PO. Also, the MFs are conspicuous by their absence. A major gap in the M&E efforts is the lack of reliable and comprehensive data systems that enable tracking of the different phases of implementation. Courts can be a critical source for this, and key ministries and department must take this up.

Lastly, a discussion should start on the supportive changes to be made in the other laws that would ensure a violence free life for the women. This law introduces aspects such as live-in relations, right of residence – concepts that are new and bold not only for the stakeholders to imbibe through trainings and discussion, but those that may require amendments in related marriage and other laws. The narratives of the women underscore the need to harmonise the other women related laws with the PWDVA, and enact a law on matrimonial property. The judicial system is the key to the implementation of any law, and as this law moves out of its infancy period, it is crucial to ensure that this does not remain a progressive law stuck in an old system.
Annexures
LIST OF ACKNOWLEDGMENTS

Special thanks to the following individuals and organisations for their contribution. We regret any inadvertent omissions in the list below.

**Judiciary**

- Mr. M. Gulati, P.S. to the Hon’ble Chief Justice of India
- Mr. Likhichand, Branch Officer (Admn), Supreme Court of India

**Delhi**

- Mr. Luv Dhawan, Welfare Officer, WCD, Delhi
- Mr. Naresh Mehta, P.S. to Chief Justice of the Delhi High Court

**Jharkhand**

- Director Social Welfare, Department of Social Welfare Women and Child Development, Jharkhand

**Kerala**

- Mr. P.P Gopi, Director of Social Welfare, Social Welfare Department, Kerala

**Maharashtra**

- Mr. Ravindra S. Patil, Deputy Commissioner, Women and Child Development, Maharashtra
- Justice Anil R. Dave, Former Chief Justice of Bombay High Court
- Mr. S S Hingne, Registrar (Inspection), High Court (A.S), Bombay High Court

**Organisations/Individuals**

- Girija Vyas, Chairperson, National Commission for Women
- Yogesh Mehta, Law Officer, National Commission for Women
- Sonali Khan & Sunita Menon, Breakthrough
- PWDVA -Maharashtra Network
• Special Cell for the Women and Children (Anjali Dave, Trupti Panchal and the team)
• Padma Deosthali (Coordinator) and Sangita Rege (Sr. Research Officer), Centre for Enquiry Into Health and Allied Themes (CEHAT)

Attendees of the Pre-National Conference Meeting

• Ms. Suman Lata, Protection Officer, Social Welfare, Chandigarh
• Ms. Sanyogita, Protection Officer, Social Welfare, Chandigarh
• Mr. Suresh Tomar, Joint Director, Commissioner Women & Child Welfare Department, Madhya Pradesh
• Ms. Renu Love, Assistant Director (Women Empowerment Cell), Department of Women & Child Development, New Delhi
• Ms. Saroja Thiruvengadam, Assistant Director, Social Welfare Department, Tamil Nadu
• Ms. Jigna Sarkar, Programme Officer, Gender Resource Centre, Gujarat
• Mr. Rupesh Kumar Sinha, WDC, Bihar
• Ms. Kavita Srivastava, Gen. Sec., PUCL, Rajasthan
• Mr. Sudhir Kumar, Consultant, Department of Women & Child Development, Rajasthan
• Mr. Surrender Shishak, Women Development Officer, Department of Social Welfare, Manipur
• Ms. Sunaina Tomar, Secretary, Department of Women & Child Development, Gujarat
• Mr. Ramesh Halbhavi, Dy. Director, Department of Women & Child Development, Karnataka
• Ms. Usha Kiran Singh, Dy. Chief Probation Officer, Directorate Mahila Kalyan, Department of Women Welfare, Uttar Pradesh
• Ms. Vinita Aggarwal, Director, MWCD, Delhi
• Ms. Mutiny Bandyopadhyay, Special Officer – I Joint Director of Social Welfare, Department of Women and Child Development, West Bengal
• Ms. Kishari Baruah, Protection Officer, Department of Women & Child Development, Assam
• Ms. R. Lalnunmawii, Protection Officer, Social Welfare Department, Mizoram
• Ms. M. M. Bindu, Project Director, Department of Women & Child Development, Karnataka
• Ms. Sangeeta Verma, Economic Advisor, MWCD, Delhi
• Mr. Yogesh Mehta, National Commission for Women, Delhi
• Ms. S. Pujari, Joint Secretary, National Commission for Women, Delhi

Attendees of the NGO Consultation Meeting

• Bimla Chandra Sekar, Ekta, Tamil Nadu
• Sheetal Sharma, North East Network, Assam
• Ibadasuklin Kharshandi, North East Network, Meghalaya
• Geetha. J, Sakhi, Kerala
• Ammu Abraham, Women’s Centre, Mumbai
• Priyanka Singh, Action India, Delhi
• Swati Sucharita, Task Force on Violence Against Women, Orissa
• Indhu Subramanium, Hengasara Hakkina Sangha (HHS), Karnataka
• Poonam Kathuria, Swati, Gujarat
• Uma Kant, Action India, Delhi
• Sharda Sathe, Stree Mukti Sangathana, Mumbai
• Angela D’souza, Bailancho Saad, Goa
• Vidya Reddy, Bhumika ,Women’s Collective, Hyderabad
• Hemlata, Mahila Samakhya, Uttarakhand
• Anuradha Kapoor, Swayam, West Bengal
• Prarthana Mishra, Sangini, Madhya Pradesh

Interns

• Deeksha Shukla, Amity Law School, New Delhi
• Elham Shabahat, New York University, New York
• Dev Chaudhary, Jindal Global Law School, Sonepat
• Devyani Deshpande, The National Law Institute University, Bhopal
• Khushboo Bhargava, ICFAI Law School, Dehradun
• Megha Nagpal, Amity Law School, New Delhi
• Shristi Agnihotri, ILS Law College, Pune
• Smriti Biradar, ILS Law College, Pune
Women's ages in the sample ranged from 21 to 53 years, with most women in the age range of 27-34 years. All except three were currently married. The education status is detailed in the table below.

Table 1: Educational Status of Women and their Husbands

<table>
<thead>
<tr>
<th>Education Level</th>
<th>Women’s education (N=61)</th>
</tr>
</thead>
<tbody>
<tr>
<td>No education</td>
<td>5</td>
</tr>
<tr>
<td>Primary (up to 5th)</td>
<td>5</td>
</tr>
<tr>
<td>Secondary (6-8)</td>
<td>14</td>
</tr>
<tr>
<td>High school (9-10)</td>
<td>8</td>
</tr>
<tr>
<td>11-12 std</td>
<td>9</td>
</tr>
<tr>
<td>Graduate</td>
<td>16</td>
</tr>
<tr>
<td>Post-graduation and above</td>
<td>4</td>
</tr>
<tr>
<td>Not applicable</td>
<td>0</td>
</tr>
<tr>
<td>Don’t know</td>
<td>0</td>
</tr>
<tr>
<td>Total</td>
<td>61</td>
</tr>
</tbody>
</table>
### Profile of POs

**Table 2: Profile of POs interviewed by location**

<table>
<thead>
<tr>
<th>Location</th>
<th>Sex</th>
<th>Educational qualification</th>
<th>Designation of the PO</th>
<th>Range in number of months functioning as PO</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Male</td>
<td>Female</td>
<td>Up to 12th</td>
<td>Graduate</td>
</tr>
<tr>
<td>Mumbai</td>
<td>6</td>
<td>4</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Thane</td>
<td>5</td>
<td>5</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Sangli</td>
<td>9</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Jaipur</td>
<td>2</td>
<td>9</td>
<td>1</td>
<td>9</td>
</tr>
<tr>
<td>Jodhpur</td>
<td>0</td>
<td>10</td>
<td>0</td>
<td>8</td>
</tr>
<tr>
<td>Delhi</td>
<td>0</td>
<td>10</td>
<td>10</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>22</td>
<td>29</td>
<td>1</td>
<td>20</td>
</tr>
</tbody>
</table>

An average of about two years
IN THE HIGH COURT OF JUDICATURE AT BOMBAY CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 484 OF 2008

Shri Darshanand Markendey Rai .. Petitioner
versus
The State of Maharashtra and anr .. Respondents

Mr.M.Y.Sayani, for the Petitioners
Smt.P.P.Shinde, APP for the state
Shri Gunratan Sadavarte for the respondent No.2

CORAM: A.V.POTDAR, J.
DATED: 12th February, 2009

P.C.

1. Heard advocate for the petitioner and advocate for the respondent No.2. Perused judgment passed by Additional Chief Metropolitan Magistrate, 5th Court, Dadar, Mumbai, in Regular CC No.220/Misc/2007, and also by the Additional Sessions Judge at Sewari, in Criminal appeal No.127 of 2007. Even today the Criminal revision is on board for admission. As limited point arises for my consideration, by consent of the parties, taken up for final hearing.

2. It is the grievance of the Petitioner that before taking cognisance by the Magistrate, he has to see that there is substantial compliance of the provisions under section 12 of the Protection of Women From Domestic Violence Act, 2005. The compliance of this section do not find place in the order passed by the learned Additional Chief Metropolitan Magistrate, Court at Dadar, as well as in the order passed by the learned Additional Sessions Judge in Criminal Appeal No.127 of 2007. In absence of any report of the Protection Officer, under section 12, even though exercise is not futile, but it required to consider whether in fact there is domestic violence

COPY OF THE ORDER DATED 12 FEBRUARY, 2009 OF THE BOMBAY HIGH COURT

Annexure 3
for which the complaint is lodged by the applicant second respondent. In absence of this exercise, the order passed by both the Courts below are irregular which can not be cured. In the premises, the petition succeeds. The order passed by both Courts below are set aside. The matter is remanded to the Additional Chief Metropolitan Magistrate, fifth Court, at Dadar with direction to dispose of criminal case No.220/Misc/2007, within a period of three months from the date of this order, but after calling report from the Protection Officer as well as Service Provider as contemplated u/s 12 of the Act. Criminal Revision stands disposed of with this order.

(A.V.POTDAR, J.)
In the Court of the II Metropolitan Magistrate,
Cyberabad, At L.B. Nagar, Hyderabad

Present: Sri. S.V. Nelson Raju, B.A., B.L.
II Metropolitan Magistrate,
Cyberabad, At L.B. Nagar,
Hyderabad.

Dated 5th of October, 2009
D.V.C 2/2008

Smt. B. Madhavi, W/o. Late B. Srinivas,
Aged about 25 years, Occ: Household,
R/o. 9-5-80/1, Maruthinagar, Champapet,
Under LB Nagar Municipality

And

1. B. Sailu, S/o. Mallaiah,
   aged about 25 yrs, Occ: Govt. Service

2. Smt. Mallamma, W/o. B. Sailu
   aged 54 years, Occ: Housewife

3. Smt. Manju P. W/o. Shankar,
   aged 26 years, Occ: Household

4. Smt. B. Sanju, W/o. Srinivas,
   aged 22 years, Occ: Housewife

(All are R/o. 2-6-296, Jaipuri Colony,
Nagole, Uppal, R.R. District.

This case came before me for final hearing in the presence of Sri. V. Raghava Reddy, Advocate
for the petitioner and Sri. K.L.N. Reddy, Advocate for the Respondent and having stood over for
consideration till this day, the Court delivered the following:-
Annexure 5

CIRCULAR ISSUED BY DGP, HARYANA

From
Director General of Police,
Haryana

To
1. All District Superintendents of Police in Haryana
2. DCPs/East, West & South Gurgaon.

No. /Spl. Cell/dated, Panchkula, the

Subject: Facilities to provide Special Cells for Women and Children Established in the office of District Superintendents of Police.

Memorandum

Following facilities are needed for effective functioning of the Special Cells for Women and Children established in the office of District Superintendents of Police:

1. Provide one neat and clean room with adequate space in SP Office in each district. The room should be separate from Crime Against Women Cell.
2. Depute two police personnel (one of them female) well qualified (at least graduate) on full time basis in this Cell.
3. Arrange to issue Identity Card to PPOs deputed in this Cell from Haryana Police.
4. Provide a vehicle as and when required for movement of PPOs for conducting enquiries, home visits, awareness generation etc.
5. Provide postal help to deliver notices/summons call letters to respondents/clients.
7. Issue directions to send cases related to violence against women especially Domestic Violence to the Special Cell.
8. Invite the PPO to make presentation about Special Cell in monthly Crime Meeting of District. You are directed to provide the above facilities to the Special Cells for Women and Children.
Compliance report in this regard shall be sent to this office within 15 days.

(R.C. Mishra)
For Director General of Police, Haryana

Endst. No. 43408-414/Spl. Cell/dated, Panchkula, the 22-5-09

A copy of above is forwarded to the following for information and necessary action please,

1. All Range Inspector Generals of Police in Haryana.
2. Commissioner of Police, Gurgaon.
3. Director, Women & Child Development Department, Haryana, SCO No. 360-61, Sec. 34A, Chandigarh.
4. Sh. Trupti Panchal, Project Coordinator, RCI-VAW TATA Institute of Social Sciences, PO BOX No. 8313, Deonar, Mumbai-400088 Fax-022-25525250

(R.C. Mishra)
For Director General of Police, Haryana
LETTER DATED 21 JANUARY 2010 & THE FORMATS FOR REPORTING, RAJASTHAN

GoM. of Rajasthan
Women & Child Welfare Department
Women’s Rights Directorate
2, Jal-Path Gandhi Nagar, Jaipur

S.No-F16 (1) (14) WRD/WH/07/Part III 1626-591267-346
Jaipur, dated 21-1-10

Distt. Supdt. Of Police

All.

Sub: In reference to the implementation of Prevention of Women from Domestic Violence Act, 2005

Reference: Letter of Additional Director General of Police (Crime Branch), Rajasthan, Jaipur, S.N. P.6 (3), R.A/W.R./Leg./06/2292-2339, dated 03-09-08.

Sir!

As you are aware that the Prevention of Women from Domestic Violence Act, 2005, is being implemented all over the country since October 2006. The aim of this Act is to provide the women protection from domestic violence, grant custody, and appropriate maintenance. In this regard, the Director General of Police (Crime Branch), Jaipur, Rajasthan has passed necessary guidelines through the above mention letter.

Under the Prevention of Women from Domestic Violence Act, 2005 (PWDVA, 2005) domestic violence is defined as any kind of mental or physical assault, physical torture, sexual harassment, oral and emotional misbehaviour or economic harassment by any of the male family members. Any aggrieved woman can file an application on her own or with the help of the Protection officer, service provider, organisation, police officer and some person, before the Magistrate. If any aggrieved woman files a complaint in this regard to the police officer, he/she should provide her information about the protection officer, service provider, alongwith details of the provisions of relief and other assistance available under the PWDVA, 2005. And, if, the woman agrees/wants, DIR shall be prepared in the form-1 prescribed under the PWDVA,
2005 and submitted to the concerned officer. If the woman wants then a FIR should be lodged about the incident.

It must be clarified that the proceedings under this Act are independent of other laws in force. If any action should be taken under any other law for a crime, the police will take action/proceed as per that law separately.

This law is a civil law and is being implemented to provide help and protection to the women. Under this Act, the only provision that provides for punishment is where the respondent has violated/disobeyed the orders issued by the Magistrate. This constitutes a cognizable offence under Section 32 of the Act. There are provisions in the Act that direct the police to help the protection officer as and when the need arises.

Hence, under the Prevention of Women from Domestic Violence Act, 2005 (PWDVA, 2005) the police have an important role to play. Thus, this is important that each thana would use a format to collect information, prepare a report and maintain records. For this purpose, attached herewith are the police form-1 to 4. We request you to keep/maintain a register according the police form-1 & 2, and to make an effort to bring/seek information according to the police form-3 from each police station/thana. It is requested that the information collected at the district level (quarterly) is sent in the police form-4 so that it can be included in the information to be sent to the Government of India.

Govt. Secretary
Welfare Department

Commissioner(WR) &
woman and Child

S.No-F16 (1) (14)WRD/WH/07/Part III 1660-760 Jaipur, dated 21-1-10

Copy for the information and necessary action-

1- To Adl. Directorate General of Police (Crime Branch), Rajasthan, Jaipur, in reference to his letter- S.N. P.6 (3), R.A/W.R./Leg./06/2292-2339, dated 03-09-08. All distt. Collectors.
2- All S. Superintendent Of Police./D.S.P. range
3- All D.Directors, Women and Child Welfare Depts.

Consultant (W.A)
# FORM POLICE-1

Register
Protection of Women from Domestic Violence Act-2005
Details of women victims contacting P.S.

<table>
<thead>
<tr>
<th>Distt------------</th>
<th>Name of the P.S --------------</th>
</tr>
</thead>
<tbody>
<tr>
<td>Year---------------</td>
<td>-----------------------------</td>
</tr>
</tbody>
</table>

## Part-2

<table>
<thead>
<tr>
<th>S.N.</th>
<th>Name of the women</th>
<th>Nature/ subject of the complaint</th>
<th>Whether any report of incident lodged, if yes-name of the magistrate, if not-reason thereof.</th>
<th>Whether copy of report given to protection officer?</th>
<th>Whether the women has lodged any FIR, if yes-give No. dates. &amp; other details.</th>
<th>Other details</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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<td></td>
<td></td>
</tr>
</tbody>
</table>
**FORM POLICE-2**

Register
Protection of Women from Domestic Violence Act-2005
Cases registered Under Section 32 of the Act (cognisance and evidence)

<table>
<thead>
<tr>
<th>S.N.</th>
<th>Name of the women to whom protection orders have issued.</th>
<th>No. date of the protection order of magistrate disobeyed by the respondent</th>
<th>Details-name, address of respondent against whom the case has been filed</th>
<th>Brief detail of the inquiry</th>
<th>Date of presentation before magistrate</th>
<th>Order of magistrate</th>
<th>Other details/remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

----------------------------------------------------------------------------------------------------------------------
**FORM POLICE-3**

Protection of Women from Domestic Violence Act-2005
Quarterly information by Thana to Supdt. of Police

<table>
<thead>
<tr>
<th>Distt</th>
<th>Name of the P.S</th>
<th>Period*</th>
<th>Year</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Jan-March Till 15/4 **</td>
<td>15/04</td>
</tr>
<tr>
<td></td>
<td></td>
<td>April-June Till 15/7*</td>
<td>15/07</td>
</tr>
<tr>
<td></td>
<td></td>
<td>July-September Till 15/10 **</td>
<td>15/10</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Oct-December Till 15/01 **</td>
<td>15/01</td>
</tr>
</tbody>
</table>

* Tick (right) before the related period.
** Report should be sent to Directorate before the fixed date.

<table>
<thead>
<tr>
<th>Period</th>
<th>No. of complaints registered under DV Act.</th>
<th>No of cases in which DIR presented before the magistrate</th>
<th>No. of cases sent to P.O.</th>
<th>No. of women seeking help from the shelter homes</th>
<th>No. of women seeking medical assistance</th>
<th>No. of person arrested/taken to be arrested for the disobedience of protection order u/s 32 by magistrate</th>
<th>Case No. of order/execution order passed by the magistrate</th>
<th>Other detail/remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

No. of cases received till Dec. 31 last year.
No. of cases received in the current year till date.
No. of case received in the ref. time period.

Total

Signature I.O.

Copy to Supdt. Of Police............. for information and necessary action.

---------------------------------------------------------------------------------------------------------------------
**FORM POLICE- 4**

Protection of Women from Domestic Violence Act-2005
Quarterly information by Supdt. Of Police

<table>
<thead>
<tr>
<th>Distt------------</th>
<th>Name of the P.S------------</th>
</tr>
</thead>
<tbody>
<tr>
<td>Duration*---------</td>
<td>Year------------------------</td>
</tr>
<tr>
<td>1 Jan-March Till 15/4 **</td>
<td>3 July-September Till 15/10 **</td>
</tr>
<tr>
<td>2 April-June Till 15/7*</td>
<td>4 Oct-December Till 15/01 **</td>
</tr>
</tbody>
</table>

* Tick (right) before the related period.
** Report should be sent to Directorate before the fixed date.

<table>
<thead>
<tr>
<th>Period</th>
<th>No of complaints registered under DV Act.</th>
<th>No of cases in which DIR presented before the magistrate</th>
<th>No of cases sent to P.O.</th>
<th>No of women seeking help from the shelter homes</th>
<th>No of women seeking medical assistance</th>
<th>No of person arrested/taken to be arrested for the disobedience of protection order u/s 32 by magistrate.</th>
<th>Case No. of order/execution order passed by the magistrate</th>
<th>Other detail/remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No. of cases received till Dec. 31. last year.</td>
<td>No. of cases received in the current year till date.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Fourth Monitoring & Evaluation Report 2010 181
<table>
<thead>
<tr>
<th>No. of case received in the ref. time period</th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Signature I.O.

Copy to-

1. Commissioner, women’s rights (PWDVA-Department) A-2, Jal-path, Gandhi Nagar, Jaipur.
2. D. Director- women and child welfare dept. Distt-.............
Govt. of Rajasthan
Women & Child welfare Department
Women's Rights Directorate
2, Jal-Path, Gandhi Nagar, Jaipur

S.No-F16(1) (38)WRD/S.P./09 I 1267-346    Jaipur, dated 19-1-10

Sub: In reference to the implementation of Prevention of Women from Domestic Violence Act, 2005

Your organization has been registered as a service provider u/s 10(1) of PWDVA, 2005. The conditions of registration have been sent along with the registration certificate letter.

As a service provider, the responsibilities are as follows:

(a) If the woman wants to file/write/lodge a DIR, the copy of the DIR must be submitted to the Magistrate and Protection Officer of the concerned area.

(b) The concerned thana and the Protection Officer (P.O.) will have the authority to refer the aggrieved person for medical examination and forward a copy of the medical report for appropriate action.

(c) If he/she decides that the aggrieved person needs a shelter, they can decide to provide her shelter or submit a report to the concerned thana/P.S.

Apart from this, your organization is expected to provide name of the persons, who are eligible as consultants under Rule 13 of the PWDVA, 2006 to the District. P.O/P.O. so that they can provide the list to the court.

As a Non-Govt. Organization you are expected to help the aggrieved woman. So, whenever a woman contacts your organisation/group or such a case is referred to the org/group; you are required to call her and provide information about her rights under the PWDVA, 2006, as given in Form IV under the Rule 8(1) (ii) of PWDVA, 2006. As per the statement of the woman you will prepare a report under the concerned rules and submit/file an application before the court along with an affidavit of the woman (form-III), and if necessary in form-II. You will send a copy of the DIR to the P.O. at concerned police officer. If the woman agrees/ wants, a copy of the DIR should be sent to the concerned police officer. You should remember that you are not supposed to investigate the matter yourself. So you are not required to investigate any incident but rather fill/lodge the DIR on the basis of the statement given by the women or her testimony/affidavit; and medical reports of beating or a letter of threat, if available. If necessary, you may provide shelter to the woman in a registered/listed shelter home and provide her proper medical facilities. It is not suggestive for Service providers to give any
suggestion, because the court may appoint the consultant/welfare officer. You may help the woman to prepare the document.

The Distt. P.O. may decide a specific area for you. So you are requested to keep a list of the Magistrate, police officers, protection officer, medical services, shelter homes etc. of that area and periodically remain in touch with them.

Your co-operation to provide positive help to the aggrieved woman is significant. For matters/cases coming to the service provider, it is found important to standardize the registers and information forms to be maintained under the PWDVA, 2006, in order to ensure uniformity. For this purpose the formats are given below. You are expected to proceed according to these forms. If there is any doubt or need for clarification, please do not hesitate to consult us.

Consultant (W.A)
Directorate women’s Rights
Jaipur, dated-19-1-10

S.No-F16 (1) (38)WRD/S.P./09I  1347-448

*Copy for the information and necessary action*

4- All Distt. Collectors.
5- All Supdt. Of Police.
6- All D.Directors, Women and Child Welfare Depts.

Consultant (W.A)
Service Provider Form-1  
Protection of Women from Domestic Violence Act-2005

1- Distt……………………………………………………………………………………
2- Name of the service provider org…………………………………
3- Address………………………………………….……………………………………

……………………………………………………………………………………………………
4- Date of registration No as a service provider………………

……………………………………………………………………………………………………
5- Phone No……………………………………….……………………………………
6- Other details………………………………………………………………………

----------------------------------------------------------------------------------------------------------------------

Details of Register

<table>
<thead>
<tr>
<th>S.No.</th>
<th>Date</th>
<th>Name &amp; phone no.of contact person</th>
<th>Receive details</th>
<th>Details of the domestic violence</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Magistrate</td>
<td>Protection Officer</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Police</td>
<td>Person himself</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Others</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Action taken</th>
<th>Action taken on the orders of magistrate</th>
<th>Special details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of DIR given to magistrate</td>
<td>Reasons for not filling up DIR</td>
<td>Reasons to refer to protection officer</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Fourth Monitoring & Evaluation Report 2010 185
Name of the service provider org: 

Period*.............. Year............... 

<table>
<thead>
<tr>
<th>Period</th>
<th>No. of complaints registered under DV Act.</th>
<th>No of cases in which DIR presented before the magistrate</th>
<th>No. of cases sent to P.O.</th>
<th>No. of women seeking help from the shelter homes</th>
<th>No. of women seeking medical assistance</th>
<th>Order/execution order passed by the magistrate</th>
<th>Other detail/remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Jan-March</td>
<td>Till 15/4 **</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2 April-June</td>
<td>Till 15/7*</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3 July-September</td>
<td>Till 15/10 **</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4 Oct-December</td>
<td>Till 15/01 *</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* Tick (right) before the related period. 
** Report should be sent to Directorate before the fixed date. 

No. of cases received till Dec. 31. last year. 

No. of cases received in the current year till date. 

No. of case received in the ref. time period. 

Total 

Signature I.O. 

Copy to:- 

1- Commissioner, women rights (PWDVA-Department) A-2, Jal-path, Gandhi Nagar, Jaipur. 
2- D. Director- women and child welfare dept. Distt-.............
राजस्थान सरकार
महिला एवं बाल विकास विभाग
निदेशालय महिला अभिकारिता
2, जल-पथ, गांधी नगर, जयपुर

क्रमांक एफ 16 (1) (14) नि.म.आ. / म.उत्तरी. / 07 / भाग - 3, 1626-59
जयपुर, दिनांक-21.1.10

जिला पुलिस अधीक्षक

समस्त।

विषय:  घरेलू हिंसा से महिला संरक्षण अभिनियम, 2005 को लागू करने के संबंध में।

प्रसंग: अति. महानिदेशक पुलिस (अपराध शाखा), राजस्थान, जयपुर के पत्र
क्रमांक प. 6 (3) प्र.आ. / नि.प्र. / विधि / 06 / 2292-2339, दिनांक 03.05.08

महोदय!

जैसा कि आप जानते हैं कि घरेलू हिंसा से महिला संरक्षण अभिनियम, 2005 पूरा देश में अक्टूबर 2006 
से लागू हो गया है। इस अभिनियम का उद्देश्य घरेलू हिंसा से महिलाओं का संरक्षण, अभिमान एवं उन्हें 
वाढ़ने वाले गुण एवं / मुआवजा दिलाया जाना है। इस संबंध में अतिरिक्त महानिदेशक पुलिस (अपराध 
शाखा), राजस्थान, जयपुर द्वारा उपर संरक्षण पत्र के माध्यम से आवश्यक दिशा-निर्देश जारी किए गए 
हैं। (प्रति संलग्न)

घरेलू हिंसा से महिला संरक्षण अभिनियम, 2005 के तहत किसी भी पारिवारिक सदस्य / पुरुष द्वारा किए 
गए मानसिक या शारीरिक आघात, शारीरिक दुर्योग, योग्य दुर्योग, मानसिक और भावनात्मक 
दुर्योग एवं आधिकृत दुर्योग को घरेलू हिंसा के रूप में परिभाषित किया गया है। कोई भी पीड़ित 
महिला घरेलू हिंसा के संबंध में अपना प्रार्थनापत्र सीधे अथवा संरक्षण अधिकारी, सेवा प्रदाता संस्था, 
पुलिस अधिकारी अथवा अन्य किसी भी व्यक्ति के माध्यम से मजिस्ट्रेट को दे सकती है। यदि कोई 
पीड़ित महिला किसी पुलिस अधिकारी को इस बारे में शिकायत देती है तो वह पुलिस अधिकारी उस 
महिला को संबंधित संरक्षण अधिकारी, सेवा प्रदाता संस्था एवं अभिनियम के अंतर्गत उपलब्ध आदेश 
अधिकारया या सहायता आदि के बारे में जानकारी देगा / देगी। यदि महिला ऐसी इच्छा व्यक्त करे 
तो घरेलू घटना की रिपोर्ट (डीआईआर) तैयार कर संबंधित अधिकारी को भेजवाई जाएगी। यदि 
संबंधित घटना के बारे में पीड़ित महिला एफ.आई.आर. भी दर्ज करना चाहती है तो उस संबंध में 
एफ.आई.आर. भी दर्ज की जाएगी।
यहां यह स्पष्ट करना ज़रूरी है कि इस अधिनियम के तहत कोई भी कार्यवाही अन्य कानून की प्राधिकारों के अलावा होनी याद किसी अन्य कानून के तहत किसी अपराध के संबंध में कार्यवाही अपेक्षित है तो पुलिस द्वारा यह कार्यवाही उस कानून में दिये गए प्राधिकारों के अनुसार ही की जाएगी।

यह कानून सिविल कानून है और महिलाओं के संस्कार व उन्हें सहायता दिये जाने के उद्देश्य से लागू किया गया है। इस अधिनियम के तहत किसी व्यक्ति को दंड दिये जाने का प्राधिकार नहीं है, अगर वह/प्रतिबद्ध मजिस्ट्रेट द्वारा दिए गए आदेशों का उल्लंघन नहीं करता तो! अधिनियम की धारा 32 के अनुसार यदि प्रतिबद्ध ऐसा करता है तो यह दंडनीय अपराध माना गया है। अधिनियम में यह प्राधिकार दिया गया है कि अवश्यकता पड़ने पर पुलिस द्वारा सुरक्षा अधिकारी की सहायता की जाए।

इस प्रकार परिवर्तन हिंसा से महिला संस्कार अधिनियम, 2005 के तहत पुलिस की भूमिका होती है।
अत: यह आवश्यक है कि प्रत्येक थाने पर संबंधित सूचना तथा उसकी नियमित रिपोर्टिंग के लिए प्राप्त निर्धारित किए जाएं, ताकि सूचना रखने और उनके संकलन में सुविधा हो। इसी के अनुसार नीचे दिए गए पुलिस प्रारूप-1 से 4 तक संलग्न करते हुए यह आयोज किया जाता है कि प्रत्येक पुलिस थाने पर पुलिस प्रारूप-1 व 2 के अनुसार रजिस्टर रखें जाएं तथा पुलिस प्रारूप-3 के अनुसार थानों से सूचनाएं मंगवाने की योजना की जाए। जिला स्तर पर संकलित सूचनाएं पुलिस प्रारूप-4 (रैमासिक सूचनाएं) में मिश्रित जाने का अनुरोध है, ताकि भारत सरकार को बेगुरे जाने वाली सूचनाओं में उन्हें शामिल किया जा सके।

आयुक्त (म.अ.)
महिला एवं बाल
दिनांक: 21.1.10
प्रतिलिपि—सूचना एवं आवश्यक कार्यवाही के लिए:
1. अधि. महानिदेशक पुलिस (अपराध शाखा), राजस्थान, जयपुर को उनके पत्र क्रमांक प. 6 (3) प्र.अ./भि.06/2292–2339, दिनांक 03.05.08 के संदर्भ में।
2. सभी जिलाधिकारी
3. सभी पुलिस महानिदेशक/उप—महानिदेशक रेंज
4. सभी उपनिदेशक, महिला एवं बाल विकास विभाग।

सलाहकार (म.अ.)
प्रारूप पुस्तिका-1

रजिस्टर
घरेलू घिसा संख्या अधिनियम, 2005 थाने में संपर्क करने वाली पीड़ित महिलाओं का विवरण

जिला................

थाने का नाम..........

वर्ष........................

भाग-2

<table>
<thead>
<tr>
<th>क्र.सं.</th>
<th>महिला का नाम</th>
<th>शिकायत का रूप/प्रकृति/विषय</th>
<th>क्या कोई घरेलू घिसा नोटिस पूर्वांश की गई है? यदि हां तो महिला का नाम लिखें। जिसके पास यह रिपोर्ट दर्ज की गई, यदि नहीं तो कारण लिखें।</th>
<th>क्या इस रिपोर्ट की प्रति सुरक्षा अधिकारी को दी गई है?</th>
<th>क्या महिला द्वारा कभी एफआईए या अन्य संबंधी अधिकार दर्ज की गई है?</th>
<th>अन्य विवरण</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
## प्रारूप पुस्तिका-2

राजस्थान
घरेलू हिंसा संरक्षण अधिनियम, 2005
अधिनियम की धारा 32 (प्रसंज्ञान और सबूत) के अंतर्गत दर्ज प्रकरण

जिला:............... थाने का नाम:............... वर्ष:..............................

<table>
<thead>
<tr>
<th>क्र.सं.</th>
<th>महिला का नाम जिसके संबंध में संरक्षण आदेश दिए गए हैं</th>
<th>मजिस्ट्रेट द्वारा प्रदत्त संरक्षण आदेश का क्रम, तिथि-जिसका प्रतिवाद ने उल्लंघन किया है</th>
<th>प्रतिवादी का नाम व पता-जिसके खिलाफ केस दर्ज किया गया है</th>
<th>कार्यवाही का संक्षिप्त विवरण</th>
<th>मजिस्ट्रेट के पास दर्ज तिथि</th>
<th>मजिस्ट्रेट का आदेश</th>
<th>विशेष विवरण</th>
</tr>
</thead>
</table>


## प्रारंभ पुस्तिका-3

घरेलू हिंसा संख्या अधिनियम, 2005

२००५ की मासिक चूकना धारा द्वारा पुलिस अधीक्षक के लिए

<table>
<thead>
<tr>
<th>जिला</th>
<th>थाने का नाम</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

| अवधि  | घरेलू हिंसा संख्या बेड़ा धारा पर दर्ज शिकायतों की संख्या | प्रकरण संख्या | संख्या अधिकारी को स्वतंत्र गए प्रकरणों की संख्या | आरोपगित उन्नत वाली महिलाओं की संख्या | चिकित्सा सहायता प्राप्त करनेवाली महिलाओं की संख्या | प्रतिवर्षी द्वारा मजिस्ट्रेट के संख्या आदेश के उल्लंघन पर भार 32 के तहत लिये गए प्रसंग्नार्थियों (गृह हो) संख्या | विशेष विवरण |
|--------|-------------------------------------------------|---------------|---------------------------------|--------------------------------|---------------------------------|---------------------------------|---------------------------------|--------------------------|
| 1      | जनवरी-मार्च | 15/4 तक | 3  जुलाई-सितंबर | 15/10 तक | 4  अक्टूबर-दिसंबर | 15/01 तक |  |  |
| 2      | अप्रैल-जुलाई | 15/7 तक |  |  |  |  |  |  |

जिस अवधि से संबंधित हो उसके आगे (सही) का निशान लगाएं।
संबंधित तिथि तक रिपोर्ट निदेशालय को प्रस्तुत की जानी चाहिए।

<table>
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<tr>
<th>गत वर्ष 31 दिसंबर तक प्रारंभ प्रकरणों की संख्या</th>
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<table>
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<tr>
<th>वर्तमान वर्ष में पिछली अवधि में प्रारंभ प्रकरण संख्या</th>
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<tr>
<td>संदर्भित रिपोर्टिंग समय में प्राप्त प्रकरणों की संख्या</td>
</tr>
<tr>
<td>---</td>
</tr>
<tr>
<td>योग</td>
</tr>
</tbody>
</table>

हस्ताक्षर प्रभारी अधिकारी

प्रतिलिपि–सूचना एवं कार्यवाही के लिए जिला पुलिस अधीक्षक…………….…………………..…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………….…………*.
प्रावृत्त पुस्तिका-4
घरेलू हिंसा संख्या अधिनियम, 2005
प्रशिक्षण सूचना पुलिस अधीक्षक द्वारा

जिला.......................... कार्यालय जिला पुलिस अधीक्षक..........................
अवधि*.......................... वर्ष ..........................................................

| अवधि | घरेलू हिंसा से संख्या हेतु धाराओं पर वर्ष शिकायतों की संख्या | प्रकरण संख्या जिसमें घरेलू घटना रिपोर्ट थाना द्वारा गठित को प्रस्तुत की गई | संख्या अधिकारी को मेहनत गई प्रकरणों की संख्या | आश्रयमूल और अधिकारी लेने वाली महिलाओं को संख्या | चिकित्सा सहायता प्राप्त करने वाली महिलाओं की संख्या | पत्थरी द्वारा गठित को प्रस्तुत और निबंधन आदेश की प्रकरण संख्या | विशेष विवरण |
|-------|-------------------------------------------------|-------------------------------------------------|-------------------------------------------------|-------------------------------------------------|-------------------------------------------------|-------------------------------------------------|-------------------------------------------------|-------------------------------------------------|
| 1     | जनवरी-मार्च 15/4 तक**                          | 3      | जुलाई-सितंबर 15/10 तक**                     |                                                |                                                |                                                |                                                |                                                |
| 2     | अप्रैल-जून 15/7 तक*                             | 4      | अक्टूबर-दिसंबर 15/01 तक**                    |                                                |                                                |                                                |                                                |                                                |

* जिस अवधि से संबंधित हो उसके आगे (सही) का निर्णय लगाए।

** संबंधित तिथि तक रिपोर्ट निदेशालय को प्रस्तुत की जानी चाहिए। हस्ताक्षर प्रभारी अधिकारी
संदर्भित शिलोट्टिंग समय में प्राप्त प्रकरणों की संख्या

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हस्ताक्षर प्रभारी अधिकारी

प्रतिलिपि:

1. आयुक्त महिला अधिकारिता (PWDVA विभाग) ए-2, जल-पथ, गांधी नगर, जयपुर।
2. उपनिदेशक—महिला एवं बाल विकास विभाग, जिला.....................

-----------------------------------------------------------------------------------
राजस्थान सरकार
महिला एवं बाल विकास विभाग
निदेशालय महिला अधिकारिया
2, जल-पथ, गांधी नगर, जयपुर।

क्रमांक एफ 16 (1) (38) नि:म:अ./सेवा प्रदा. /09 1/1267–346 जयपुर, दिनांक–19.1.10

समस्त सेवा प्रदाता संस्थाएं।

विषय: घरेलू हिस्सा से महिला संस्थान अधिनियम, 2005 को लागू करने के संबंध में।

आपकी संस्था को घरेलू हिस्सा से महिला संस्थान अधिनियम, 2005 की धारा 10 (1) के तहत सेवा–प्रदाता के रूप में पंजीकृत किया गया है। पंजीकरण की शर्त पंजीकरण प्रमाण–पत्र के साथ पहले भेज दी गई है।

सेवा–प्रदाता संस्थाओं/संगठनों के लिए तय जिम्मेदारियां निम्न प्रकार से हैं:

(क) महिला द्वारा सहमति/इच्छा प्रकट किए जाने पर घरेलू घटना रिपोर्ट (डीअर) निर्दिष्ट प्रारूप/फॉर्म में लिखित तथा उसकी प्रति संबंध तथ्यों के मजिस्ट्रेट एवं सुरक्षा अधिकारी को भेजना;

(ख) पीड़ित महिला की मेडिकल जांच करवाना और मेडिकल रिपोर्ट की प्रति संबंध तथ्यों और सुरक्षा अधिकारी को पुलिस थाना को भेजना;

(ग) यदि पीड़ित महिला को शेल्टर/आश्रय की जरूरत हो तो उसे शेल्टर/आश्रयौत में शरण की व्यवस्था को सूचित करना तथा इस बारे में समूचे रिपोर्ट को संबंध पुलिस थाने में भेजना।

इसके अलावा यह भी अपेक्षा की जाती है कि आप घरेलू हिस्सा से महिला संस्थान अधिनियम, 2006 के नियम 13 के तहत योग्यता रखने वाले अपनी संस्था के व्यवस्थापक का नाम जिला सुरक्षा अधिकारी/सुरक्षा अधिकारी को भिजवाएं ताकि वे न्यायालयों को परम्परागत संस्थाएं की सूची दे सकें।

समाजसेवी गैर सरकारी संस्था के रूप में आपसे पीड़ित महिला की सहायता करने की अपेक्षा की जाती है। अतः जब भी कोई पीड़ित महिला आपसे सहायता करे, या ऐसा कोई मामला आपके पास भेजा जाए तो उस महिला को इस अधिनियम के तहत मिलने वाले अधिकारों के विषय में जानकारी दें, जैसा कि घरेलू हिस्सा से महिला संस्थान अधिनियम, 2006 के नियम 8 (1) (ii) के तहत फॉर्म–4 में दिया गया है। महिला के व्यवन के आधार पर आप नियमों के अंतर्गत प्रारूप–1 में रिपोर्ट बनाएं तथा महिला के शास्त्रीय प्रारूप (प्रारूप–3) के साथ संलग्न करें, आवश्यक होने पर आप प्रारूप–2 में महिला की ओर से प्रार्थना पत्र भरकर न्यायालय के समूह प्रस्तुत करें। घरेलू घटना रिपोर्ट (DIR) की प्रति सुरक्षा अधिकारी व संबंधित न्यायिक प्रक्रिया के समक्ष प्रस्तुत करें। घरेलू घटना रिपोर्ट (DIR) में प्रथम सूचना रिपोर्ट (FIR) लिखे जाने का संकेत देते हुए इसकी प्रति संबंध पुलिस थाना को भिजवाएं। ध्यान रखें कि समझौता: आप किसी मामले में जांच/छानबीन करने में सक्षम न हों। अतः घटना की प्रमाणित तथ्य के जांच न करें और जो भी
तथ्य (DIR) में देखा जा सकता है कि पृष्ठवर्धक महिला के बयान और संभवतः उपलब्ध साक्ष्य (मालिक फीप से जुड़ी मेडिकल रिपोर्ट या धमकी भरे पत्र आदि) पर आधारित हो। आवश्यक होने पर महिला को पंजीकृत आश्रयगृह में शरण दिलाया जाना आवश्यक है। सेवा प्रदाता द्वारा मामले में किसी भी प्रकार के परामर्श की सालाह नहीं दी जाती। क्योंकि जमीन पड़ने पर न्यायालय/मौजिस्ट्रेट द्वारा इस संबंध में परामर्शदाता/कल्याण अधिकारी की निर्देशन के अनुसार जा सकते हैं। आप महिला को उसके पास में दस्तावेज तैयार कराने में मदद भी कर सकते हैं।

सेवा प्रदाता के रूप में जिला सुरक्षा अधिकारी द्वारा आपके लिए क्षेत्र विशेष निर्धारित किया जा सकता है। अतः आपसे आग्रह किया जाता है कि जब भी क्षेत्र आपके लिए निर्धारित किया गया हो, उस क्षेत्र के मौजिस्ट्रेट, न्यायिक अधिकारी, सुरक्षा अधिकारी, या विशेष सेवाओं, आश्रय-गृह आदि की सूची अपने पास रखें और समय-समय पर इनसे संपर्क करते रहें।

पृष्ठवर्धक महिला को सकारात्मक सहयोग देने के लिए आपका योगदान महत्वपूर्ण है। सेवा प्रदाता के पास आने वाले मामलों, उनके निष्पादन व सूचनाओं के आदान-प्रदान हेतु यह जरूरी हो जाता है कि घरेलू हिस्से से महिला संस्करण अधिनियम, 2005 के तहत संस्थाओं द्वारा रखे जाने वाले रजिस्ट्री एवं सूचना फॉर्म का मानकीकरण किया जाए ताकि एकमता बनी रहे। इसलिए निम्न फॉर्म/प्रारूप स्थापित किए जा रहे हैं। आपसे अंक जितना जाना है कार्यवाही करें। यदि किसी प्रकार की कोई भर्ती या स्पष्टीकरण आवश्यक होने पर विना संकोच संपर्क करें।

सलाहकार (भ.अ.)
निदेशालय महिला आधिकारिता
जयपुर,
दिनांक-19.1.10

क्रमांक एफ 16 (1) (38) निम.अ./सेवा प्रदाता/091 1347-448

प्रतिलिपि-सूचना एवं आवश्यक कार्यवाही के लिए--

1. सभी जिलाधीश
2. सभी गृहस्थ अधिकारी
3. सभी उपनिदेशक, महिला एवं बाल विकास विभाग।

सलाहकार (भ.अ.)


Fourth Monitoring & Evaluation Report 2010
प्रारूप भेदावधाता-1
घरेलू हिला महिला संरक्षण अधिनियम

1. जिला........................................................................................................................................
2. सेवाप्रदाता संस्था का नाम.....................................................................................................
3. पता...........................................................................................................................................
4. सेवाप्रदाता संस्था के रूप में पंजीकरण संख्या और तिथि......................................................
5. टेलीफ़ोन नंबर....................................................................................................................... 
6. अन्य विवरण................................................................................................................................

रजिस्टर विवरण

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<th>संपर्क व्यक्ति का नाम व फ़ोन नंबर</th>
<th>प्रकरण प्राप्ति</th>
<th>घरेलू हिला घटना का संक्षिप्त विवरण</th>
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<td>साइना गृहस्थी में निवास-समझौता</td>
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<td>साइना गृहस्थी में निवास-समझौता</td>
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Fourth Monitoring & Evaluation Report 2010 197
सेवाप्रदाता संस्था का नाम

अवधि*...........................................

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<td>अक्टूबर-दिसंबर</td>
<td>15/01 तक**</td>
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* जिस अवधि से संबंधित हो उसके आगे (सही) का निशान लगाएं।

** संबंधित तिथि तक रिपोर्ट निदेशालय को प्रस्तुत की जानी चाहिए।

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<th>प्रकरण संख्या</th>
<th>संख्या अधिकारी को नेत्री गए प्रकरणों की संख्या</th>
<th>आश्रयाधीन में आश्रय लेने वाली महिलाओं की संख्या</th>
<th>विकित्सा सहायता प्राप्त करने वाली महिलाओं की संख्या</th>
<th>निजस्तंभ द्वारा पारित या नियमावली आदेश</th>
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<td>सव्विशेष रूप से</td>
<td>प्रतिक आदेश</td>
<td>अन्य</td>
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हस्ताक्षर प्रभारी अधिकारी

प्रतिलिपि:

1. आयुक्त महिला अधिकारिता (PWDVA विभाग) ए–2, जल–पथ, गांधी नगर, जयपुर।
2. उपनिदेशक— महिला एवं बाल विकास विभाग, जिला.........................
### Annexure 7

#### DETAILS OF TISS DATA, SPECIAL CELLS, HARYANA
**(APRIL 2009 TO MARCH 2010)**

**Format A for Violence against Women (PWDVA)**

<table>
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<th>S. No.</th>
<th>Item</th>
<th>Rohtak</th>
<th>Kaithal</th>
<th>Hisar</th>
<th>Sonipat</th>
<th>Kurukshetra</th>
<th>Jhajjar</th>
<th>Sirsa</th>
<th>Ambala</th>
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<td>141</td>
<td>310</td>
<td>140</td>
<td>159</td>
<td>71</td>
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<td></td>
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<td></td>
<td></td>
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<tr>
<td></td>
<td>(a) Judicial Magistrate/Court</td>
<td>54</td>
<td>21</td>
<td>155</td>
<td>34</td>
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</tr>
<tr>
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<td>(b) Service Provider</td>
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<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>-</td>
<td>0</td>
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<tr>
<td></td>
<td>(c) Voluntary/Women’s organisation</td>
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<td>0</td>
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<td>0</td>
<td>0</td>
<td>0</td>
<td>9</td>
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<td>(d) Police</td>
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<td>0</td>
<td>72</td>
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<td>(e) Self</td>
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<td>61</td>
<td>82</td>
<td>90</td>
<td>83</td>
<td>27</td>
<td>184</td>
<td>30</td>
</tr>
<tr>
<td></td>
<td>(f) Others</td>
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## Annexure 8

### DETAILS OF TISS DATA, SPECIAL CELLS, HARYANA
**(APRIL 2010 TO AUGUST 2010)**

**Special Cell for Women and Children, Compiled report for the Month of April to August 2010 Format A for Violence against Women (PWDVA)**

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**CHILD MARRIAGE COMPLAINTS**

<p>| 1      | New cases registered in intake register of child related issues     | 0   | 1   | 0   | 4   | 7   | 4   | 1   | 0    |
| 2      | Cases referred by:                                                  |     |     |     |     |     |     |     |      |
| 2a     | Verbal &amp; Telephonic                                                 | 0   | 1   | 0   | 1   | 6   | 1   | 1   | 0    |
| 2b     | Police                                                              | 0   | 0   | 0   | 0   | 0   | 2   | 0   | 0    |
| 2c     | Self                                                                | 0   | 0   | 0   | 0   | 0   | 1   | 0   | 0    |
| 2d     | Others                                                              | 0   | 0   | 0   | 3   | 0   | 0   | 0   | 0    |
| 3      | Application to Magistrate for injunction orders by Prohibition Officer | 0   | 1   | 0   | 0   | 0   | 3   | 0   | 0    |
| 4      | Final judgments received                                            | 0   | 1   | 0   | 0   | 0   | 4   | 0   | 0    |
| 5      | Mutually resolved cases                                              | 0   | 0   | 0   | 3   | 5   | 1   | 0   | 0    |</p>
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Annexure 9

DETAILS OF TISS DATA, SPECIAL CELLS, MAHARASHTRA (FROM FEBRUARY 2010)

Data of DIR filled by Special Cell Worker from last six months (from February 2010)

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LETTER FROM THE WCD, HARYANA TO DGHS

From
The Director
Women & Child Development Department,
Haryana, Chandigarh

To
Director General Health Services
Haryana, Panchkula

No. 24911  Cons./Chandigarh, dated 15-09-09

Subject: Circulation of Details of Special Cells for Women and Children to all Govt. Hospitals, CHCs and PHCs.

As you are aware that as provided under Section 2 (i) read with Section 7 of the Protection of Women from Domestic Violence Act 2005, all Govt. Hospitals, CHCs, and PHCs in Haryana have been notified as medical facility to provide medical aid to the victims of domestic violence. Further Rule 17 of the Protection of Women from Domestic Violence Rules 2006 provides that person in charge of medical facility shall forward the details of victims of domestic violence to the local Protection Officer. In view of the above provisions, you are requested to circulate the details of Special Cells for Women and Children to all Govt. Hospitals, CHCs and PHCs with the directions that any woman who comes for treatment in the Govt. Hospital, CHC or PHC and who appears to be the victim of domestic violence, the details of such woman must be forwarded to the Special Cell of the concerned District.

Enclosures:

1. Copy of Notification
2. Details of Special Cells for Women and Children
3. Brief note on Special Cells for Women and Children.

Joint Director
for Director, Women & Child Development Department,
Haryana, Chandigarh
Directorate of General Health Services, Haryana, Sector-6, Panchkula.


Copy of the above along with its enclosures is forwarded to all the CIVIL SURGEONS in the State of Haryana with the directions that any woman who comes for treatment in the Government Hospitals, CHCs, PHCs, Sub-Centres and who appears to be the victim of domestic violence, the details of such women must be forwarded to the Special Cell of the concerned district.

Medical Officer (Nutrition),

for Director General Health Services, Haryana
Annexure 11

DETAILS OF DILAASA: CRISIS CENTRE FOR WOMEN

DILAASA: CRISIS CENTRE FOR WOMEN
INTAKE FORM

(Please tick the relevant information)

Reg No.: Date:

Time interview started: Time interview ended:

Referred by: Date of MLC (whether done from Dilaasa):

Name:

Age (DOB) Religion

Muslim Christian
Hindu Others
Buddhist

Marital Status: Single Married (first/second wife) Separated Widowed
Deserted Live in relationship Divorced Others

Number of years of marriage/Date of Marriage:

Present address (Mention Landmark) Safe address (Mention Landmark)

Phone No.: Res.: C/o.: Work place:

Can we get in touch with you? If yes, where and how?

By Phone By letter Can’t get touch in touch with you

Relationship to the Safe address/phone number
Specify the relation. (Natal Family, Marital Family, Employers, Neighbours/Friends/Others)
Name:

Education: Illiterate Primary (Specify) Secondary Higher education Graduate Post graduate Vocational courses Others

Occupation: Not Employed Domestic worker Informal sector (Specify) Formal sector Self-Employed Home maker Others

Financial status
Woman’s Income (Daily wages/Weekly/Monthly)___________________________________
Family Income (Daily wages/Weekly/Monthly) ____________________________________
Do you have any assets in your name? Movable/Immovable

Do you have any important documents with you?

Marriage certificate Marriage photo Birth certificate of children
Ration card List of streedhan Receipts of Jewellery
Investments in your name Voter card Health reports
Academic certificates Property papers Bank account

Information about children

Name of child Sex Age Any other information

Her Relationship to the abuser: Husband Marital family (Specify) Natal family (Specify)
Children Others

Name of abuser:

Address and Telephone Number of work place:

Police station nearest to residence:

Police station nearest to incident:

Date: NC No.:

Medical treatment:

If referred from hospital, record the following from the case paper:
What was found on examination?

What is the treatment prescribed?

Pregnancy status:   Yes   Months   No   NA

DILAASA: CRISIS CENTRE FOR WOMEN

Section II History of Violence

Details of present/recent incident of violence

History of Violence

Number of years you have experienced violence:

Types of violence faced

(Please tick from each type of violence) (a body map can be used to help the woman talk about where she was assaulted)

<table>
<thead>
<tr>
<th>Physical</th>
<th>Emotional</th>
<th>Sexual</th>
<th>Financial</th>
</tr>
</thead>
<tbody>
<tr>
<td>Beating, slapping by hand</td>
<td>Verbal abuse</td>
<td>Forced sex</td>
<td>Not allowing her to seek employment</td>
</tr>
<tr>
<td>Pinching</td>
<td>Persistent criticism</td>
<td>Painful sex</td>
<td>Denying her access to any money</td>
</tr>
<tr>
<td>Pulling hair</td>
<td>Isolation</td>
<td>Withholding sexual pleasure</td>
<td>Denying right to her own income</td>
</tr>
<tr>
<td>Pushing, shoving</td>
<td>Threats to kill her</td>
<td>Sexual advances from other family members</td>
<td>Asking her for an explanation for every expenditure</td>
</tr>
<tr>
<td>Twisting the arm</td>
<td>Threats to remarry</td>
<td>Denying her the use of contraceptives</td>
<td>Denying her food and shelter</td>
</tr>
<tr>
<td>Banging the head on the wall and floor</td>
<td>Husband not communicating with her</td>
<td>Forcing her to have children</td>
<td>Demanding money</td>
</tr>
<tr>
<td>Punching the face</td>
<td></td>
<td>Forced oral sex</td>
<td>Dowry demands</td>
</tr>
<tr>
<td>Physical</td>
<td>Emotional</td>
<td>Sexual</td>
<td>Financial</td>
</tr>
<tr>
<td>--------------------------</td>
<td>--------------------------------</td>
<td>----------------------</td>
<td>----------------------------</td>
</tr>
<tr>
<td>Punching the chest</td>
<td>Threats against her family</td>
<td>Forced anal sex</td>
<td>Any other</td>
</tr>
<tr>
<td>Punching the abdomen</td>
<td>Suspicion</td>
<td>Any others</td>
<td></td>
</tr>
<tr>
<td>Kicking the chest</td>
<td>Restricting mobility</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Kicking the stomach</td>
<td>Humiliating her in public</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Kicking her on the face</td>
<td>Extra-marital affair</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Belting the woman</td>
<td>Any other</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Human bites on different body parts</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Use of blunt instruments</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Use of sharp instruments</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Strangulation</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Forcing her to consume poison</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Any other</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Narrate incidents of violence and her life story:

What do you do after the incident of violence? (Cry, sit in a corner, leave the house, go to your natal home, talk to the children, go to sleep, nothing, carry on with work, make a police complaint, suicidal ideation)

In what way is the violence affecting your physical and psychological health?

Are there other family members affected by violence?

<table>
<thead>
<tr>
<th>Name</th>
<th>Age</th>
<th>Sex</th>
<th>Type of violence and its effect</th>
</tr>
</thead>
</table>

SAFETY ASSESSMENT

The following questions could be asked to assess her safety. There are situations where there is a possibility that the woman may face more violence. By asking these questions, the counsellor would help the woman gauge her own safety. The more the number of yes, the unsafe her going back would be. After asking these questions, the counsellor would ask her if she feels safe to go back. The woman may say she feels unsafe but wants to go back or may say she feels safe. Here it is important to draw up a safety plan with the woman so that she can protect herself. A safety plan world have to be drawn up even if the woman answers “No” to the above questions.

1. Has the physical violence increased in frequency over the past year?
2. Has the severity of physical violence increased over the past year? (from kicks and blows there is use of instruments?)
3. Does he or his family threaten to kill you? If yes, then do you believe that they can kill you?
4. Does he and/or his family threaten you with second marriage? If yes, how serious do you think the threat is?
5. Have you thought of committing suicide? If yes, then have you attempted it or do you have any plan of committing suicide?
6. Is he violent towards your children and/or other family members? If yes, then has this increased in the past year?

SAFETY PLAN

Safety plan discussed with woman (Physical and Psychological):

Expectations from the centre (in the woman’s words):-
DILAASA: CRISIS CENTRE FOR WOMEN

Section III Intervention

(Discussion with the woman)

Reg. of complaints (MLC, Police complaint)

Medical (Refer her to an OPD/IPD, Explain the health complaints that the woman is suffering)

Emotional Support (Reassure her that violence is not her fault, help her to understand the pattern of abuse, share with her that she is not alone, coping mechanism make specific suggestion like attend women’s meeting, engage in paid work, skill building etc., stress on her strengths, helping her to link it to a larger oppressive structure in which we live and how violence against woman happens most of the time.)

Social Support (Income generation, skill building, educational support for children such as Balwadi, boarding schools)

Shelter

Police (Information and explanation on the importance of filing an NC and other complaints)

Legal Counselling (her rights, procedure for injunction, stay order, maintenance, divorce)

Impressions: Woman’s perception about her situation (a more holistic picture about her life)

Counsellor’s analysis of the woman’s situation -

Future plan discussed with woman:

Reg of complaints:

Medical:

Emotional Support:

Social Support:

Safety/Shelter:

Police:

Legal Aid:

Date:     Feedback from the team:
DILAASA: CRISIS CENTRE FOR WOMEN

Follow-up session

Name:  
File No.  
Reg. No.  

Discussion with the woman:  
Date:  

Safety Assessment and Plan:

Reg. of complaints:

Medical:

Emotional Support:

Social Support:

Safety/Shelter:

Police:

Legal Aid:

Future Plan:

Team Feedback:
Findings of study of case records of 1357 cases reported to Dilaasa between 2001 and 2006

Reference

- 18% of the women were referred from casualty department, direct referral by hospital staff accounted for 12%, about 8% were referred from OPDs and IPDs, 16% were identified by Dilaasa counsellors through screening in the wards, 11% of the women had come after seeing the publicity materials about Dilaasa while 6% were self-referred and about 5% were referred from other hospitals and by community health volunteers.

Duration of marriage

- 10%, 17%, and 28% of the women who reported to Dilaasa within 1 year, 1-2 years and 3-5 years respectively. 18% women also reported having faced abuse for more than 15 years. 73% of the women are living in marital relationship and want to continue living there. 7% were never married and reported abuse from boyfriends and natal family.

During pregnancy

- 9% of the currently married women who reported immediately after violence were pregnant. In addition to this, 47% women reported facing violence during pregnancy.

Forms of Violence

- 69% women reported financial violence – of these only 15% (143) reported dowry demands. 41% women reported some form of sexual violence, of these 67% reported marital rape. 33% women came after an assault, 16% came after an attempt to suicide. 83% women reported some form of mental health consequence- of these 30% reported suicidal attempt, 53% reported some form of physical health consequences

Non-Registered users

- A number of “non-registered” users who were counselled every year were women referred from the female medical ward, and many of them had attempted suicide. However, they did not report a history of domestic violence, and were therefore counselled only for suicide prevention. About 535 “non-registered” users reported to Dilasa during 2005-06 to 2008-09. They are possibly cases of domestic violence but denied it due to the fact that attempt to suicide becomes a police case and they did not want to reveal history of violence at all.
WHAT IS YOUR ROLE AS A HEALTHCARE PROVIDER?

IDENTIFY ABUSE
- Look out for signs and symptoms revealing abuse
- Probe sensitively
- Assure her of confidentiality and prioritise her safety

EMOTIONAL SUPPORT
- Listen carefully
- Believe in her
- Validate her experience
- Convey that violence is not her fault
- Assure her that she is not alone

INFORMATION AND REFERRAL
- Inform the patient that violence is illegal
- Convey the importance of filing a police complaint
- Ask about her safety
- Refer her to other agencies for further help

MEDICAL SUPPORT
- Take a thorough history
- Assess for both current and past histories of violence
- Attend to all injuries

DOCUMENTATION
- Register a medico-legal care and document details in the MLC register as well as the case paper
- Collect forensic evidence in case of sexual violence
- Make a Domestic Incident Report if it is domestic violence

EMOTIONAL SUPPORT
- Listen carefully
- Believe in her
- Validate her experience
- Convey that violence is not her fault
- Assure her that she is not alone
Signs and symptoms that signal the need to ask about gender-based violence by departments to which women may present

<table>
<thead>
<tr>
<th>Casualty</th>
<th>Gynaecology/Obstetrics</th>
<th>Psychiatry</th>
<th>Medicine</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Rape/Sexual assault</td>
<td>- History of assault</td>
<td>- Depression</td>
<td>- History of consumption of poison</td>
</tr>
<tr>
<td>- Assault</td>
<td>- History of fall during pregnancy</td>
<td>- Insomnia</td>
<td>- Breathlessness</td>
</tr>
<tr>
<td>- Poisoning/Attempted suicide</td>
<td>- Repeated pregnancies</td>
<td>- Attempted suicide</td>
<td>- Fainting spells</td>
</tr>
<tr>
<td>- Burns</td>
<td>- Spontaneous abortion</td>
<td>- Anxiety/Tension</td>
<td>- Swelling</td>
</tr>
<tr>
<td>- Fractures</td>
<td>- Repeated birth of girl child</td>
<td>- Self-harm</td>
<td>- Tenderness</td>
</tr>
<tr>
<td>- Falls</td>
<td>- MTP</td>
<td>- Obsessive compulsive disorder</td>
<td>- Chronic anaemia</td>
</tr>
<tr>
<td>- Pregnancy with history of fall/assault</td>
<td>- Reversal of tubal ligation</td>
<td>- Eating disorders</td>
<td>- Aches and pains</td>
</tr>
<tr>
<td>- Unexplained bruises, CLW, lacerations and/or abrasions</td>
<td>- Pregnant single women, widows</td>
<td>- Substance abuse</td>
<td>- Sudden weight loss</td>
</tr>
<tr>
<td>- Repeated health complaints despite normal reports</td>
<td>- Chronic leucoorrhea</td>
<td>- Repeated pregnancies</td>
<td>- Tuberculosis</td>
</tr>
<tr>
<td>- Old scars or fractures in different stages of healing</td>
<td>- Postpartum psychosis</td>
<td>- Spontaneous abortion</td>
<td>- Repeated health complaints despite normal reports</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Injury marks on labia, breast and/or other sexual organs</td>
<td>- Pyrexia of unknown origin</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Abruptio placentae</td>
<td>- Convulsions</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Pelvic inflammatory disease</td>
<td>- Irritable bowel syndrome</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Infertility</td>
<td>- Loss of appetite</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Orthopaedic</th>
<th>Surgery</th>
<th>ENT</th>
<th>Skin</th>
</tr>
</thead>
<tbody>
<tr>
<td>- All fractures</td>
<td>- History of assault</td>
<td>- Perforated ear drum</td>
<td>- STIs</td>
</tr>
<tr>
<td>- All falls at home</td>
<td>- Abdominal trauma</td>
<td>- Injuries and fractures</td>
<td>- RTIs</td>
</tr>
<tr>
<td>- Minor sprains</td>
<td>- Burns</td>
<td>- Locked jaw</td>
<td>- HIV</td>
</tr>
<tr>
<td>- Ligament injury</td>
<td>- Contusion, lacerations and/or bruises</td>
<td>- History of reduced hearing</td>
<td>- Repeated allergies</td>
</tr>
<tr>
<td>- Contusions</td>
<td></td>
<td>- Chronic discharge from ears</td>
<td>- Eczema</td>
</tr>
<tr>
<td>- Chronic ache in back, shoulder, neck</td>
<td></td>
<td>- Sudden loss of voice</td>
<td>- Eczematous change</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Difficulty in swallowing</td>
<td>- Allergic rashes around the neck, thighs, waist, forehead</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>- Fungal infection</td>
</tr>
</tbody>
</table>

Source: Dilaasa. Guidelines for health professionals in responding to women facing violence. Mumbai, CEHAT, undated
# Annexure 12

## REPORTING SYSTEM FOR THE POs IN DIFFERENT STATES

<table>
<thead>
<tr>
<th>State</th>
<th>Reporting Authority</th>
<th>Form of reporting</th>
<th>Reporting Period</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bihar</td>
<td>Managing Director, DWCD</td>
<td>Reports in prescribed format State level meetings</td>
<td>Monthly</td>
</tr>
<tr>
<td>Chandigarh</td>
<td>Research Officer, Social Welfare Department</td>
<td>Reports called for whenever the concerned officer desires for same</td>
<td></td>
</tr>
<tr>
<td>Rajasthan</td>
<td>Commissioner of Women</td>
<td>Prescribed format</td>
<td>Quarterly reports</td>
</tr>
<tr>
<td>Tamil Nadu</td>
<td>Assistant Director (Women’s Welfare) O/o Directorate of Social Welfare</td>
<td>Reports in prescribed format Meetings</td>
<td>Submitted every month Held once in three months</td>
</tr>
<tr>
<td>Uttar Pradesh</td>
<td>Director, Mahila Kalyan</td>
<td>Reports Meetings</td>
<td>Regular (no period specified)</td>
</tr>
<tr>
<td>Mizoram</td>
<td>Deputy Director</td>
<td>Submission of reports with data and records</td>
<td>Quarterly</td>
</tr>
<tr>
<td>West Bengal</td>
<td>Director of Social Welfare &amp; Spl. Secretary, Deptt. Of WCD &amp; SW Deptt Districts to D.M. &amp; Spl. Secretary, Deptt. Of WCD &amp; SW Deptt</td>
<td>Reports in prescribed format</td>
<td></td>
</tr>
<tr>
<td>Madhya Pradesh</td>
<td>Deputy Director</td>
<td>Reports Meetings</td>
<td>Monthly</td>
</tr>
<tr>
<td>Assam</td>
<td>Deputy Director</td>
<td>Reports Meetings</td>
<td>Quarterly</td>
</tr>
<tr>
<td>Manipur</td>
<td>Women Development Officer</td>
<td>Reports in prescribed format Meetings</td>
<td>Regular (no period specified)</td>
</tr>
<tr>
<td>Gujarat</td>
<td>Director, Social Welfare</td>
<td>Reports in prescribed format</td>
<td></td>
</tr>
<tr>
<td>Karnataka</td>
<td>Director, DWCD</td>
<td>Reports in prescribed format Meetings</td>
<td>Quarterly</td>
</tr>
</tbody>
</table>
GUIDELINES FOR SPECIAL CELLS, HARYANA

Circular

The Special Cells for Women and Children is a Programme of the Dept of WCD and Home, to work on the issue of Domestic Violence against Women and Child Marriages. The Special Cell undertakes its work within the Indian Constitution, and work towards ensuring that women and children are recognised as individuals, with equal rights and opportunities in society, including the opportunity to live peaceful violence-free life.

The Special Cell established by the Govt. of Haryana in all districts of the State is esp. located within the SP’s office, to work with a clear understanding that Domestic Violence against Women and Solemnisation of Child Marriages is a crime, against them and the society, and that it is the responsibility of the state to prevent, protect and counter it. The Protection cum Child Marriage Prohibition Officer (PPO) appointed at each Special Cell under Section 8 of the Protection of Women from Domestic Violence Act 2005 (PWDVA) and Section 16 of the Prohibition of Child Marriage Act 2006 (PCMA), therefore would be an officer of the court and the violated women/ children- a bridge between women/children and Justice.

The Special Cell’s Approach to Work

The Special Cells’ ideology of work is essentially multifaceted in nature, and is based on its perspective on the issue of domestic violence against women and child marriages. One key aspect of the Special Cells’ ideology is that it focuses its work on the issue of domestic violence against women with a pro-woman understanding that legitimizes the violated woman’s concerns and needs. The Special Cells recognize that a violated woman is one who has experienced violations of rights and/or physical/sexual/economic/verbal and emotional abuse in private spheres of her life, and that she is not responsible for the violence inflicted on her. In fact, the Special Cells perceive that the misuse of power by men within patriarchal society makes women vulnerable to, and a victim of domestic violence. Second key aspect of the Special Cells’ ideology is that it focuses its work on the issue of preventing the solemnisation of child
marriages. Thus, the Special Cell acts on the premise that domestic violence against women/solemnisation of child marriage is not a personal matter to be resolved by the family alone, and that instead, it is a crime, and therefore, an issue that needs to be addressed within the public domain. The mission of the Special Cell is to work towards ensuring that women/children are recognized as individuals, with equal rights and opportunities in society, including the opportunity to live a peaceful, violence-free life.

As a result of this view, the Special Cells recognize the need to work simultaneously at two levels, namely at the level of the individual violated woman/children, as well as at the level of systems. At the individual level, the Special Cells engage the violated woman/children in a problem-solving process, which is directed towards empowering them. In this problem-solving process, the Special Cells facilitate the process whereby violated women/children gain access to spaces within the Legal Framework, especially the Police and Judicial system. Hence, simultaneity of work at both the individual and systemic levels is another key aspect of the Special Cells’ ideology.

In order to effectively work at both the individual and systemic levels on the issue, the location of the Special Cells within the police system is one more essential aspect of its ideology and methodology of work. Through its location in the police system, the Special Cells will create emotional, physical, mental, and legal space for the violated woman/child within the Legal Framework, where they can engage in addressing their needs and concerns in the problem-solving process within a facilitative environment. The legitimate power and authority inherent in the police system enables the Special Cell to say “no to violence” at the individual and societal levels, and focus on the violated woman/child’s rights as a citizen, as well as their legal rights. The synergy resulting from the differential strengths and contributions of both the police system and the Special Cells enables a coordinated, multi-agency response to the issue of domestic violence against women/child marriages. Such a coordinated response is needed as a violated woman/child has complex needs arising from her context of violence, which require specialized social services, along with legal measures. Additionally, through its location within the police system, the Special Cells also link the police system with women/children’s organizations and other social service groups, thereby further enhancing a coordinated response to the violated woman/child’s needs.

One more essential aspect of the Special Cells’ ideology pertains to the fact that its work draws from the values, principles, methods, and interventions of professional Social Work practice. Human beings are central to social work methods and interventions, which are based on the belief that all human beings can change, including both the oppressed and the oppressor. Thus, Social Work practice is built on the premise that a planned problem-solving process can bring about social change, as human beings are resourceful and have potential for transforming their own lives. Social Work practice is committed to marginalized and vulnerable stakeholder groups, and the Special Cells’ commitment to violated women/children is in accordance with
this, as violated women/children are marginalized. Thus, the role of trained social workers and socially aware Lawyers in carrying out the work of the Special Cells is another essential component of its ideology of work, which is focused on process-oriented social change.

The objectives of the Special Cells (as stated below) are based on its above-stated ideology of work:

The Special Cells’ work is directed towards:

1. Rebuilding violated women’s self-esteem, self-worth and dignity.
2. To perform the role of the Protection Officer under the PWDV Act 2005.
3. To perform the role of the Prohibition Officer under the PCM Act 2006.
4. Offer immediate services in cases of family violence and atrocities against women in the form of:
   i. Work with Magistrates / Police in registering complaints under PWDV Act 2005 and in any other matter.
   ii. Placement in institutions.
   iii. Counselling.
   iv. Referral to family service agencies and other services including medical, psychiatric, educational and vocational.
   v. Legal aid.
   vi. Any other assistance.
4. Be a liaison between police and organisations for women and children

Monitoring/Steering Committee

To ensure smooth functioning of the Special Cell for Women and Children a Monitoring Committee/Steering Committee will be set up, which will meet initially on a quarterly basis and once special cells are properly established, the committee will meet on a half-yearly basis. The Committee will consist of Dept of Home (police), Dept of Women and Child Development, Haryana State Legal Services Authority, Supervising agency - Tata Institute of Social Sciences. The following shall be the ex-officio members of the Steering committee:

- Financial Commissioner Home.
- Financial Commissioner WCD.
- Director General of Police.
- Member Secretary Haryana State Legal Services Authority.
- Director WCD.
- Hony. Secretary Haryana Red Cross.
• Project Co-ordinator TISS.
• Consultant WCD (Convenor).
• Representative of Lawyers Collective Women Rights Initiative.

The roles and responsibility of the different Stakeholders of the program is enumerated below:

**Role and Responsibility of the Monitoring/Steering Committee**

- Policy Development for effective implementation of Special Cells
- Monitoring the Implementation of the programme.
- Advising on financial management of Special cells.
- Review the program plans/work plans of the Special Cells
- Facilitate coordination with different arms of the Govt and stakeholders for the smooth and effective functioning of the Special Cells
- Periodic monitoring of implementation of the program through reporting from the PPOs/Consultant of the Special Cells
- Develop and plan newer and contextual strategies to deal with Domestic Violence against Women and Solemnisation of Child Marriages.
- Develop a system for monitoring and evaluation of the Special Cell and organising agencies.

**Role of Nodal Department (DWCD)**

- Be the member of the Steering Committee to guide the work of Special Cell
- Provide funding through organising agencies for Special Cells.
- Policy Support for effective interventions at Special Cell.
- Monitoring of the project through periodic visits and reports from Supervisory agency/Consultant/ PPOs of the Special Cells.
- Implement evaluation and monitoring system developed by the Steering Committee.

**Role of Haryana Police Headquarter**

- Be a member of the steering committee to guide the work of Special Cell.
- Give all Policy support, infrastructure support and uphold the spirit of challenging Domestic Violence against Women/ Child Marriages.
- Monitor and supervise, guide the Special Cells based on the objectives and Monitoring Indicators of the Special Cells
- Facilitate and coordinate capacity building of Special Cells on socio-legal work with violated women.
- Regular visits by senior officials to facilitate the functioning of Special Cells.
Role of SP Office where Special Cell is located

- Support Policy implementation of the program at District level
- Monitoring the work of the Special Cells
- Support/initiate Special Cell District specific interventions.
- Facilitate and coordinate ongoing day-to-day work of Special Cell to facilitate the setting up of social services within the police system.

For smoothly functioning of the Special Cell, within the police system administrative and infrastructural support is necessary from concerned SP office where Special Cell is located i.e.

- Two rooms- one for PPO’s office and one for Counselling.
- Postal help to deliver notices/summons/call letters to respondents/clients.
- Furniture.
- Providing a vehicle from Motor Transport Section as and when required.
- Providing an Identity card/Authority letter to the PPOs, so that they can visit police station, access records, jails, lock up without any difficulty.
- Make available/depute at least one police personnel to help/support the PPOs for administration/visits to the field.

Role of Deputy Commissioner

- Ensure coordination with various arms of District Administration.
- Facilitate provisions of shelter home/children home/medical facility/counsellors, etc.

Role of PO (ICDS)

- Support implementation of the programme at the District Level.
- Facilitate the coordination of the PPO’s with the District Administration.

Role of TISS as a Resource and guiding Supervising Agency

- Share the resources build from experience, research and documentation.
- Facilitation and support planning in setting up of new Special Cells
- Advice and Assist stakeholders of Special Cells on issues of Domestic Violence against Women/Child Marriage.
- Training and capacity building of different stakeholders
- Jointly work on research and documentation with implementing agencies, and other stakeholders of Sp Cells
- Supervise the implementation of the program based on the principles and objectives defined for Special Cells
• Facilitate co-ordination between different stakeholders of the program
• Facilitate on-going training and capacity building of the PPOs.
• Maintain documentation, reports and records of the work.
• Invited Member of the Steering Committee

**Monitoring Indicators (Operating Procedures or Protocols)**

The monitoring indicators have been developed under ten categories, with each category representing an area of work of the Special Cells. Each of these areas is further segmented into specific indicators represent special cells interventions within a particular area of work. These indicators are to be used holistically and not individually, as each of them represents a part of the work done at the Special Cells.

A. Special Cells’ interventions for providing emotional support and strengthening the psychological self of the violated woman/child
B. Special Cells’ interventions for negotiating for non-violence with various stakeholders.
C. Special Cells’ interventions for building support systems for violated women/children.
D. Special cells’ interventions for engaging police help in the interest of violated women/children.
E. Legal Aid to facilitate the violated woman/child’s journey through the legal justice system.
F. Special Cells’ interventions related to arranging shelter for violated women.
G. Special Cells’ interventions related to working with men/parents in the interest of violated women/children.
H. Special Cells’ interventions related to the re-establishment of women’s relationships with their economic assets.
I. Special Cells’ interventions for advocacy for group entitlement in the interest of violated women/children.
J. Special Cells’ interventions related to development counselling with violated women/children.
**Negotiating for non-violence with stakeholders**
- Building alliances with the police and other systems in the interests of violated women & children
- Creating an environment of acceptance of the human rights of women/children.

**Promoting the rights of women/children with systems and stakeholders**
- Building awareness in the police & other systems on the violated woman/child’s problems & perspective
- Building awareness in organizations on the problems & perspective of violated women/children
- Building awareness in community groups on the violated woman/child’s problems & perspective

**Building the violated woman/child’s self-confidence & self-esteem**
- Training police & other systems on issues pertaining to violence against women/children
- Training community groups on issues pertaining to violence against women/children

**Empowering violated women/children**
- Harnessing police authority to help violated women

**Building support systems for the violated woman/children**

**Enabling the violated woman/child access services, resources & assets due to her**

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**Infrastructure of the Special Cell**

Each Special Cell is housed in the SPs office and has one full time trained PPO supported by an assistant and police personnel. Also a State Consultant will anchor all the Special Cells.
The Special Cell’s Protection cum Child Marriage Prohibition Officers (PPOs) is an integral part of the social services provided to the violated woman/child. During the problem solving process, the PPOs intervene in the interest of the violated woman/child. The PPO’s commitment to women/children’s issues, with focus on the issue of domestic violence against women and child marriages, is a crucial aspect of the Special Cell’s service delivery.

Role of the State Consultant

1. Overall programme development at the state level
2. Supervision of various roles and responsibilities and tasks of the protection officer in the Special Cells in the region, and facilitation of programme development
3. Overall responsibility for management and administration of the programme.
4. Financial management of the programme with assistance of Accounts Branch of WCD Deptt.
5. Responsibility for maintenance of linkages between police, Steering Committee, the State Resource Group, and the programme,
6. Facilitating the implementation of core services for violated women/children as and when required, so as to role model intervention skills, and respond to cases that require special skills, so as to enhance the interventions
7. Bringing the issue of domestic violence against women at various fora and levels, together with the PPOs.
8. Holding monthly performance reviews of PPOs.
9. Convene meetings of steering committee and liaison with all members of the steering committee.
10. Preparing state level reports from regional reports, from reports of each Special Cell in the districts.
11. Engaging in systemic interventions so as to sensitize the police to the issue of domestic violence against women and child marriage.
12. Planning and coordinating training programmes, and implementing these at the district level.

Training of Protection Officers of the Special Cells
1. Newly appointed PPOs should be trained for a one-month period.
2. Subsequent to the initial training, PPOs should be given issue specific trainings/ refresher courses on periodical basis.
3. A review of the PPO’s performance should be carried out after six months of appointment. The State Consultant along with the supervising agency should undertake this review.
4. During the review, the PPO’s pro-woman/child ideology, and commitment to equality and social justice needs to be assessed, as this is necessary for the effective working of the Special Cells.

Teamwork between the Protection Officers of the Special Cells
1. For effective teamwork in the Special Cells, the PPOs must respect and trust one another, as well as be accountable to each other and demonstrate transparency in their work relationship.
2. Teams must work with a sense of autonomy, so as to facilitate effective problem-solving in the interests of violated women/children.
3. It is necessary to facilitate teamwork at the level of each Special Cell, as well as at the level of the Special Cells Programme as a whole, as this creates synergy in the problem-solving process.

Ongoing staff development within the Special Cells includes the following
1. There is a need for ongoing development of PPOs in the Special Cells to strengthen and empower them, and to continuously provide space for sharing concerns and work experiences, as well as upgrading their skills.
2. The PPOs should be trained as trainers, and after one year of field experience, they can start participating as resource persons in training programmes of the Special Cells. They can also be sent to training programmes of other organizations after one year of work with the Special Cells. In this way the capacities of PPOs will be developed. This will also contribute towards an increase in the number of training programmes for the police at the local district level.
3. Collective reflection on work on cases of violated women/children is required on a regular basis. Such collective reflection is required to discuss sensitive complex problems, as well as to develop strategies for these. Such discussions must address ethical issues of work.
4. A collective pro-woman/child ideology should be built in the Special Cells continuously, as part of the ongoing development of PPOs of the Special Cells.
Performance Appraisal of PPOs of the Special Cells

1. The performance appraisal process at all levels should be a participatory one.
2. Both merit and effort should be equally recognized.
3. The performance appraisal system should have built into it rewards for creative and effective work on the issue of violence against women/children.
4. The performance appraisal system should recognize that the PPOs of the Special Cells are its assets and wealth.
5. The two objectives for the performance appraisal process should be to enable the PPOs learn and engage in self-development, and to function as a system for rewarding and correcting professional behaviour.
6. Performance appraisals should not focus on targets, and nor should the programme functionaries feel restricted by the numbers indicated by them in their annual plan and budget. Instead, the focus of performance appraisal should be on the process of work.